



## **CONDITIONS OF CONTRACT**

**PISA Standard Consultancy Agreement**

***For the Supply of Services***

## TABLE OF CONTENTS

1.	BEHAVIOURAL COMMITMENTS .....	4
2.	CONSTRUCTION OF CONTRACT .....	4
3.	DEFINITIONS .....	5
4.	TERM.....	6
5.	EVIDENCE OF CONTRACT .....	6
6.	SUPPLY OF SERVICES .....	7
7.	INSURANCE .....	8
8.	NONCONFORMING SERVICES.....	9
9.	OBLIGATIONS OF CONTRACTOR.....	9
10.	VARIATION .....	10
11.	INVOICING .....	10
12.	PAYMENT .....	11
13.	TEMPORARY SUSPENSION OF SERVICES .....	11
14.	DUTY .....	12
15.	GST.....	12
16.	TERMINATION.....	12
17.	DISPUTE RESOLUTION .....	13
18.	SURVIVAL OF PROVISIONS.....	14
19.	INTELLECTUAL PROPERTY RIGHTS .....	14
20.	RISK AND INDEMNITY .....	15
21.	CONFLICT OF INTEREST .....	16

22.	CONFIDENTIALITY .....	17
23.	ASSIGNMENT AND NOVATION.....	17
24.	NAMED PERSONNEL .....	17
25.	NEGATION OF EMPLOYMENT AGENCY ETC .....	18
26.	NOTICES.....	18
27.	FORCE MAJEURE.....	18
28.	PRINCIPAL'S REPRESENTATIVE .....	19
29.	CONTRACTOR'S REPRESENTATIVE .....	19
30.	AUTHORISED REPRESENTATIVE.....	19
31.	SECURITY AND ACCESS.....	19
32.	INDUSTRIAL DISPUTES .....	19
33.	REPORTING .....	19
34.	NOT USED .....	20
35.	PROTECTION OF PERSONS, PROPERTY AND THE ENVIRONMENT .....	20
36.	MISCELLANEOUS .....	21
37.	PRIVACY AND PERSONAL INFORMATION .....	21
	SCHEDULE A.....	23
	SCHEDULE B .....	24

---

***Instrument of Agreement for the Supply of Consultancy Services***

**THIS AGREEMENT** is made on the date on the Purchase Order.

**BETWEEN:**

**PROCUREMENT INTEGRITY SERVICES** of 13 Orana Street, Buddina, QLD 4575, in the State of Queensland  
("Principal")

**AND**

The recipient of the Purchase Order

---

***Instrument of Agreement for the Supply of Consultancy Services***

**1. BEHAVIOURAL COMMITMENTS**

- 1.1 The Parties will work together in an innovative, cooperative and open manner so as to produce outstanding results in delivering the Services under this Contract.
- 1.2 The Parties acknowledge that a key purpose of the Contract is to avoid disputation and the Parties commit to immediately notify each other of perceived or real differences of opinion under this Contract and to strive to promptly resolve those differences in good faith.
- 1.3 The Parties undertake to act reasonably and to do all things properly and reasonably within our power that are necessary to give effect to the spirit and intent of this Contract and to give due regard to the representations of each other when reaching any decisions, including decisions as to the giving or withholding of consent or approval, or when exercising any other discretion pursuant to this Contract.
- 1.4 Except where the Principal is given an absolute discretion by an express term of the Contract, the Parties undertake to act in good faith in conducting all activities arising out of this Contract and will:
  - (a) be fair and honest; and
  - (b) not impede or restrict each other's performance.

**2. CONSTRUCTION OF CONTRACT**

- 2.1 A reference to:
  - (a) the singular includes the plural, and vice versa;
  - (b) a gender includes each other gender;
  - (c) a person includes a corporation, a firm, and a voluntary association;
  - (d) an Act includes an Act that amends, consolidates or replaces the Act;
  - (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
  - (f) money is a reference to Australian dollars and cents;
  - (g) a time of day is a reference to Australian Eastern Standard Time;
  - (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.
- 2.2 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 2.3 All information delivered as part of the Services supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.
- 2.4 If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.

---

***Instrument of Agreement for the Supply of Consultancy Services***

**3. DEFINITIONS**

3.1 In the Contract, except where the context otherwise requires:

**'Act'** means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.

**'Clause'** means a clause of the Contract.

**'Contract'** means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

**'Contract Commencement Date'** means the date specified on the Purchase Order.

**'Contract Material'** means New Contract Material and Existing Contract Material.

**'Contract Price'** means:

- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract; and
- (b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates;
- (c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b); and
- (d) where the payment is on a lump sum or lump sum and schedule of rates and includes a limb three gainshare/painshare bonus payment, the aggregate of the sums referred to in paragraphs (a) or (c) and the bonus payment.

**'Contractor'** means the party named as such on the Purchase Order, and including its successors and permitted assigns.

**'Contractor's Representative'** means the person nominated on the Purchase Order, if any. If none is nominated on the Purchase order, the Contractor. Or any replacement made in accordance with this Contract;

**'Existing Contract Material'** means any material that exists at the commencement of the Contract and which is provided in connection with the Contract including but not limited to sketches, plans, designs, estimates, calculations, reports, models, computer source codes, articles, information, files and data.

**'Force Majeure'** means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction and any circumstance where the Contractor is required to suspend performance of its obligations under the Contract as a consequence of an order from a court or tribunal, or where otherwise required pursuant to a legislative requirement.

**'GST'** means the goods and services tax under the GST Act.

**'GST Act'** means A New Tax System (Goods and Services Tax) Act 1999 and includes other GST related legislation.

---

***Instrument of Agreement for the Supply of Consultancy Services***

**‘Intellectual Property Rights’** means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract.

**‘Moral Rights’** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968, and rights of a similar nature anywhere in the world whether existing before commencement of the Term or which may come into existence on or after the date of the Contract.

**‘Named Personnel’** those persons nominated on the Purchase Order, if any. If none is nominated on the Purchase order, the Contractor;

**‘New Contract Material’** means any material provided in connection with the Contract that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract.

**‘Nonconforming Services’** see Clause 8.1.

**‘Purchase Order’** means the Principal-generated document issued to the Contractor authorising the purchase as outlined in the Purchase Order.

**‘Principal’s Representative’** means the person nominated on the Purchase Order, if any. If none is nominated on the Purchase order, the Principal, or any replacement made in accordance with this Contract;

**‘Services’** means the services, tasks, work and requisites the subject of the Contract which are more particularly described in the Specification at Schedule A including all variations to the services, tasks, work and requisites provided for by the Contract.

**‘Specification’** means the works required by the Principal as outlined at Schedule A includes any specification included in the Request for Tender.

**‘Term’** means the period for which the Contract will be in effect as specified in Clause 4.

**‘Valid Invoice’** means a valid invoice that the Principal will pay on as outlined at Clause 11.2.

#### **4. TERM**

- 4.1 The Term of the Contract is as per the Purchase Order, starting on the Contract Commencement Date, unless it is terminated earlier in accordance with the terms and conditions of the Contract.

#### **5. EVIDENCE OF CONTRACT**

- 5.1 The Contract is constituted by the following documents:

- (a) Instrument of Agreement
- (b) Conditions of Contract
- (c) The Schedules in order of appearance
  - a. Schedule A
  - b. Schedule B
  - c. Purchase Order.

---

***Instrument of Agreement for the Supply of Consultancy Services***

- 5.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (c) in Clause 5.1.
- 5.3 For avoidance of doubt, quantities listed in Schedule B are estimated quantities only and do not form part of the Contract.

**6. SUPPLY OF SERVICES**

- 6.1 The Contractor must provide the Services
- (a) in accordance with:
    - i. the milestones, performance standards and time frames specified in Schedule A; and
    - ii. all legislation, regulations, ordinances, policies and codes relevant to the performance of the Consultancy Services; and
  - (b) with due care, skill and diligence which may reasonably be expected of a skilled and suitably qualified professional consultant.
- 6.2 Unless the Specification states otherwise, all Services supplied must be in accordance with Australian Standards and best practice guidelines where such exist. Where an Australian Standard does not exist the relevant ISO Standard shall apply.
- 6.3 If no sample or standard is stated in the Specification, the Services must be of the highest standard and carried out promptly with all due skill, care and diligence.
- 6.4 The Contractor must:
- (a) engage and retain personnel who are able to competently provide the Services; and
  - (b) ensure that all personnel engaged in the supply of the Services have all skills and qualifications necessary to supply the Services.
- 6.5 The Contractor must document its compliance with its obligations under the Contract and use a Quality Assurance System to assist in this compliance where relevant. The Contractor is not released or discharged from its obligations under the Contract from use of a Quality Assurance System.
- 6.6 The Contractor must supply the Services punctually. However, if a time for supply of the Services is stated in the Contract, the Services must be supplied within the time stated in the Contract, as the case may be.
- 6.7 Upon it becoming evident to the Contractor that supply of the Services is likely to be delayed, the Contractor must promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to supply the Services by the due date or from any other obligation under the Contract, unless the Principal agrees in writing.
- 6.8 The Contractor shall not be entitled to any extension of time for supply of the Services unless:
- (a) the Contractor has complied with Clause 6.7; and
  - (b) the Principal has granted its consent.



---

***Instrument of Agreement for the Supply of Consultancy Services***

- In relation to this Clause 6.8, the Principal's consent will not be unreasonably withheld.
- 6.9 Unless otherwise provided in the Contract, the Contractor must pay all insurances and other charges in connection with the delivery of Services.
- 6.10 Delivery of Services shall not of itself constitute acceptance of the Services by the Principal, with acceptance being subject to the written approval of the Principal.
- 6.11 Where it is a term of the Contract that Services must be commissioned, the Principal shall not be deemed to have accepted the Services unless the Services are satisfactorily commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 6.12 Where it is a term of the Contract that Services must be certified, the Principal shall not be deemed to have accepted the Services unless the Services are satisfactorily certified within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 6.13 The Principal may conduct any examination or testing of the Services. If the testing shows that the Services are Nonconforming Services, the Principal may give written notice to the Contractor pursuant to Clause 8.1.

**7. INSURANCE**

- 7.1 The Contractor must have and maintain:
- (a) insurance under the relevant legislation to cover workers, eligible persons, self employed contractors, directors, trustees and partners; and
  - (b) Professional Indemnity insurance of \$5,000,000 per claim and \$10,000,000 in the annual aggregate; and
  - (c) Public Liability insurance of \$20,000,000 per occurrence and for an unlimited number of claims.
- 7.2 The Contractor must at the , upon receipt of a written request at any time from the Principal, produce evidence that the insurances required by this Clause 7 have been effected and maintained in the form of certificates of currency.
- 7.3 Each insurance policy must:
- (a) cover the Contractor's liability upon the obligations it has assumed and the indemnities it has given in the Contract; and
  - (b) remain current at all times during the Term.
- 7.4 The Contractor must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this Clause 7.
- 7.5 The Contractor must inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this Clause 7 within 7 days thereof and must ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.
- 7.6 The Contractor must immediately inform the Principal if the insurer gives the Contractor a notice of cancellation concerning the policy and the Contractor must give the Principal a copy of the notice.

---

***Instrument of Agreement for the Supply of Consultancy Services***

7.7 The Contractor must immediately give the Principal a copy of any notice from the insurer advising that the Contractor has failed to renew the policy or to pay a premium.

7.8 This Clause 7 shall survive termination or expiration of the Contract.

**8. NONCONFORMING SERVICES**

8.1 Where, at any time during the supply of the Services or any part of the Services, or after the supply of the Services, the Principal determines, acting reasonably, that the Services or a part of the Services do not comply with the Specification or the Contract ("Nonconforming Services"), the Principal may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly supply or supply again the Services or such part of the Services as do not comply.

8.2 The Principal may, without derogating from any other right it may have on account of such supply of unsatisfactory Services, defer payment of that part of an invoice as relates to the Nonconforming Services until the Principal has certified that the re-supplied Services comply with the Specification or the Contract, as the case may be.

8.3 If the Contractor fails to comply with a requirement of a notice given under Clause 8.1, the Principal reserves the right to arrange for the supply of the Services from another supplier and/or to terminate the assignment with the Contractor.

8.4 All costs and expenses incurred by the Principal in exercising the rights of the Principal under Clause 8.3 in excess of the Contract Price, shall be a debt due and payable by the Contractor to the Principal.

**9. OBLIGATIONS OF CONTRACTOR**

9.1 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Services.

9.2 The Contractor warrants that it has the necessary skills and expertise to be able to competently supply the Services.

9.3 The Contractor must provide the Services in accordance with the timing requirements of the Principal.

9.4 The Contractor will notify the Principal immediately in writing if the Contractor thinks a Principal direction or any other information contained in any document provided by Principal is inaccurate or is otherwise insufficient.

9.5 The Contractor must give written notice to the Principal, as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or performance of the Services, detailing the matter or circumstances and its anticipated effect of the Services.

9.6 The Contractor must advise the Principal promptly if additional briefing or information is required from the Principal to avoid any delay to the provision of Services.

9.7 If any Contract Material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing if requested by the Principal.

---

***Instrument of Agreement for the Supply of Consultancy Services***

- 9.8 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Contractor must not store it on a foreign computer without keeping the current version of the Contract Material on separate media (approved in writing by the Principal) and delivering it to the Principal at intervals approved in writing by the Principal.
- 9.9 The Contractor must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from, material that is not the subject of the Contract.
- 9.10 For the purposes of this Clause 9, “foreign computer” means a hard disk or other similar device affixed to a computer that is not the property of the Principal.

**10. VARIATION**

- 10.1 The Principal may, by written notice given to the Contractor, require the Contractor to vary the Services in nature, scope or timing.
- 10.2 Without limiting the generality of Clause 10.1, the Principal may direct the Contractor to:
- (a) increase, decrease or omit any part of the Services; or
  - (b) change the character or content of any part of the Services; or
  - (c) change the direction of any part of the Services; or
  - (d) perform additional work.
- 10.3 The Contractor shall respond in writing within seven (7) days (or such other period as may be agreed) of receipt of Principal’s request stating the effect such Variation may have on the Services, Deliverable(s) or any Delivery Date(s) and what adjustment, if any, may be required to the Contract Price as a result of the proposed variation.
- 10.4 Where the Principal requires a variation to the Lump Sum component of the Services, the parties must negotiate in good faith a variation of the value of the work to be paid for as a lump sum component of the Contract Price and the time for completion of supply of the Services and failing agreement, either party may invoke the dispute resolution procedure in Clause 17.
- 10.5 The Contractor must not commence work on the variation to the Services unless and until the variation is agreed in writing by the Principal and the Contractor.

**11. INVOICING**

- 11.1 The Principal is not obliged to pay the Contractor any part of the Contract Price unless and until:
- (a) the Contractor has issued a Valid Invoice; and
  - (b) the Contractor has supplied to the Principal any Services:
    - i. required under the Contract to be supplied before each amount in the invoice becomes payable; and
    - ii. in accordance with the Contract.
- 11.2 A “Valid Invoice” is an invoice which:
- (a) is a tax invoice under A New Tax System (Goods and Services Tax) Act 1999;
  - (b) identifies the Services for which payment is being invoiced;

---

***Instrument of Agreement for the Supply of Consultancy Services***

- (c) correctly calculates the amount payable by the Principal to the Contactor in accordance with the Contract;
  - (d) includes sufficient details for the Principal to assess progress against any milestones under the Contract;
  - (e) for any Services charged on a time basis, is supported by records of the time spent by individuals involved in carrying out the Services and verified by the Contractor;
  - (f) specifies a correct order number and Contract number allocated by the Principal and notified by the Principal to the Contractor; and
  - (g) is issued:
    - i. in any form notified by the Principal to the Contractor from time to time; and
    - ii. to any person, section or address within the Principal as notified by the Principal to the Contractor from time to time.
- 11.3 If the Principal asks the Contractor to give the Principal additional information or documentary evidence concerning a Valid Invoice (or an invoice purporting to be a Valid Invoice), the Contractor must promptly give the Principal that information or evidence.
- 11.4 The Contractor shall claim payment progressively as per the Purchase Order.

**12. PAYMENT**

- 12.1 Except to the extent that the Contract Price specified in it has already been paid, the Principal will pay a Valid Invoice within 30 days after:
- (a) the Valid Invoice is emailed to the Principal;
  - (b) Clause 11.1(b) has been satisfied; and
  - (c) the Contractor has given the Principal any information or evidence the Principal asks for under Clauses 11.2 and 11.3.
- 12.2 Unless provided elsewhere in the Contract, the Principal is not required to pay interest on the amount of a Valid Invoice, even if the Principal does not pay the Valid Invoice on time.

**13. TEMPORARY SUSPENSION OF SERVICES**

- 13.1 The Principal may give written notice to the Contractor requiring the Contractor to suspend the progress of the whole or any part of the supply of the Services for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Principal because of any change in the nature, scope or timing of the Services.
- 13.2 The Principal may, by giving written notice to the Contractor, require the Contractor to recommence all or any part of the supply of the Services suspended by written notice given under Clause 13.1. All notices under this clause must require the Contractor to recommence work no later than 14 days from the date of the notice.
- 13.3 Where the Contractor is required to suspend the supply of the Services pursuant to Clause 13.1:
- (a) the Principal and the Contractor must negotiate in good faith as to reasonable compensation payable to the Contractor; and

---

***Instrument of Agreement for the Supply of Consultancy Services***

- (b) any previously agreed date for completion of the supply of the Services will be postponed by a period equal to the duration of the suspension.

**14. DUTY**

- 14.1 The Contractor must pay all duty imposed under the relevant legislation (if any) on the Contract.

**15. GST**

- 15.1 An amount payable by the Principal to the Contractor and specified in, or calculated in accordance with, the Contract is taken to be expressed on a GST inclusive basis unless it is expressly stated otherwise in the Contract.
- 15.2 If:
  - (a) an amount payable by the Principal to the Contractor and specified in, or calculated in accordance with, the Contract is not taken to be expressed on a GST inclusive basis; and
  - (b) the amount is consideration for a supply which is a taxable supply under *A New Tax System (Goods and Services Tax) Act 1999*,then, despite anything else in the Contract, the amount payable by the Principal to the Contractor is 110% of the amount.
- 15.3 The Contractor warrants that it is registered, and throughout the Term will remain registered, for GST under *A New Tax System (Goods and Services Tax) Act 1999*.

**16. TERMINATION**

- 16.1 If the Contractor:
  - (a) breaches any Clause of the Contract; or
  - (b) suspends payment of its debts or is unable to pay its debts; or
  - (c) has execution levied on any of the assets of the Contractor and the execution is not satisfied within 28 days; or
  - (d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
  - (e) has a receiver appointed for all or any part of the assets of the Contractor; or
  - (f) has an order filed for the Contractor's administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
  - (g) ceases to carry on business,the Contractor will be in breach of the Contract and the Principal may give to the Contractor a written notice to remedy the breach.
- 16.2 If within 14 days of receiving a notice under Clause 16.1 the Contractor does not remedy the breach, the Principal may immediately terminate the Contract by giving written notice to the Contractor.
- 16.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 16.2, the Principal may, in circumstances which would otherwise entitle the Principal to terminate the Contract in accordance with Clause 16.2:

---

***Instrument of Agreement for the Supply of Consultancy Services***

- (a) let such contracts as the Principal decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and
  - (b) suspend or cease all payments otherwise due to the Contractor.
- 16.4 This Clause 16 shall survive termination or expiration of the Contract.
- 16.5 Upon termination of the Contract pursuant to Clause 16.2, all money which has been paid and all money to be paid for Services supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.
- 16.6 The Contract may be terminated at any time by:
  - (a) mutual agreement or by the Principal giving 28 days written notice to the Contractor; or
  - (b) by the Principal (in its absolute discretion) if the Services are suspended in accordance with Clause 13 for more than 30 days.
- 16.7 If the Contract is terminated as set out in Clause 16.6, the Principal will pay the Contract Price for the completed Services, apportioned up to and including the date of termination including payment of any costs and expenses reasonably incurred by the Contractor to that date.
- 16.8 Upon termination and payment of the amount due to the Contractor under Clause 16.6, the Contractor shall deliver to the Principal the Contract Material produced by the Contractor, up to date of termination, regardless of their stage of completion but without any liability in respect of the Contract Material which is incomplete by reason of such termination.
- 16.9 The Contractor shall be entitled to terminate this Contract:
  - (a) upon the Principal's failure to pay any amount properly due and payable to the Contractor in accordance with the Contract and when given 7 days written notice of the Contractor's intention to terminate the Contract, such amounts remain unpaid; or
  - (b) within 14 days after the day in which the Contractor gives written notice to the Principal of its intention to terminate the Contract where the Services have been suspended by the Principal for more than 45 days and the Contractor has not received a notice to recommence the Services pursuant to clause 13.2.

**17. DISPUTE RESOLUTION**

- 17.1 A Party must not commence court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute or difference (together called a 'dispute') arising out of or in connection with this Contract, unless it has first complied with this Clause.
- 17.2 The existence of a dispute or the application of any part of the process described in this Clause 17 will not relieve the Parties from any obligation under this Contract.
- 17.3 A Party claiming that a dispute has arisen out of or in connection with this Contract must give notice to the other Party identifying and providing details of the dispute ('Notice of Dispute').

---

***Instrument of Agreement for the Supply of Consultancy Services***

- 17.4 Within 14 days of receiving the Notice of Dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. If the dispute has not been resolved within 28 days of service of the Notice of Dispute, that Notice of Dispute shall be referred to the Chief Executive Officers of the Principal and the Contractor.
- 17.5 If the Chief Executive Officers of the Principal and the Contractor have not resolved the dispute within 14 days of receiving the Notice of Dispute, that dispute shall be referred to the arbitration.
- 17.6 If within a further 14 days, the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the Principal. The arbitration shall be conducted in accordance with the rules of the Institute of Arbitrators and Mediators Australia.

**18. SURVIVAL OF PROVISIONS**

- 18.1 A provision of the Contract which:
- (a) by its nature is obviously intended to apply after the Term;
  - (b) according to its terms is intended to apply after the Term; or
  - (c) is capable of sensibly being given continued application after the Term,
- has that continued application.
- 18.2 So there is no doubt:
- (a) if at the end of the Term an obligation of either party was due to be fulfilled but had not been fulfilled, the ending of the Term does not relieve that party from its obligation;
  - (b) if at the end of the Term a right of either party has accrued because of events or circumstances arising before the end of the Term, the ending of the Term does not extinguish the right; and
  - (c) if after the end of the Term a right of either party accrues due or partly due to events or circumstances arising before the end of the Term, the party may still exercise the right despite the ending of the Term.

**19. INTELLECTUAL PROPERTY RIGHTS**

- 19.1 The Contractor warrants that the supply of the Services by the Contractor to the Principal under the Contract will not infringe the Intellectual Property Rights of any third party.
- 19.2 The Contractor indemnifies the Principal against any claim by a third party in relation to infringement of the Intellectual Property Rights of the third party of or incidental to the supply of the Services by the Contractor to the Principal under the Contract.
- 19.3 In respect of the supply of the Services by the Contractor under the Contract, the Contractor indemnifies and must at all times keep indemnified the Principal from and against any loss or liability (including reasonable legal costs and expenses) incurred by the Principal arising from any claim, demand, suit, action or proceeding (including a claim for a breach of a person's Intellectual Property Rights) by any person against the Principal where



---

***Instrument of Agreement for the Supply of Consultancy Services***

the loss or liability arose out of, or in connection with, or in respect of, the supply of the Services by the Contractor under the Contract.

- 19.4 The indemnities in Clause 19.3 will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. The Principal may recover a payment from the Contractor under this indemnity before it makes the payment in respect of which the indemnity is given.
- 19.5 Unless otherwise specified in the Contract, title to and Intellectual Property Rights in all New Contract Material provided to the Principal, will upon its creation vest in the Principal.
- 19.6 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Contractor grants, and will ensure that relevant third parties grant, to the Principal, a paid up non-exclusive, non-transferable licence:
- (a) to use, reproduce, communicate to the public and adapt for its own use; and
  - (b) to perform any other act with respect to copyright; and
  - (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,
- the Existing Contract Material but only as part of the Contract Material (and any further development of that material).
- 19.7 Where the Contractor is an individual, the Contractor consents to any acts or omissions of the Principal in the exercise of rights or assignments granted under this Clause that might otherwise constitute an infringement of the Moral Rights of the Contractor.
- 19.8 Without limiting Clause 19.7, the Contractor consents, in relation to the Contract Material:
- (a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal; and
  - (b) to the specific acts or omissions set out in the Contract.
- 19.9 Prior to an individual commencing work in respect of the Contract Material on behalf of the Contractor, the Contractor must obtain from that individual, in writing, and provide to the Principal, upon request:
- (a) all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this Clause 19; and
  - (b) without limiting paragraph (a), a consent to any act or omission (including the specific acts or omissions set out in the Contract) which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent must be in a form specified by the Principal.

**20. RISK AND INDEMNITY**

- 20.1 The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal or any officer, servant or agent of the Principal arising from the acts or omissions (including negligent acts) of the Contractor, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Services under the Contract. The Contractor's liability to the Principal for any loss or damage under this Contract shall be reduced proportionally to the extent



---

***Instrument of Agreement for the Supply of Consultancy Services***

- that an act or omission of the Principal, its officers, employees or other consultants caused or contributed to any loss or damage.
- 20.2 The Principal may, acting reasonably, direct the Contractor to take action against another person for the recovery of compensation, provided the Principal indemnifies the Contractor for its external costs or expenses incurred in pursuing recovery (for the avoidance of doubt, the Principal is not required to reimburse or indemnify the Contractor for any internal resources, costs or expenses).
- 20.3 The Contractor releases and indemnifies the Principal and all officers, servants and agents of the Principal from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Contractor, arising from:
- (a) any wilful or negligent act or omission of the Contractor or any person for whose conduct the Contractor is liable; and
  - (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor; and
  - (c) death, injury, loss or damage suffered by the Contractor, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal.
- 20.4 In the event of any claim or action being made or brought against the Principal, the Principal may retain any money due to the Contractor in respect of Services supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Contractor as a debt due and payable to the Principal.

**21. CONFLICT OF INTEREST**

- 21.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the commencement of the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the Term, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than Principal, the Contractor must promptly give written notice to the Principal of that conflict of interest or risk of it.
- 21.2 The Contractor must take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the Term, engage in any activity or obtain any interest, which is in conflict with providing the Services to the Principal. Any such activity must be disclosed in writing to the Principal immediately.
- 21.3 The parties acknowledge and agree that the Contractor may tender for Services under this Contract.
- 21.4 Where the Principal receives a notice of conflict of interest under this Clause, the Principal may give the Contractor a written notice to remedy the conflict under Clause 17.

---

***Instrument of Agreement for the Supply of Consultancy Services***

**22. CONFIDENTIALITY**

- 22.1 The Contractor must, and must ensure that its employees, agents and approved subcontractors, keep confidential any information obtained in the course of performing the Contract.
- 22.2 If required in writing by the Principal, the Contractor's employees, agents and approved subcontractors must deliver to the Principal a confidentiality undertaking in the form required by the Principal.
- 22.3 In the event of a the Contractor breaching this Clause:
  - (a) the Principal may immediately terminate the Contract by giving written notice to the Contractor; and/or
  - (b) the Contractor shall be liable for all damages associated with a breach of this Clause, including but not necessarily limited to, loss of earnings by the Principal and the Principal's client/s.

**23. ASSIGNMENT AND NOVATION**

- 23.1 The Contractor must not assign or subcontract any of the rights or obligations of the Contractor under the Contract (either for the supply of the Services or otherwise) without the prior written consent of the Principal. The information provided to the Principal must include the details of the consultant or subcontractor. Any consent given by the Principal in whole or in part:
  - (a) may be conditional; and
  - (b) will not relieve the Contractor from any of its liabilities or obligations under the Contract.
- 23.2 The Contractor is liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Contractor.
- 23.3 The Principal may by notice to the Contractor novate this Contract to any entity partly or wholly owned or partly or wholly controlled by the Principal.

The novation shall be accompanied by a covenant in favour of the Contractor from the nominated entity to be bound by the provisions of this Contract and such novation will take effect from the day after it is delivered without any further action required by the Contractor or the Principal and the nominated entity will then enjoy all of the rights and benefits of the Principal under this Contract as if the nominated entity had been named in it in lieu of the Principal.

**24. NAMED PERSONNEL**

- 24.1 The Contractor shall provide such information as the Principal may reasonably require at commencement and upon further request by the Principal in connection to Named Personnel (and persons proposed as Named Personnel) as set out in the Contract, including details of their qualifications and experience.
- 24.2 In the event of a member of the Named Personnel having to be replaced, at least 4 weeks prior notice in writing is required by Contractor stating the reason(s) for the replacement.

---

***Instrument of Agreement for the Supply of Consultancy Services***

Where the person concerned is in Principal's reasonable opinion key to the performance of the Contract that person shall not be replaced without the prior written approval of the Principal.

- 24.3 Following consultation with the Contractor and joint assessment of the performance of any member of the Named Personnel, the Principal shall have the right to require the removal from the Services of such person whose performance is unsatisfactory and their replacement by another person possessing the required qualifications and experience.
- 24.4 Subject to Clause 24.1 above, no person may become a member of the Named Personnel without the prior written approval of the Principal. Any alteration of the membership of the Named Personnel shall not result directly or indirectly in the Principal being liable for any additional cost whatsoever
- 24.5 Any agreement to or approval by the Principal of any member of the Named Personnel shall not in any way relieve the Contractor of its obligations to ensure that the Services are carried out in accordance with the Contract.

**25. NEGATION OF EMPLOYMENT AGENCY ETC**

- 25.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Principal.
- 25.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of the Principal.
- 25.3 Nothing in the Contract is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

**26. NOTICES**

- 26.1 Notices are given in writing under the Contract if they are delivered by pre-paid postage or certified mail, by hand, by facsimile transmission or by electronic mail transmission. Notices are deemed given 5 days after deposit in the mail with postage pre-paid or certified, when delivered by hand, when received by the electronic mail, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted or sent via electronic mail on the same day as the transmission is sent. The addresses for service of notices are specified at:
  - (a) the Purchase Order for the Principal
  - (b) the Purchase Order for the Contractor.
- 26.2 A party may change its address for service of notices by giving written notice to the other party to the Contract.

**27. FORCE MAJEURE**

- 27.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default is caused by Force Majeure.

---

***Instrument of Agreement for the Supply of Consultancy Services***

- 27.2 Without limitation, where the event of Force Majeure continues for a period of more than 14 days, the Principal may terminate the Contract by giving written notice to the Contractor.

**28. PRINCIPAL'S REPRESENTATIVE**

- 28.1 The role of the Principal in this Contract will be represented by the person nominated as the Principal's Representative on the Purchase Order, if any. If none is nominated on the Purchase order, the Principal.
- 28.2 The Principal may at any time nominate another person to be the Principal's Representative by giving notice in writing to the Contractor with the details of the new Principal's Representative.
- 28.3 The Principal may at any time delegate some or all of the Principal's Representative's powers to another person by giving notice in writing to the Contractor of the details and powers of the person.

**29. CONTRACTOR'S REPRESENTATIVE**

- 29.1 The role of the Contractor in this Contract will be represented by the person nominated as the Contractor's Representative on the Purchase Order, if any. If none is nominated on the Purchase order, the Contractor.
- 29.2 A senior executive member of the Contractor may at any time nominate another person to be the Contractor's Representative by giving notice in writing to the Principal with the details of the new Contractor's Representative.

**30. AUTHORISED REPRESENTATIVE**

- 30.1 The respective representatives of each Party have express authority to bind the party that they each represent.

**31. SECURITY AND ACCESS**

- 31.1 The Contractor must, when using any premises or facilities of the Principal, comply with all reasonable directions and procedures as notified by the Principal, including those relating to security and occupational health and safety which are in effect at the premises or facility.
- 31.2 The Principal must disclose all relevant information relating to the safety and environmental conditions of the premises or facility.
- 31.3 The Contractor and the Principal will confirm and agree on the following at the time of the engagement:
- (a) Responsibility for the Safety compliances
  - (b) Responsibility for the Environmental compliances

**32. INDUSTRIAL DISPUTES**

- 32.1 The Contractor must not involve the Principal in any industrial dispute arising between the Contractor and any employee of the Contractor.

**33. REPORTING**

- 33.1 The Contractor is to provide reports to the Principal as reasonably required by the Principal.

---

***Instrument of Agreement for the Supply of Consultancy Services***

**34. NOT USED**

**35. PROTECTION OF PERSONS, PROPERTY AND THE ENVIRONMENT**

- 35.1 The Contractor must comply with all Statutory Requirements under the *Workplace Health and Safety Act 2011* which:
- (a) are imposed on the Contractor (even if someone else is also subject to the same Statutory Requirement); or
  - (b) affect the performance of the Contractor's obligations under the Contract.
- 35.2 The Contractor must immediately give the Principal a copy of any report or notice:
- (a) that the Contractor is required by a Statutory Requirement under the *Workplace Health and Safety Act 2011* to give, file or lodge; and
  - (b) if the requirement to give, file or lodge the report or notice arises in the course of the performance of the Contractor's obligations under the Contract.
- 35.3 If the performance of the Contractor's obligations under the Contract involves any activity for which the Principal is obliged under the *Workplace Health and Safety Act 2011* to appoint a principal contractor, the Contractor:
- (a) accepts appointment as the principal contractor; and
  - (b) must do all things required by the Principal to give effect to that appointment.
- 35.4 Without limiting any other obligation of the Contractor:
- (a) if the performance of the Contractor's obligations under the Contract involves a high risk construction activity as defined by the *Workplace Health and Safety Regulation 2008* – the Contractor must give the Principal a copy of each work method statement that the Contractor is required by that Regulation to prepare or have; and
  - (b) if the Contractor or any of the Contractor's Personnel is (in the course of performing the Contractor's obligations under the Contract) a designer of structures as defined by the *Workplace Health and Safety Act 2011* – the Contractor must ensure that the design of the structure does not adversely affect the workplace health and safety of persons both during construction and when the structure has been constructed and is being used for the purpose for which it was designed.
- 35.5 The Contractor must:
- (a) ensure that all equipment used, or to be used, in or for the performance of the Contractor's obligations under the Contract is:
    - i. suitably designed for safety in the use made, or to be made, of it;
    - ii. maintained in a safe and serviceable condition; and
    - iii. used and operated safely and competently;
  - (b) provide suitable precautions and safeguards during any unloading activity carried out in the performance of the Contractor's obligations under the Contract;
  - (c) provide protection for members of the public and workers on any Work Site; and
  - (d) ensure that each Work Site is kept in a tidy and safe condition.

---

***Instrument of Agreement for the Supply of Consultancy Services***

**36. MISCELLANEOUS**

- 36.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Services.
- 36.2 The Contract is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals therefrom.
- 36.3 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.
- 36.4 A variation of the Contract is of no force or effect against a party to the Contract unless the variation is in writing and signed by or on behalf of that party (and, in the case of the Principal, unless the person signing on behalf of the Principal is a delegate of the Principal having authority to do so).
- 36.5 Waiver of any provision of or right under this Contract:
  - (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
  - (b) is effective only to the extent set out in any written waiver.
- 36.6 The fact that a party to the Contract does not do, or delays in doing, something the party is entitled to do under the Contract does not amount to a waiver.
- 36.7 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.
- 36.8 The parties to the Contract are independent and nothing in the Contract will appoint the Contractor as an agent or employee of the Principal or any of the Principal's clients.

**37. PRIVACY AND PERSONAL INFORMATION**

- 37.1 If the Contractor collects or has access to Personal Information in order to provide the Services, the Contractor must:
  - (b) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
  - (c) not use Personal Information other than for the purposes of the supply of the Services, unless required or authorised by law;
  - (d) not disclose Personal Information without the consent of the Principal, unless required or authorised by law;
  - (e) not transfer Personal Information outside of Australia without the consent of the Principal;
  - (f) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties under the Contract;
  - (g) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under the Contract;

---

***Instrument of Agreement for the Supply of Consultancy Services***

- (h) ensure that its agents and sub-contractors (including the Key Personnel) who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this Clause 37;
  - (i) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
  - (j) comply with such other privacy and security measures as the Principal reasonably advises the Contractor in writing from time to time.
- 37.2 The Contractor must, if requested by the Principal during the Agreement Term, obtain from its officers, employees, agent and/or sub-contractors (including the Key Personnel) engaged for the purposes of the Principal, an executed deed of privacy in a form acceptable to the Principal.
- 37.3 The Contractor must immediately notify the Principal on becoming aware of any breach of this Clause 37.

***Instrument of Agreement for the Supply of Consultancy Services***

SCHEDULE A

*Scope of Work*

- As per the Purchase Order.



***Instrument of Agreement for the Supply of Consultancy Services***

**SCHEDULE B**

*Schedule of Rates*

The Contractor shall provide the Services for the rates outlined in the Purchase Order (ex GST) when directed and as approved by the Principal.