

# Queensland Competition Authority

## CONSULTANCY AGREEMENT

This is an agreement between and the Queensland Competition Authority to carry out certain consultancy services ("**Services**") in accordance with the following Details:

DETAILS	
<b>Consultant</b> (also called "you" in this Agreement)	Name: _____ Tel: _____ Contact: _____ Fax: _____ Address: _____
<b>Principal</b> (also called "we" or "us" in this Agreement)	Name: Queensland Competition Authority Address: GPO Box 2257 Tel: (07) 3222 0555 Brisbane Qld 4001 Fax: (07) 3222 0599
<b>Services to be Provided</b>	
<b>Other Documents Applying to this Agreement</b>	<ul style="list-style-type: none"> <li>• Terms of Reference dated</li> <li>• Proposal dated</li> </ul>
<b>Our Representative</b>	Name: _____ Address: Queensland Competition Authority GPO Box 2257 Brisbane Qld 4001 Tel: (07) _____ Fax: (07) 3222 0599
<b>Payment</b>	\$ (inclusive of GST) on completion of the project and the Principal's acceptance of the final report. No further costs or expenses shall be incurred unless authorised by the Principal.
<b>Date</b>	

This Agreement to perform the Services in connection with the project is made up of the **Details** and accompanying **Terms for Carrying out Consultancy Services** and the other documents expressly referred to in these Details as **Other Documents Applying to this Agreement**.

<p>.....</p> <p>Signed for and on behalf of the Consultant by:</p> <p>Name: .....</p> <p>Title: .....</p>	<p>.....</p> <p>Signed for and on behalf of the Principal by:</p> <p>Name: .....</p> <p>Title: .....</p>
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## TERMS FOR CARRYING OUT CONSULTANCY SERVICES

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### 1. TERMS OF ENGAGEMENT

**(Precedence)** To the extent of any inconsistency between the documents comprising this Agreement, the documents will be given precedence in the following order:

- (a) the Details;
- (b) these Terms for Carrying Out Consultancy Services;
- (c) any Terms of Reference provided by us to you and expressly referred to in the Details, as it may have been amended by agreement between the parties;
- (d) any Proposal provided by you to us and expressly referred to in the Details, as it may have been amended by agreement between the parties;
- (e) any Other Documents Applying to this Agreement (expressly referred to in the Details).

**(Other Agreements Excluded)** The provisions of any other previous agreements, proposals, correspondence or discussions in relation to the Services and which are not expressly referred to in the Details, will not apply.

**(Prior Services)** This Agreement also applies to the Services (if any) provided before its date.

### 2. OUR RELATIONSHIP WITH YOU

**(Independent Contractor)** In providing the Services you are an independent contractor and do not have any authority to act as our agent or on our behalf, unless we expressly authorise you in writing. In particular you have no authority to enter contracts, make representations or incur liabilities on our behalf.

**(No Other Relationship)** This Agreement does not create any relationship of employment, partnership or joint venture between us.

### 3. OUR REQUIREMENTS FOR SERVICES

**(Scope of Services)** The Services are as described in this Agreement and include all necessary or incidental deliverables or other services.

**(Standard of Services)** You will satisfy yourself as to our requirements for the Services. You will provide and complete the Services using the skill, care and diligence expected of a competent, qualified and experienced professional providing similar services and to a standard satisfactory to us.

**(Reliance by Others)** You acknowledge that we and others engaged by us may be relying on the Services in carrying out further work or services relating to the project.

### 4. INFORMATION PROVIDED BY US

**(Information Provided)** For your convenience, we (or others acting for us) may have provided (or may in the future provide) you with information relevant to the project or the provision of the Services.

You will:

- (a) **(Reasonable Care)** act with reasonable care in relying upon or using that information in connection with the provision of the Services; and
- (b) **(Non-Reliance)** not rely on or use any part of that information for any purpose to the extent that we notify you it is not to be so relied upon or used (including for the provision of the Services).

### 5. PAYMENT

**(Lump Sum Fee)** We will pay you the fees set out in the Details, as adjusted in accordance with this Agreement (which is a lump sum covering all of the Services).

**(Time for Claims)** Payments may be claimed by you as specified in this Agreement (on completion of the Services for the specified stages or periods in accordance with this Agreement and to our satisfaction). Your claim for payment will not be issued before the date agreed in this Agreement.

**(Payment Times)** We will pay you within 30 days after receiving a valid claim for payment (which includes any substantiating information we may reasonably require).

### 6. TAXES AND CHARGES

**(GST Payments)** To the extent amounts payable to you under this Agreement are expressly stated to exclude GST, we will also pay you the goods and services tax which applies to the supply of the Services to us, after you provide us with a valid tax invoice for the amounts.

**(Other Taxes)** Otherwise you will pay all taxes and charges payable in connection with the provision of the Services or this Agreement.

**(GST on Supply by Us)** Where we incur any goods and services tax applying to any payment which you may for any reason become liable to make to us under or in connection with this Agreement or the Services, you will pay us that goods and services tax immediately we provide you with a valid tax invoice for the amounts.

### 7. DELAYS IN PROVISION OF SERVICES

**(Allowable Delays)** Where:

- (a) **(Suspension)** the Services are suspended by us; or
  - (b) **(Other Delays)** you are unavoidably delayed in providing the Services for any other reason beyond your and your subconsultants' reasonable control,
- then:
- (c) **(Extension)** any agreed deadlines applying to the Services will be extended by the reasonable period which we notify to you at any time; and
  - (d) **(No Claim)** you will have no claim for any delay or other costs (unless we agree otherwise in writing).

### 8. EXTRA OR VARIED SERVICES

**(Approvals to Extra Services)** We will pay you for additional or varied Services (including where we ask you for any reason to vary in any way the nature, scope or timing of the Services) only if before the additional or varied Services are provided:

- (a) **(Notice of Extra Services)** you notify us that the Services sought by us (or proposed to be provided by you) are additional or varied; and
- (b) **(Price and Time Agreed)** we agree with you the scope of the additional or varied services and a lump sum fee or rates, and time for completion to apply to the additional or varied Services.

**(Not Commence)** You will not commence any variation to the Services without our consent and we have both agreed to the scope of the additional or varied services as well as the varied fees and time for completion.

**(Omissions)** We may omit any of the Services (for our convenience and regardless of whether there has been any default on your part) at any time by written notice to you. If we omit Services:

- (a) **(Reduced Price)** we will be entitled to a reasonable adjustment (which includes profit and overhead) of amounts payable to you;
- (b) **(Exclusion of Claims)** you will have no claim (including for loss of profit) arising from the omission; and
- (c) **(Others May Provide)** we may provide ourselves or use others to provide to us the omitted services.

## 9. RESPONSIBILITY FOR SERVICES

**(Responsibility Preserved)** You will remain fully responsible for the Services despite:

- (a) **(Our Involvement)** our, our representative's or any of our other consultants' comment on, review of, approval of, acceptance of, or certificate issued in connection with the Services (or any failure to do so);
- (b) **(Payments)** any payments being made for the Services; or
- (c) **(Insurance)** you effecting and maintaining any insurances required by this Agreement.

## 10. LIABILITY

- (a) **(Limitation of Liability)** To the maximum extent permitted by law and notwithstanding any other provision of this Agreement, the Consultant's maximum aggregate liability in respect of the Services provided under this Agreement is capped at an amount of \$10 Million;
- (b) **(Exclusions from Limitation)** The limitation set out in paragraph (a) does not apply to your liability to us in respect of:
  - (i) loss or liability that is recoverable by you under contracts of insurance required by this Agreement or that would have been recoverable by you under those contracts of insurance if you had:
    - (A) effected, maintained and otherwise complied with your obligations regarding the contracts of insurances in accordance with this Agreement;
    - (B) complied with the contracts of insurance; and
    - (C) fully enforced your rights under the contracts of insurance

whether or not you have in fact done so, and there was no excess or deductible applying under the contracts of insurance;

- (ii) loss or liability that arises from or in connection with: any fraudulent, malicious or illegal acts or omissions by you; deliberate breaches of contract (including this Agreement) or any duty by you; acts or omissions you committed with a reckless disregard for their consequences; infringement of intellectual property rights; rectifying or re-performing defective services; personal injury or death; loss or damage to any property; loss or liability which you are legally entitled to recover from any other person (including under any indemnity, as liquidated damages or otherwise); or loss or liability in respect of which you cannot, by law, contract out of liability.
- (c) **(Proportionate Liability)** Except to the extent of liability arising from personal injury or death, your liability to us under or in connection to this Agreement (including under clause 11) will be reduced proportionately to the extent that any claim, damage, loss or liability has been

caused by the negligent act or omission of third parties (other than subcontractors or third parties for which you are responsible either under this Agreement or any law)

## 11. INDEMNITY AND INSURANCE

**(Indemnity)** You will indemnify us (and our officers and employees) against any claim, damage, loss or liability we suffer or incur arising from:

- (a) either:
  - (i) loss/damage to property (including our property); or
  - (ii) death/injury of persons (including your employees) arising from your negligence; or
- (b) any breach by you of this Agreement or any law;

except to the extent that the claim, damage, loss or liability was caused by our negligence. This indemnity will continue to apply after the Services are complete or termination for any reason.

**(Insurance)** You will effect:

- (a) **(Public Liability)** public liability insurance (for at least \$10 million);
- (b) **(Workers Compensation)** worker's compensation insurance (as required by law); and
- (c) **(Professional indemnity)** professional indemnity insurance (on reasonable terms and amounts having regard to your operations and obligations under this Agreement),

and maintain those insurances for the term of this Agreement (and in the case of professional indemnity insurance, for 6 years after completion of the Services).

## 12. INTELLECTUAL PROPERTY, DOCUMENTS AND MORAL RIGHTS

**(Licence to Use)** As from the time that you create any new intellectual property or you use any existing intellectual property of yourself or others in connection with your providing the Services, you irrevocably license us or any contractors or employees working for us to use, develop or deal with the intellectual property for any purpose associated with our activities.

**(Indemnity)** You will indemnify us against any loss or liability to us arising from others making any claims against us in respect of the ownership of, or rights to use intellectual property you use, develop or create.

**(Ownership)** Without prejudice to our respective intellectual property rights, all reports, specifications, studies, investigations and any other documents, computer software, information and data stored by any means (but excluding any working papers) which you create or provide to us in connection with the Services will become our property when created or provided and you will not use, or allow others access to them or any information (about or belonging to us) contained in them without our prior written consent (other than for the purposes of providing the Services to us under this Agreement).

**(Moral Rights)** You warrant to us that:

- (a) **(Consent)** all individuals who may have "moral rights" (as that expression is defined in the *Copyright Act 1968 (Cth)*) in any material (including reports, specifications studies, investigations or other information) provided as part of the Services or any works constructed in accordance with that material have validly provided their written consent (pursuant to section 195AWA of that Act) in favour of us (or any other person); and
- (b) **(Form of Consent)** the consent referred to in paragraph (a) allows us (or others) to deal with that material or those works (including by way of destruction or alteration) in

connection with the completion, development, use, demolition or improvement of the project to which the Services relate in such a manner as we or they decide (without being held to have infringed any moral right of the individual).

### 13. SUBCONTRACTING

**(Consent to Subcontracting)** You will not subcontract the provision of any of the Services without our prior agreement.

**(Your Responsibility Preserved)** Your subcontracting any of the Services:

- (a) **(Full Responsibility)** will not relieve you from full responsibility for all the Services;
- (b) **(Consistent Terms)** will be on terms which are consistent with your obligations to us; and
- (c) **(Liability)** will result in your being liable to us for acts or omissions of your subconsultants as if they were your own acts or omissions.

**(Co-ordination of Subconsultants)** You will ensure that the services of all subconsultants are co-ordinated to meet our requirements for the Services.

### 14. ASSIGNMENT

**(Your Assignment)** You will not assign your rights or obligations in relation to the Services.

**(Our Assignment)** We may assign or otherwise deal with our rights and obligations in our discretion and without your consent.

### 15. GENERAL OBLIGATIONS

You will:

- (a) **(Key Personnel)** use the personnel which are identified in this Agreement or which you have nominated to us (or other personnel acceptable to us) to provide the Services;
- (b) **(Access)** only access the site of the project or any of our premises or facilities with our express consent and in accordance with our reasonable directions (including not interfering with others);
- (c) **(Confidentiality)** not disclose to third parties, or use for any purpose (other than providing the Services) any information about us, the project or this Agreement or otherwise provided to you by us (or others acting for us), unless we specifically authorise that disclosure or use in writing or where required by law;
- (d) **(Publicity)** obtain our written approval before publishing or publicising any information associated with the project, us or the Services;
- (e) **(Deliver Documentation)** promptly deliver to us, upon our request (including after termination of this Agreement for any reason), all documentation and materials (except for one (1) set which will be retained on a confidential basis by you for your risk management and quality assured purposes):
  - (i) provided to you by or on behalf of us in connection with the Services; or
  - (ii) prepared by you or others engaged by you in connection with or as part of the Services;
- (f) **(Inadequacy of Information)** promptly notify us if any information which we provide you is inaccurate or inadequate for you to provide the Services;

(g) **(Reporting)** keep us fully informed as to any matters affecting the cost, timing or quality of the Services or the project (including as to any matters on which we may specifically request that you report) immediately upon you becoming aware of such matters;

(h) **(Quality Assurance)** implement a quality assurance system in accordance with this Agreement or otherwise in accordance with the relevant Australian Standards to meet our requirements;

(i) **(Legal and Contractual Compliance)** comply and ensure the Services comply with all laws, legal requirements, standards, codes, directions and to the extent we disclose them to you, any agreements binding on us;

(j) **(Approvals)** obtain and comply with all licences, permits, approvals and other required authorisations required to be obtained by you in order for you to provide the Services; and

(k) **(Representative)** always ensure that you have a nominated representative (who is notified and acceptable to us) who has full authority to act on your behalf.

### 16. OUR REPRESENTATIVES AND CONSULTANTS

**(Our Representative)** We may notify you of a representative for the purposes of this Agreement. If we do, you should deal with that representative to the extent we require.

**(Co-operation with Other Consultants)** We may also engage other consultants. You will cooperate with them and coordinate the provision of the Services with their services to the extent we reasonably require.

### 17. CONFLICT OF INTEREST

**(Warranty)** You warrant to us that you are not aware of any reason why the provision of the Services will or may place you in a position of conflict as regard any other interest or duty of yourself or any of your personnel, employees, agents and subcontractors.

**(Disclosure)** You will fully disclose to us any such conflict or possible conflict immediately you become aware of it.

### 18. TERMINATION

**(Termination in our discretion)** We may immediately terminate the Services at any time (in our discretion and regardless of whether there has been any default on your part) by seven (7) days prior written notice, in which case:

- (a) **(Cease the Services)** you will cease performing the Services and take all reasonable steps to minimise any costs that may be suffered as a consequence of the termination; and
- (b) **(Payment)** we will pay you:
  - (i) in connection with the Services provided up to the date of termination; and
  - (ii) subject to paragraph (a), reasonable costs incurred by you which are directly attributable to the termination of the Services,

but you will have no claim against us for costs, expenses or losses (including loss of profit) arising from the termination.

**(Termination for Breach)** Either of us may terminate this Agreement and exercise our rights against the other (including to recover damages) where we become entitled to do so under the general law or in the event of insolvency of either party.

**(Substantial Breach by Consultant)** Without limiting the previous paragraph, we may terminate this Agreement immediately if you fail to effect or maintain insurance as required by this Agreement, you breach any confidentiality obligation under this Agreement or there

exists any conflict of interest or duty of yourself or any of your personnel, employees, agents or subcontractors.

## 19. PRIVACY ACT

**(Privacy)** In relation to any "Personal Information" (as defined in the Privacy Act 1988 (**Act**) provided or to be provided by you in connection with the Services (whether as part of your proposal or otherwise), you warrant to us:

- (a) **(Consents)** you have obtained and will obtain the consent of each individual about which "Sensitive Information" (as defined in the Act) is provided; and
- (b) **(Disclosure Statements)** you have or will within the time required by the Act, ensure that each individual about whom any Personal Information is provided has received or will receive a written statement complying with the requirements of National Privacy Principle 1.3 in relation to the disclosure of that information to any person in relation to reviewing and assessing matters relevant to the Services or to enjoying the benefit of the Services, from time to time.

## 20. DISPUTES

**(Disputes)** Either of us may refer any dispute connected with this Agreement to respective senior officers of each of us (who will have authority to negotiate and settle disputes).

**(Negotiation)** Our senior officers will negotiate in good faith for 14 days to attempt to resolve the dispute, failing which either of us may at any time commence court proceedings in respect of the dispute.

**(Continued Performance)** You will continue to perform the Services despite any dispute between us.

## 21. GENERAL

**(Waiver)** You acknowledge that no waiver by us of a breach of any term of this Agreement will be a waiver of any other breach of that or any other term.

**(Applicable Law)** The law of Queensland applies.

**(Clauses Survive Termination)** Any clause capable of continuing to apply after the Services are completed or terminated for any reason will do so.