Consultancy Services Agreement

GLS Template

Contents

[1. DEFINITIONS 3](#_Toc155197683)

[2. INTERPRETATION 3](#_Toc155197684)

[3. TERM 3](#_Toc155197685)

[4. CONSULTANCY SERVICES 3](#_Toc155197686)

[5. RELIANCE 4](#_Toc155197687)

[6. DUTY TO INFORM 4](#_Toc155197688)

[7. PAYMENT 4](#_Toc155197689)

[8. INVOICES 4](#_Toc155197690)

[9. DISPUTED INVOICES 4](#_Toc155197691)

[10. OTHER PAYMENTS 5](#_Toc155197692)

[11. TAXES 5](#_Toc155197693)

[12. SITE ACCESS 5](#_Toc155197694)

[13. SERVICE LEVELS 6](#_Toc155197695)

[14. WARRANTIES & REPRESENTATIONS 6](#_Toc155197696)

[15. THIRD PARTY CO-OPERATION 6](#_Toc155197697)

[16. INDEMNIFIED MATTERS 7](#_Toc155197698)

[17. LIABILITY 7](#_Toc155197699)

[18. PHYSICAL DAMAGE 7](#_Toc155197700)

[19. MUTUAL TERMINATION RIGHTS 8](#_Toc155197701)

[20. CUSTOMER SPECIFIC TERMINATION RIGHTS 8](#_Toc155197702)

[21. CONSEQUENCES OF TERMINATION 8](#_Toc155197703)

[22. IPR 9](#_Toc155197704)

[23. IPR INDEMNITY 9](#_Toc155197705)

[24. CONFIDENTIALITY 10](#_Toc155197706)

[25. DATA PROTECTION 10](#_Toc155197707)

[26. CO-OPERATION 10](#_Toc155197708)

[27. REPUTATION 10](#_Toc155197709)

[28. GENERAL PROVISIONS 10](#_Toc155197710)

[SCHEDULE 1 | DEFINITIONS 13](#_Toc155197711)

[SCHEDULE 2 | PAYMENT TERMS 16](#_Toc155197713)

[SCHEDULE 3 | CONSULTANCY SERVICES 17](#_Toc155197717)

**THIS AGREEMENT** is dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BETWEEN:**

**(1) [PARTY A],** a company registered in [Country], with commercial licence number [●] and having its registered office at [Address] (“**Customer**”); and

**(2)** **[PARTY B]**, a company registered in [Country], with commercial licence number [●] and having its registered office at [Address] (“**Consultant**”),

**(2)** **[PARTY B]**, a citizen of [Country], with passport number [●] and having their residential address at [Address] (“**Consultant**”),

(collectively the “**Parties**”, and each a “**Party**” to this Agreement).

**RECITALS**

1. The Customer wishes to purchase the Consultancy Services in connection with its business.
2. The Consultant is a provider of the Consultancy Services that are contemplated under this Agreement.
3. The Customer wishes to purchase, and the Consultant has agreed to perform, the Consultancy Services subject to and in accordance with this Agreement.

**IT IS HEREBY AGREED** as follows:

* 1. DEFINITIONS
     1. The defined terms in this Agreement shall have the meaning ascribed to them in **Schedule 1 (Definitions)**.
  2. INTERPRETATION
     1. In this Agreement, the following rules of interpretation shall apply:
        1. references to a “day”, “month” or “year” are references to a “day”, “month” or “year” of the Gregorian calendar;
        2. a reference to “including” and its other grammatical forms shall be construed without limitation;
        3. any obligation on a Party not to do something includes an obligation not to allow that thing to be done; and
        4. unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  3. TERM
     1. This Agreement shall commence on the Agreement Date and, unless terminated earlier in accordance with Clauses 19 or 20, shall remain in full force and effect for the Term.
     2. Subject to Clause 3.1, at the end of the Initial Term, or the then current Extended Term, as applicable, this Agreement shall automatically extend for an Extended Term.
  4. CONSULTANCY SERVICES
     1. The Consultant shall do all things necessary so that the Consultancy Services are performed in accordance with, and fully meet and comply with:
        1. the Service Levels (if any);
        2. Good Industry Practice;
        3. all Applicable Law;
        4. the Customer Policies; and
        5. the terms of this Agreement.
     2. The Consultancy Services shall fully conform to the requirements of this Agreement including as set out in **Schedule 3 (Consultancy Services)**.
  5. RELIANCE
     1. The Consultant acknowledges and agrees that:
        1. in entering into this Agreement, the Customer is relying on the Consultant’s particular skill, care, experience and expertise as a provider of the Consultancy Services; and
        2. any advice provided by the Consultant under or in connection with this Agreement is for the benefit of, and may be relied on, by the Customer and its Affiliates.
  6. DUTY TO INFORM
     1. If the Consultant ever believes that it may be unable to perform any of its obligations under this Agreement, it shall immediately notify the Customer and provide any and all details required by the Customer.
     2. The giving of notice by the Consultant under Clause 6.1 shall not entitle the Consultant to any relief whatsoever from the performance of its obligations under this Agreement.
  7. PAYMENT
     1. Subject to the Consultant’s performance of its obligations in accordance with this Agreement, the Consultant may issue an Invoice to the Customer.
     2. Each Party shall be responsible for paying its own bank charges.
  8. INVOICES
     1. The Consultant shall invoice the Customer in accordance with the Paragraph 2.2 of **Schedule 2 (Payment Terms)**, or if no schedule has been agreed then, within 60 calendar days of the proper performance of the relevant Consultancy Services.
     2. The Consultant acknowledges and agrees that, notwithstanding any other provision of this Agreement, the Customer shall only pay Invoices that:
        1. contain the information required by the Customer including the period covered by the Invoice;
        2. are in the manner prescribed by the Customer, and addressed to the Customer’s accounts payable department at the address specified in **Schedule 2 (Payment Terms)**;
        3. accurately detail the Charges to allow the Customer to verify the calculation and the accuracy of the Charges;
        4. set out the Consultant’s VAT/tax code or equivalent (where appropriate), together with any VAT (or equivalent) payable as a separate line item and subject to a separate tax invoice;
        5. include the Consultant’s full and correct banking details;
        6. provide the name of the Customer’s designated contact person;
        7. are accompanied, where applicable, by relevant supporting documentation;
        8. are provided in electronic copy, failing which in hard copy; and
        9. fully comply with the requirements of this Agreement.
     3. An Invoice (if correct and approved) shall be payable by the Customer within a period of 60 calendar days from receipt.
  9. DISPUTED INVOICES
     1. The Customer will notify the Consultant within 60 calendar days of the receipt of an Invoice if the Customer:
        1. disputes (in good faith) any part of or all of the Charges stated in the Invoice; and/or
        2. considers such Invoice to be incorrect or incorrectly issued for any reason.
     2. The Customer shall not be required to pay any disputed amount or invoice until the Dispute has been resolved and the Parties agree that the amount is valid and properly due to the Consultant.
     3. Where the Consultant agrees with the Customer in connection with the disputed Invoice, it shall promptly issue a credit note for the disputed portion or if the whole Invoice is disputed, it shall cancel it and re-issue a correct Invoice.
  10. OTHER PAYMENTS
      1. Any monies owed by the Consultant to the Customer, including those owed pursuant to any indemnity given under this Agreement, shall be payable on demand.
  11. TAXES
      1. All amounts specified in this Agreement shall be inclusive of all Taxes including VAT.
      2. The Consultant shall give all notices and pay all Taxes (including Withholding Tax), duties and fees that are required of it by Applicable Laws in connection with its performance of the Consultancy Services.
      3. The Consultant shall indemnify the Customer in connection with any Claim it receives in connection with the Consultant’s failure to perform its obligations under this Clause 11.
  12. SITE ACCESS
      1. Subject to Clause 12.2, the Customer shall provide the Consultant with such access to Sites as may be reasonably required to facilitate the full performance of the Consultant’s obligations in this Agreement.
      2. The Consultant acknowledges and agrees that its access (and access of its Personnel) to a Site shall always be strictly subject to, and conditional upon, the following:
         1. reasonable access being solely for the purpose of providing the Consultancy Services;
         2. access occurring only during Business Hours at the Site, unless otherwise agreed;
         3. access being subject to, and consistent with, all applicable Customer Policies;
         4. the provision of reasonable prior notice by the Consultant of an intended visit to a Site in accordance with all applicable Customer Policies dealing with Site access;
         5. the Consultant’s Personnel properly identifying themselves prior to seeking access to the relevant Site;
         6. the Consultant taking all reasonable measures so as to ensure that any of its Personnel accessing a Site do not jeopardise or interfere with the health and safety of any other person at the Site; and
         7. the Consultant and its Personnel acknowledging and agreeing that entry onto a Site is entirely at their own risk.
         8. If the Consultant or its Personnel fails to comply with any of the requirements of this Agreement, then the Customer may in its sole discretion and at the Consultant’s cost and expense:
         9. deny that person access to the Site; and/or
         10. subject further access to such additional conditions as the Customer deems appropriate.
      3. The Consultant acknowledges and agrees that any breach of its obligations under this Clause 12 shall be a Material Breach and shall indemnify the Customer for any related Loss or Claim.
      4. The Consultant acknowledges and agrees that it shall not be entitled to any form of relief for its failure to perform its obligations under this Agreement, which arises as a result of any actions that the Customer has taken pursuant to Clause 12.3.
  13. SERVICE LEVELS
      1. The Consultant shall do all such things as are necessary to ensure that the Consultancy Services are provided so as to meet or exceed the relevant Service Levels.
  14. WARRANTIES & REPRESENTATIONS
      1. Each Party warrants and represents to the other Party that:
         1. it is duly incorporated and has the legal capacity to enter into this Agreement;
         2. it has not engaged any agent, intermediary or go between for the purpose of concluding this Agreement; and
         3. it shall obtain and maintain in force, and shall at all times comply with, all necessary Approvals as required under this Agreement and under Applicable Law.
      2. The Consultant warrants and represents to the Customer that:
         1. this Agreement shall constitute valid and binding obligations on the Consultant;
         2. all information and documentation supplied by the Consultant is true and accurate and the Customer may rely on the same without need for further verification;
         3. no conflict of interest exists or is anticipated;
         4. it will comply with Applicable Law;
         5. no Insolvency Event in respect to the Consultant exists or is anticipated; and
         6. it has procured sufficient insurance to cover its liabilities under this Agreement.
      3. The Consultant further warrants and represents to the Customer that:
         1. the Consultancy Services shall be performed in accordance with Good Industry Practice;
         2. the Consultancy Services shall at all times be rendered by appropriately experienced, qualified and trained Personnel with all due skill, care and diligence;
         3. the Consultancy Services shall meet or exceed the Service Levels;
         4. it has adequate Personnel and resources to fulfil its obligations under the Agreement;
         5. the Customer’s receipt (including that of its Affiliates) of the Consultancy Services shall not breach any Third Party IPR;
         6. the Customer’s receipt of the Consultancy Services shall at no time during the Term result in the Customer breaching any Applicable Law; and
         7. the performance of its obligations under this Agreement by a Subcontractor shall not invalidate any warranty given by it under this Agreement.
  15. THIRD PARTY CO-OPERATION
      1. The Customer acknowledges and agrees that the performance by the Consultant of its obligations under this Agreement may require interaction and co-operation with Third Parties.
      2. For the purposes of Clause 15.1, the Customer shall at all times during the Term, procure that Third Parties as may reasonably be required by the Consultant fully co-operate with the Consultant.
      3. Notwithstanding any other provision of this Agreement, the Consultant shall not be liable to the Customer for any delay or non-performance of its obligations under this Agreement arising as a result of any Third Party referred to in Clause 15.2 failing to fully co-operate with the Consultant.
  16. INDEMNIFIED MATTERS
      1. Subject to Clause 16.4, the Consultant shall fully indemnify the Customer from and against any and all Losses of whatever nature suffered, sustained or incurred, arising out of or in connection with:
         1. any negligent act, or omission, or wilful misconduct by the Consultant or its Personnel in connection with this Agreement;
         2. any Claim made against the Customer by any Personnel of the Consultant in respect of any Workplace Matters;
         3. any and all physical loss or damage caused by the Consultant’s Personnel to any property belonging to the Customer or its Affiliates whether or not at any Site;
         4. any act or omission of the Consultant’s Subcontractor;
         5. any death, personal injury, physical loss or damage sustained by the Personnel of the Consultant or its Subcontractor;
         6. any Claim brought by a Third Party for a breach of that Third Party’s IPR as a result of the Consultant’s performance under or in connection with this Agreement; or
         7. a breach by the Consultant of Clauses 12, 24 or 25.
      2. For the purposes of Clause 19.1, the Customer shall be deemed to include its Affiliates, Personnel, directors, shareholders and officers.
      3. Each indemnity in this Agreement is a continuing obligation separate and independent from the Consultant’s other obligations and survives termination of this Agreement.
      4. The Consultant shall not be liable under this Clause 19 to the extent that the Claim and/or Loss occurred wholly and directly as a result of the Customer’s gross negligence, misconduct or fraudulent conduct.
      5. This Clause 19 shall survive the expiry or earlier termination of this Agreement.
  17. LIABILITY
      1. Nothing in this Agreement shall exclude or limit either Party’s liability to the other in connection with:
         1. death or personal injury caused by negligence or wilful or reckless misconduct of that Party;
         2. any fraud or fraudulent misrepresentation of that Party;
         3. any gross negligence or wilful misconduct of that Party;
         4. any liability which cannot be lawfully excluded by that Party;
         5. in the case of the Consultant, a breach of Clauses 12, 24 or 25; and/or
         6. any liability arising under Clause 16.
      2. Subject to Clause 17.1, the Consultant’s total liability for Loss under this Agreement shall be limited to [100%] of the total Charges paid and payable under this Agreement.
      3. Subject to Clause 17.1, neither Party shall be liable for Indirect Loss under this Agreement.
  18. PHYSICAL DAMAGE
      1. The Consultant accepts liability for damage or loss to the Customer’s physical property and/or equipment caused by it or its Personnel at any Site.
      2. Any damage or loss claimed by the Customer in connection with damage caused by the Consultant to its physical property and/or equipment shall be calculated on a ‘replace as new’ basis.
      3. The Consultant shall be solely responsible and liable for any death, personal injury, loss or damage sustained by the Consultant or its Personnel, of any nature whatsoever, in performing its obligations under this Agreement.
  19. MUTUAL TERMINATION RIGHTS
      1. Either Party may serve a Termination Notice to terminate this Agreement with immediate effect if the other Party:
         1. commits a Material Breach; or
         2. experiences, or is reasonably likely to experience, an Insolvency Event.
  20. CUSTOMER SPECIFIC TERMINATION RIGHTS
      1. The Customer may terminate this Agreement at any time and without cause by issuing a Termination Notice to the Consultant giving not less than [5] calendar days’ notice of such termination.
      2. The Customer may issue a Termination Notice to the Consultant terminating the whole or part of this Agreement at its sole discretion with immediate effect if:
         1. a change in Control of the Consultant occurs;
         2. the Consultant has failed to obtain and/or maintain any Approval(s);
         3. the Consultant has breached any applicable Customer Policies; or
         4. the Customer reasonably apprehends that any of the events mentioned in Clauses 20.2.1 to 20.2.3 are about to occur in relation to the Consultant.
  21. CONSEQUENCES OF TERMINATION
      1. Upon receipt of a Termination Notice, the Parties shall promptly (and in any event, within any time frame set out in the Termination Notice):
         1. return all Confidential Information to the Party that disclosed it, or destroy such Confidential Information and provide evidence of destruction where requested;
         2. in the case of the Consultant, take all possible action at its own cost and expense to ensure the safety of all Personnel and the protection of all equipment still in its possession;
         3. take all possible action at its own cost and expense to ensure the safety of all Personnel; and
         4. cease performance of their obligations under this Agreement in accordance with, and to the extent specified in, the Termination Notice.
      2. Upon receipt of a Termination Notice for whatever reason, the Consultant shall promptly (and in any event, within any time frame set out in the Termination Notice):
         1. provide the Customer with a detailed report in relation to the Consultancy Services performed up to and including the date of receipt of the Termination Notice;
         2. return to the Customer any items or equipment issued to the Consultant by the Customer during the Term;
         3. refund to the Customer (or the Customer may treat as a Deduction) any portion of the Charges that have been paid but where performance of the Consultancy Services has not occurred; and
         4. take any other action relating to the termination of this Agreement as the Customer may reasonably require.
      3. Where requested, the Consultant shall render such assistance as the Customer may reasonably require to effect transition of the Consultancy Services to another provider, subject to the Charges.
      4. Notwithstanding any other provision of this Agreement, where the Customer terminates this Agreement under:
         1. Clause 20.1, then it shall pay to the Consultant all outstanding amounts for Consultancy Services in accordance with this Agreement up to and including the termination date; or
         2. Clause 20.2, then it shall have no further liability to the Consultant whatsoever.
      5. The termination or expiry of this Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued under this Agreement or Applicable Law up to the date of termination or expiry thereof.
      6. The provisions of Clauses 1, 2, 16, 17, 21, 23, 24, 25 or 28 shall survive the termination and/or expiry of this Agreement.
      7. Clause 26.6 does not limit the survivability of other provisions, which by their nature, are likewise intended to survive the termination and/or expiry of this Agreement.
  22. IPR
      1. Subject to Clause 22.4, the IPR owned by a Party prior to the Agreement Date and made available to the other Party under this Agreement shall remain the absolute property of the granting Party or their licensors as applicable.
      2. The Consultant acknowledges and agrees that ownership of all rights in and to the Customer’s IPR shall at all times remain vested in and belong to the Customer.
      3. The Consultant shall not use or permit the use of any IPR belonging to the Customer or any of its Affiliates for any purpose whatsoever, without the express prior written consent of the Customer.
      4. Unless otherwise agreed, the Consultant shall grant to the Customer a non-exclusive, perpetual royalty-free licence to use its IPR for the Term of this Agreement, to the extent required to receive the full benefit of this Agreement.
      5. Subject to Clause 22.4, upon termination or expiry of this Agreement, each Party shall return to the other Party all materials made available to it by the other Party under this Agreement.
      6. All IPR created by a Party during the Term of this Agreement shall vest unconditionally and immediately upon its creation with the Customer.
  23. IPR INDEMNITY
      1. Subject to Clause 23.2, the Consultant shall fully indemnify the Customer (and its Affiliates) for any Claim brought by any Third Party for a breach or alleged breach or infringement of its IPR where such a Claim relates to:
         1. the receipt and/or use by the Customer (or its Affiliates) of any Consultancy Services; or
         2. the Customer asserting its full right to enjoy the use and/or exploitation of any New IPR; or
         3. the performance by the Consultant of any of its obligations under this Agreement.
      2. Upon receipt of a Claim under Clause 23.1, the Consultant shall, where requested by the Customer, cause the breach and/or infringement to end by:
         1. resupplying the infringing element so that the infringement ceases; and/or
         2. obtaining for the Customer, at the Consultant’s expense, the right to continue to use the infringing element.
      3. If neither of the remedies prescribed in Clause 23.2 can be accomplished within a time period acceptable to the Customer, the Consultant shall reimburse the Customer all amounts paid in relation to the infringing element of the Consultancy Services.
      4. This Clause 23 shall be without prejudice to any other rights that the Customer has under this Agreement, Applicable Law or otherwise.
  24. CONFIDENTIALITY
      1. During the Term and for 3 years afterwards each Party shall keep the other Party’s Confidential Information strictly confidential.
      2. Each Party may only use the other Party’s Confidential Information strictly for the purposes of performing its obligations under this Agreement.
      3. Neither Party shall disclose Confidential Information to any person other than an Authorised Recipient and even then only on a strictly ‘need to know’ basis.
      4. Each Receiving Party shall procure that its Authorised Recipients (including its own Personnel) are aware of, and fully comply with, its obligations under this Clause 24 as if that Authorised Recipient were themselves a Party.
  25. DATA PROTECTION
      1. In addition to its general obligations to comply with Applicable Law, the Consultant shall:
         1. comply at all times with all applicable data protection and privacy legislation;
         2. comply with the Customer’s internal data protection policies as are communicated to it;
         3. process Personal Information strictly in accordance with the Customer’s Instructions;
         4. utilise adequate organisational and technical measures so as to safeguard Personal Information from loss, destruction and/or unauthorised access; and
         5. where required, enter into a data transfer agreement and/or data processor agreement (or equivalent) in the form required under Applicable Law.
      2. The Consultant acknowledges and agrees that:
         1. the Customer may share any Personal Information that the Consultant provides to the Customer under this Agreement with Third Parties contracted to provide services to the Customer;
         2. it shall indemnify the Customer against any loss or damage (of whatever nature) incurred by or awarded against the Customer relating to any breach of this Clause 25; and
         3. its obligations under this Clause 25 shall survive the termination or expiry of this Agreement.
  26. CO-OPERATION
      1. The Parties shall meet as regularly as the Customer may reasonably require to oversee the correct performance of this Agreement.
      2. The Customer shall provide reasonable assistance and support to the Consultant as may be reasonably requested in connection with this Agreement.
      3. Each Party shall, at the request and cost of the other Party, do or procure the doing of all such things as the other Party may reasonably require, to give that Party the full intended benefit of this Agreement.
  27. REPUTATION
      1. The Consultant shall not (and shall procure that its Personnel shall not) do anything, or engage in any activity, which is likely to adversely affect, or damage, the Customer’s good name and/or reputation.
  28. GENERAL PROVISIONS
      1. **Cumulative Rights:** Unless otherwise stated, the rights and remedies of a Party under this Agreement are cumulative and do not exclude any other right or remedy provided by Applicable Law.
      2. **Entire Agreement:** This Agreement constitutes the entire agreement of the Parties relating to the provision of the Goods, to the exclusion of all other terms and conditions, and any prior written or oral agreement between them.
      3. **Novation & Assignment:** The Consultant shall not assign, novate, or otherwise transfer all or any of its rights, benefits or obligations under this Agreement without the prior written approval of the Customer.
      4. **Sub-Contracting:** The Consultant shall not sub-contract the performance of any of its obligations under this Agreement without the prior written approval of the Customer.
      5. **Variation:** No variation of this Agreement shall be effective unless in writing and signed by each Party’s Authorised Representative.
      6. **Specific Performance:** Nothing in this Agreement prevents a Party from seeking interim or interlocutory relief to prevent a breach of, and to compel specific performance by the other Party of, this Agreement.
      7. **Waiver:** No failure to exercise, nor any delay in exercising, any right, power or remedy under this Agreement shall operate or be deemed a waiver of the same. Waivers must always be given in writing.
      8. **Illegality:** If any provision of this Agreement is determined to be invalid, illegal or void by any court or administrative body of competent jurisdiction then the rest of this Agreement shall still remain in full force and effect.
      9. **Relationship:** Nothing in this Agreement shall be construed to make either Party an agent, employee, franchisee, joint venturer or legal representative of the other Party.
      10. **Third Party Rights:** Except where expressly contemplated, this Agreement does not create any rights which are enforceable by any person who is not a Party to this Agreement.
      11. **Notices:** Any notice or other communication given under or in connection with this Agreement shall be in writing and shall be delivered by email to the Party due to receive it at the Party’s email address. The Parties’ addresses for the purpose of this Agreement are:
          1. **Consultant:** [email address]
          2. **Customer:** [email address]
      12. **Governing Law:** This Agreement is governed by, and shall be construed in accordance with, the laws of the Territory. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the Territory in relation to any Disputes

**EXECUTION**

**EXECUTED** as an Agreement on the date and year first above written.

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of | |  |
| [**CONSULTANT**]  as its duly authorised representative: | |  |
|  | |  |
|  | Signature of authorised representative |  |
|  | |  |
|  | Name & title of authorised representative (print) |  |

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of | |  |
| [**CUSTOMER**]  as its duly authorised representative: | |  |
|  | |  |
|  | Signature of authorised representative |  |
|  | |  |
|  | Name & title of authorised representative (print) |  |

SCHEDULE 1 | DEFINITIONS

* 1. DEFINITIONS
     1. In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meaning:

|  |  |
| --- | --- |
| **Administration Event** | means an order that is made for the appointment of an administrator (or equivalent) to manage the affairs, business and property of a Party; or where documents are filed with a court of competent jurisdiction for the appointment of an administrator (or equivalent) of a Party; or where a notice of intention to appoint an administrator is given by a Party or its legal representative; |
| **Affiliate** | means any entity that is Controlled by a Party or under the common Control of that Party; |
| **Agreement** | means the terms and conditions of this agreement and the Schedules hereto; |
| **Agreement Date** | means the date set out at the top of page 7 of this Agreement; |
| **Applicable Law** | means all national, state, local and municipal legislation, regulations, statutes, by-laws, Approvals and/or other laws and any other instrument or direction from officials having the force of law as may be issued and in force from time to time (and any amendment or subordinate provisions thereto) relating to or connected with the activities contemplated under this Agreement, wherever so located and/or performed; |
| **Approvals** | means any licenses, permits, consents, approvals and authorisations (statutory, regulatory or otherwise) that a Party may require (whether to comply with Applicable Law or otherwise) to perform its obligations under this Agreement; |
| **Authorised Recipient** | means any Third Party to whom a Party may disclose Confidential Information under this Agreement (including, without limitation, its Personnel and any external advisors engaged for the purposes of performing its obligations under this Agreement) and/or as may be required by Applicable Law; |
| **Business Day** | means a day other than a weekend, official public holiday or a day upon which banks are otherwise generally closed for business in the Territory; |
| **Business Hours** | means the hours of [8:00 a.m. to 5:00 p.m.] during a Business Day in the Territory; |
| **Charges** | means the amount payable by the Customer to the Consultant for the proper performance of the Consultancy Services under this Agreement, such amounts being as set out in **Schedule 2 (Payment Terms)**; |
| **Claim** | means any allegation, debt, judgment, cause of action, action, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise asserted by any person at any time; |
| **Confidential Information** | means this Agreement and all information of any nature which a Party may have or acquire before or after the Agreement Date, however conveyed (whether in writing, verbally, in a machine- readable format or by any other means and whether directly or indirectly), which relates to the business, products, price lists, developments, Personnel, Consultants and customers of a Party and its Affiliates (whether or not designated as Confidential Information by the Disclosing Party), and all information designated as confidential or which ought reasonably to be considered confidential; |
| **Control** | means the: (1) ownership or control (whether directly or indirectly) of more than 50% of the voting share capital of the relevant entity; (2) ability to direct the casting of more than 50% of the votes exercisable at general meetings of the relevant entity on all, or substantially all, matters; or (3) right to appoint or remove directors of the relevant entity holding a majority of the voting rights at meetings of the board on all, or substantially all, matters, and the terms “Controls”, “Controlled” and “Controlling” shall have the equivalent grammatical meaning; |
| **Consultancy Service** | means the consultancy services to be performed by the Consultant under or in connection with this Agreement including as set out in **Schedule 3 (Consultancy Services)**; |
| **Creditor Event** | means where a Party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors in any way; |
| **Customer Policies** | means any and all policies maintained by the Customer in connection with its business, as the Customer may notify from time to time; |
| **Deduction** | means any sums which may be deducted by the Customer from any sums owed by the Customer to the Consultant under or in connection with this Agreement; |
| **Dispute** | means any dispute between the Parties under or in connection with this Agreement; |
| **Extended Term** | means the period of [●] months from the end of the Initial Term or the then current Extended Term; |
| **Force Majeure Event** | means any event or occurrence which prevents or delays a Party from performing any or all of its obligations under this Agreement and which arises directly from, or is directly attributable to acts, events, omissions or accidents which are unforeseeable and beyond the reasonable control of the Party so prevented or affected, and may include acts of God, governmental act, war, fire, flood, explosion or civil commotion; |
| **Good Industry Practice** | means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from time to time from a skilled and experienced person carrying out the same type of activity, and applying the best industry practices under the same or equivalent circumstances, acting generally in accordance with Applicable Law; |
| **Indirect Loss** | means in relation to a breach of this Agreement any loss of production, loss of use, loss of revenue, loss of profit, loss of revenue, loss of contract, loss of goodwill, or any indirect, consequential or special loss; |
| **Initial Term** | means a period of [●] months from the Agreement Date; |
| **Insolvency Event** | means a Creditor Event, Receivership Event, Administration Event or a Winding-up Event; |
| **Instruction** | means any reasonable instruction given [by the Customer to the Consultant] under or in connection with this Agreement, and the terms “Instruct” and “Instructed” shall have the equivalent grammatical meaning; |
| **IPR** | means patents, inventions (whether patentable or not), copyrights, moral rights, design rights, trade-marks, trade names, business names, service marks, brands, logos, service names, trade secrets, know-how, domain names, database rights and any other intellectual property or proprietary rights (whether registered or unregistered, and whether in electronic form or otherwise) including rights in computer software, and all registrations and applications to register any of the aforesaid items, rights in the nature of the aforesaid items in any country or jurisdiction, any rights in the nature of unfair competition rights, and rights to sue for passing off; |
| **Invoice** | means an invoice in the format approved by the Customer; |
| **Loss or Losses** | means any loss, expense, claim, penalty expenses or equivalent which the Customer suffers directly as a result of the Consultant’s actions or inactions in respect of this Agreement or otherwise as a result of the Consultant’s performance under or in connection with this Agreement, but excluding any consequential losses; |
| **Material Breach** | means: (1) a breach of this Agreement that is not remedied by the breaching Party within 30 calendar days of being notified of the breach; (2) a persistent pattern of minor breaches of this Agreement, which when taken as a whole, constitute a material breach; or (3) any breach of any term in this Agreement which is designated as a Material Breach term; |
| **New IPR** | means IPR developed by a Party after the Agreement Date; |
| **Person** | means any natural person, corporate or unincorporated body (whether or not having separate legal personality), individual, corporation, partnership, limited liability company or similar entity; |
| **Personal Information** | means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller; |
| **Personnel** | means all employees, agents and Subcontractors of an entity who are assigned, engaged or otherwise employed from time to time to work in connection with this Agreement |
| **Receivership Event** | means where a receiver (or equivalent) is appointed over any of a Party’s assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager (or equivalent) of a Party, or if any other Person takes possession of or sells a Party’s assets; |
| **Receiving Party** | means the Party receiving Confidential Information from the other Party under or in connection with this Agreement; |
| **Service Levels** | means any performance service level(s) associated with any Consultancy Services as set out in **Schedule 3 (Consultancy Services)**; |
| **Site** | means the site specified in **Schedule 3 (Consultancy Services)** or any site(s) upon which the Consultancy Services (or any part thereof) are to be performed in connection with this Agreement; |
| **Subcontractor** | means any Person subcontracted by a Party to perform or assist in the performance of that Party’s obligations under this Agreement; |
| **Tax** | means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of them); |
| **Term** | means the Initial Term and each applicable Extended Term; |
| **Termination Notice** | means a notice to terminate this Agreement issued by a Party in accordance with Clauses 19 or 20 of this Agreement; |
| **Territory** | means [●]; |
| **VAT** | means value-added tax or any other sales tax or any other taxes similar thereto in the Territory which may be payable in relation to the supply and delivery of the Consultancy Services; |
| **Winding-up Event** | means where an order is made or a resolution is passed for the winding-up of a Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of a Party; and |
| **Workplace Matters** | means those matters pertaining to labour standards, income tax, workers’ compensation, annual leave, long service leave, superannuation (or any other mandatory employee benefits) or any applicable award, determination or agreement of a competent industrial tribunal that relates to the Personnel. |

SCHEDULE 2 | PAYMENT TERMS

* 1. GENERAL PAYMENT TERMS
     1. Subject to the Consultant’s performance of its obligations in accordance with this Agreement, the Consultant may issue an Invoice to the Customer for payment.
     2. Each Party shall bear all costs and expenses incurred by it in connection with the performance of its obligations under or in connection with this Agreement.
     3. The Consultant acknowledges and agrees the adequacy of the Charges as full payment for all of its obligations under or in connection with this Agreement.
     4. Each Party shall be responsible for paying its own bank charges.
  2. CHARGES
     1. The Charges shall be calculated in accordance with the following:
        1. [●].
  3. BANK ACCOUNT DETAILS
     1. The Customer shall pay all Charges due by wire transfer to the following bank account details in accordance with an approved Invoice:

|  |  |
| --- | --- |
| **Bank** |  |
| **Bank Account Name** |  |
| **Bank Address** |  |
| **Swift** |  |
| **IBANN** |  |
| **BSB** |  |

SCHEDULE 3 | CONSULTANCY SERVICES

* 1. SCOPE OF CONSULTANCY SERVICES:
     1. The Consultant acknowledges the scope of the Consultancy Services to be as follows:
        1. [DN: Insert details here.]
  2. SITES
     1. For the purposes of this Agreement the Consultant shall be granted reasonable access in accordance with the terms of this Agreement to the Site specifically set out below:
        1. [DN: Insert details here.]
  3. PROFESSIONAL STANDARDS
     1. In addition to the other obligations under this Agreement, the Consultancy Services shall comply with the Professional Standards listed below.
        1. [DN: Insert details here.]
  4. SERVICE LEVELS
     1. The Consultant shall ensure that the Services meet or exceed the following Service Levels:
        1. [DN: Insert details here.]
     2. If a Service Level is not met, notwithstanding any other provision of this Agreement, the Consultant shall:
        1. arrange all such additional equipment, resources and/or materials as are reasonably necessary to meet or exceed the Service Levels; and
        2. take any other remedial action as is necessary to correct its failure to meet or exceed the relevant Service Levels.
     3. Any actions required of the Consultant under Paragraph 4.2 shall be entirely at its sole cost and expense.