

New South Wales Government
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[NOTE: This agreement is only to be used for Consultancy Agreements outside of the Performance and Management Services Scheme]

CONSULTANCY AGREEMENT

between

[Principal]

and

[Consultant]

This is an Agreement between the Principal and the Consultant as listed in the below Details on the terms of:

1. the Details
2. the Terms and Conditions
3. any Other documents forming part of this Agreement (which may also be attached).

# Details

## Principal (“We”, “Us”, “Our”)

|  |  |
| --- | --- |
| Name |  |
| Australian Business Number (ABN) |  |
| Contact Name |  |
| Address |  |
| Telephone |  |
| E-mail |  |

## Consultant (“You”, “Your”)

|  |  |
| --- | --- |
| Company Name |  |
| Australian Business Number (ABN) |  |
| Contact Name |  |
| Address |  |
| Telephone |  |
| E-mail |  |

## Term of Agreement

### Unless sooner terminated, the term of this Agreement is:

#### Start date: [Enter Start Date]

#### End date: [Enter End Date]

## Consultancy Services (the “Services”)

[Guide Note: Describe services here and/or reference document/s that expand that description, as appropriate. Include any required deliverables, meeting dates etc.]

## Timetable

[Guide Note: *Timeframes for delivery/performance milestones and applicable dates.*]

|  |  |
| --- | --- |
| Milestone | Date |
|  |  |
|  |  |
|  |  |
|  |  |

## Specified Personnel

You must use only the persons named in the table below, or alternates agreed to in writing by the Us (which agreement may be given or withheld in the Our absolute discretion), to provide the Services.

Your responsibility for the performance of the Services and for the standard of performance by Your personnel is not altered in any way by this clause 1.6 or by anything done in accordance with this clause 1.6

|  |  |  |
| --- | --- | --- |
| Name | Position | Contact |
| Name | Lead Analyst | Phone/Email |
|  |  |  |
|  |  |  |

## Performance of Services

[Guide Note: If required, specify where the Consultant is required to perform the Services (i.e. DFSI Office, Client Office, etc).]

### The Services are to be performed at [Department/Agency, Office Address], unless agreed otherwise by Us in writing.

## Fees and Agreed Expenses

[Guide Note: Set out total fee/basis for its calculation. Set out any agreed expenses and any applicable cap on expenses, if applicable, state whether expenses must be pre-approved.]

|  |  |
| --- | --- |
| Cost Element | Ex GST |
|  | $ |
|  | $ |
|  | $ |

## Payment Plan

### Payable upon satisfactory completion (in Our sole opinion) of the milestone or key performance indicators as set out in the following table.

|  |  |  |  |
| --- | --- | --- | --- |
| Instalment | Amount of Instalment(Ex. GST) | Milestone or Key Performance Indicator | Expected Date of Completion |
| 1 | $ |  |  |
| 2 | $ |  |  |
| 3 | $ |  |  |

## Payment of Invoices

### Within 30 days of receipt of a valid claim for payment, in the form of a tax invoice and including any supporting documentation We reasonably require.

### In the case of any agreed expenses, the claim for payment must include copies of all 3rd party invoices for expenses incurred.

## Liability Cap

The liability cap for this Agreement is $[value] (Ex GST)

## Insurances

### You shall, and shall ensure that any approved sub-contractors will, arrange and maintain with a reputable insurance company for the Term of the Agreement:

#### a public liability policy of insurance to the value of at least $10 million in respect of each claim;

#### workers’ compensation insurance as required by all relevant laws of Australia relating to workers’ compensation; and

#### a professional indemnity insurance policy to the value of at least $10 million in respect of each claim.

# Terms and Conditions

## Defined terms

### Capitalised terms have the meanings set out in the Details.

## Consultancy Services

### You agree to provide the Consultancy Services:

#### (Timetable) in accordance with any agreed Timetable and in any event by the End Date;

#### (Standard) in a professional and ethical manner to the standard expected of a competent, qualified and experienced professional providing similar services;

#### (Our directions) in accordance with Our reasonable directions;

#### (Specified Personnel) using any Specified Personnel. You must ensure that all personnel utilised in connection with the Services are appropriately qualified, competent and experienced in the provision of services of the nature of the Services;

#### (Consultation and reports) reporting to, meeting with, and/or consulting with, Us as We may reasonably require;

#### (Compliance with law and policy) complying with all laws, regulation, privacy principles, Australian and/or ISO standards and any NSW Government policies, guidelines and code of conduct communicated by Us to You during the period of the Agreement.

#### (Our material) keeping secure any material to which We give You access;

#### (Confidentiality) by not disclosing without Our prior consent any information in connection with the Consultancy Services or this Agreement other than as necessary to perform the Consultancy Services, with respect to any matter that is public knowledge or as legally required;

#### (Personal information) where the Consultancy Services involve access to personal information about individuals, then:

##### complying with all applicable privacy legislation and any other measures that We may reasonably require to maintain privacy;

##### (keeping personal information safe and secure, only using it for the purpose of this Agreement (or as legally authorised or required) and only disclosing it to 3rd parties with Our prior consent (or as legally authorised or required); and

#### (Subcontracting) by not subcontracting any part of this Agreement without Our prior consent in writing.

## Fees and payment

### In consideration of Your supply of the Services in accordance with this Agreement, We will pay You the Fees and any Agreed Expenses at the times and on the conditions listed in the Details.

## Taxes and charges

### (**GST**) To the extent that any Fees or Agreed Expenses payable under this Agreement are stated to be GST exclusive, on receipt of a valid tax invoice We will also pay You the GST amount in respect of those Fees and Agreed Expenses, being the amount of GST for which You are liable in respect of the supplies that You make under this Agreement for which those Fees and Agreed Expenses are payable, provided that We will not pay an amount of GST on an Agreed Expense for which You can claim an input tax credit.

### If We are liable to pay any GST in connection with any supply that We make to You under this Agreement, on receipt of a valid tax invoice You will promptly pay Us that GST amount.

### (**Other taxes**) You will pay all other taxes and charges payable in connection with this Agreement.

## Liability Cap

### To the extent permitted by law, Your liability under this Agreement is limited to the Liability Cap, except to the extent that Your liability:

#### is covered by any insurance required by this Agreement, or would have been covered by such insurance if You had complied with those requirements;

#### arises as a result of Your (or Your personnel’s) fraud, negligence or unlawful acts or omissions;

#### arises as a result of infringement of 3rd party intellectual property in the Contract Material; or

#### arises as a result of Your (or Your personnel’s) acts or omissions that cause death, personal injury or property damage.

## Indemnity and Insurance

### (Indemnity) You indemnify Us (and Our personnel) against any liability or loss that We suffer in connection with:

#### any fraud, negligence or unlawful act or omission by You or Your personnel;

#### any infringement of a 3rd party’s intellectual property rights in the Contract Material;

#### any act or omission of You or Your personnel causing death, personal injury or property damage; and

#### any breach by You or Your personnel of this Agreement.

### (Insurance) You must take out and maintain for the Term, with a reputable insurer, the required Insurance. Insurances shall be effective from the start date of this Agreement and shall be maintained for the period of the Agreement provided however, where applicable, professional indemnity insurance shall, unless We otherwise agree in writing, be continued to be maintained for a period of one year following the expiration or earlier termination of this Agreement.

### (Certificates of currency) You must produce certificates of currency for the required Insurance before beginning to provide the Consultancy Services and from time to time at Our request.

## Fitness for Purpose

### You acknowledge and agree that the We rely upon Your skill and knowledge in providing the Services. You must ensure that all work, documents and other deliverables produced by it are reasonably suitable in all respects for the purposes required by this Agreement.

## Contract Material

### We own the Contract Material, including all intellectual property in that material. You must do everything necessary to give effect to this provision.

### You have a non-exclusive licence to use, copy and modify the Contract Material for the purposes of this Agreement and for any other purposes that We expressly agree with You in writing.

### Unless We give written notice to the contrary, You may keep one copy of the Contract Material for Your records.

### You may only incorporate 3rd party material in the Contract Material with Our prior written consent, which will not be given unless We are satisfied that its terms of use permit Us to make effective use of that material.

### If You are an individual, You consent to any acts or omissions by Us in respect of the Contract Material that may otherwise constitute an infringement of Your moral rights including the right not to name You as author and the right to modify the Contract Material. You will supply Us with moral rights consents to the same effect from any other creators of the Contract Material before they begin to perform this Agreement.

## Conflict of interest

### You warrant that, to the best of Your knowledge, as at the Start Date You do not have a conflict of interest, and no conflict of interest is likely to arise for You, in the performance of this Agreement. You will notify Us immediately You become aware of the existence or possibility of a conflict of interest.

## Disputes

### We will both seek to resolve any dispute arising between us by negotiations in good faith for a period of ten (10) business days before resorting to any court proceedings.

## Termination

### Unless otherwise than stated in clause 2.11.2 and 2.11.3, this Agreement will terminate upon the End Date as noted in the Term of Agreement or upon Our giving notice to You that We consider that the Services have been fully performed or that it does not require further performance of the Services by You.

### (For convenience) We may terminate this Agreement at any time for convenience, on five (5) business days’ prior written notice (or on such longer period as may be stated in the termination notice).

### (For cause) We may, by written notice, immediately terminate this Agreement if You:

#### breach the Agreement in a way which, in Our opinion, is not capable of remedy; or

#### fail to remedy a breach which, in Our opinion, is capable of being remedied, within five (5) business days of receiving notice from Us requiring You to do so, or such longer period as We may reasonably allow, having regard to the particular breach;

#### You are declared bankrupt or bankruptcy proceedings are commenced against You or You become subject to any form of insolvency administration; or

#### You are the subject of proceedings or investigations by ICAC, the police or similar public body;

#### breach the Principal’s Business and Ethics Statement.

## Upon termination

### Upon termination of this Agreement You must immediately:

#### stop providing the Services and take all reasonable steps to mitigate any costs arising due to early termination;

#### return or destroy (as instructed by Us) any material that We have supplied to You in connection with this Agreement; and

#### provide Us with the Contract Material in any format/s that We reasonably request.

### If We terminate for convenience, We will pay You:

#### any Fees and Agreed Expenses payable for the Consultancy Services up to the date of termination; and

#### Your reasonable costs and expenses that We are satisfied You have unavoidably incurred as a direct result of Our early termination (excluding any loss of profit), up to an amount equal to the value of one month of the Consultancy Services,

less any amount that We may deduct by reason of a previous overpayment of Fees and Agreed Expenses made in error, a payment owed by You to Us under Your indemnity, an amount of any payment We are legally required to make for You or Your employees in the way of superannuation, payroll tax, workers compensation or wages or a prepayment of Fees and Agreed Expenses for Consultancy Services not yet performed at the date of termination.

## General

### (Relationship) Our relationship is one of principal and independent contractor. You are not Our employee, agent or partner.

### (Variation) This Agreement may only be varied in writing, signed by both of us.

### (Waiver) Any waiver of a breach must be in writing and will not amount to a waiver of any other breach.

### (Assignment) You must not assign Your rights in relation to this Agreement (and may only transfer Your obligations with Our prior consent).

### (Applicable law) This Agreement is governed by the law of New South Wales.

### (Terms and conditions that survive beyond the Term) Any term of this Agreement that is capable of continuing to apply beyond the Term will do so including terms relating to Liability, Indemnity and Insurance and Contract Material.

# Other Documents forming Part of this Agreement

# Acceptance of Agreement

|  |  |
| --- | --- |
| Signed for and on behalf of thePrincipal by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signatory | Signed for and on behalf of theConsultant by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signatory |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print name  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print name  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position of signatory | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position of signatory |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |