**AGREEMENT FOR PROVISION OF CONSULTANCY SERVICES (MINOR) RELATED TO CONSTRUCTION**

**Project Name:**

**Consultant Type:**

Agreement

|  |  |  |
| --- | --- | --- |
| **PARTIES:** | |  |
| **Principal:** | **……………………………,** of (insert address)  **(“insert Acronym as appropriate”)** | |
|  | **and** | |
| **Consultant:** | **Company Name: ……………………………………………..**  **ABN: ……………………………………………………**  **ACN: ……………………………………………………**  **(“Consultant”)** | |

The Consultant will carry out the Services and otherwise comply with and be bound by this Agreement.

The **Agreement** comprises:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | (a) | This execution page; | (d) | The Consultancy Brief; |
|  | (b) | The Schedule; | (e) | The Letter of Acceptance; and |
|  | (c) | Terms and Conditions; | (f) |  |

*INSTRUCTION: Under (f), include other relevant correspondence or material which forms part of the contract Agreement.*

**EXECUTED AS AN AGREEMENT**

**Date of execution of the Agreement: ………………………**

*INSTRUCTION: The Delegate inserts the date of execution. Note, the Delegate always signs last]*

**This Agreement is made between the Principal and the Consultant upon and subject to the Conditions attached.**

|  |  |
| --- | --- |
| **SIGNED** by (Insert the name and title of the authorized delegate) ………………, as authorised representative for the **Principal.** | **SIGNED** for and on behalf of the **CONSULTANT** by the person named below in item 1 who warrants that he or she is a duly authorised representative able to execute on behalf of the Consultant: |
| **Signature: ……………………………………………….**  **Date: ……………………………..** | **Signature: ……………………………………………….**  **Name: ……………………………..**  **Date: ……………………………..** |

Schedule - Details of Agreement

The details are:

|  |  |  |
| --- | --- | --- |
| **1** | **Consultant:** | Company name:  ABN: ACN:  Address:  Tel: Fax:  email:  Contact person: |
| **2** | **Project:** |  |
| **3** | Brief description of Services to be provided: | Consultancy brief: |
| **4** | Commencement Date:  (Clause 3.2) | The date of the Letter of Acceptance: ……………… |
| **5** | Completion Date:  (Clause 3.2) |  |
| **6** | Consultant's Principal Officer:  (Clause 5) |  |
| **7** | Principal’s Representative  (Clause 6) |  |
| **8** | Supervising officer:  (Clause 7) |  |
| **9** | Amount of Public Liability Insurance:  (Clause 15.1) | $5,000,000 (default) |
| **10** | Amount of Professional Indemnity Insurance:  (Clauses 15.1 and 15.2) | $2,000,000 (default) |
| **11** | Fees and Expenses | Fees payable for the Services:  Option 1 - $**[insert a lump sum amount]** upon acceptance by the Principal that the Services have been completed as required under this Agreement.  Option 2 - $**[insert a total amount]** in instalments (example (a), (b) (c):  Option 3 - $**[insert amount]** per **[insert hour/day/week]** up to a maximum amount of **[insert amount]**.  For additional requests made by the Principal which the parties agree do not form part of the Services: **[insert amount per hour or other basis]**.  Expenses that may be claimed by Consultant: **[If Consultant is entitled to claim Expenses, insert items that may be claimed and limits per item. Alternatively, insert “none”.]**  (All fees and Expenses are GST inclusive unless otherwise stated) |
| **12** | Fee Summary | Maximum Amount payable for fees and Expenses: …………… |

Terms and Conditions

1. Definitions and Interpretation
   1. For the purposes of this Agreement -

**“Business Day”** means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Melbourne.

**“Commencement Date”** means the date stated in item 4 of the Schedule.

**“Completion Date”** means the date stated in item 5 of the Schedule.

**“Confidential Information”** means any information or data, including Personal Information and (insert any departmental specific information), whether or not in a material form, which is, by its nature, confidential, is designated by a party as being confidential or which the recipient party knows, or ought to know, is confidential and includes information acquired, collected or developed for the purpose of the Project or obtained during the currency of this Agreement, but does not include information in the public domain, other than as a result of a breach of this Agreement.

**“Consultancy Brief”** means the brief for the Project.

**“Consultant's Principal Officer”** means the person stated in item 6 of the Schedule.

**“Data” means –**

* Victorian government datawith respect to datasets and databases owned and held by the Victorian government provided to the Consultant for the purposes of, or in connection with, the Services; and
* Data created by the Consultant for the purposes of, or in connection with, the Services.

**“Expenses”** means the out of pocket expenses, if any, to be paid pursuant to clause 9.4 and set out in item 11 of the Schedule.

**“GST”** means GST within the meaning of the *GST Act*.

**“GST Act”** means *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth as amended from time to time.

**“IP Act”** means the *Information Privacy Act 2000* (Vic) as amended, updated or replaced from time to time, which Act defines a Code of Practice and contains Information Privacy Principles.

**“Intellectual Property”** means trademarks, patents, circuit layouts, copyrights, know-how and all other rights with respect to Intellectual Property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, and rights in respect of such Intellectual Property include all statutory and other proprietary rights.

**“Laws”** includes all Acts of the Parliaments of Australia and the states and territories, and all regulations, by-laws, awards and orders made thereunder, and the lawful requirements of public, municipal and other competent authorities in any way affecting or applicable to the Services, the Project or this Agreement.

**“Materials”** means all materials and documentation produced by the Consultant in performance of the Services.

**“Maximum Amount Payable”** means the amount stated in item 12 of the Schedule, being the maximum amount that can be paid by the Principal to the Consultant for the Services. This amount is a cap and the Consultant is not automatically entitled to be paid it.

**“Personal Information”** has the same meaning as that term in the IP Act.

**“Principal’s Representative”** means the person nominated by the Principal in accordance with clause 6.1 and stated in item 7 of the Schedule.

**“Project”** means the project to be undertaken as described in item 2 of the Schedule in respect of which the Services are to be provided.

**“Schedule”** means a schedule to this Agreement.

**“Services”** mean the Services to be provided by the Consultant as set out in brief in item 3 of the Schedule and more fully set out in the Consultancy brief.

**“Supervising Officer”** means the person nominated by the Principal in accordance with clause 7.1 and stated in item 8 of the Schedule, or such other person from time to time filling the position of that person.

* 1. Unless the context requires otherwise:

(a) words importing any gender include each other gender;

(b) the plural includes the singular and vice versa;

(c) a reference to a person includes any other entity recognised by law and vice versa; and

(d) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it.

* 1. In performing this Agreement, both parties must act reasonably and in good faith.

1. Governing Law
   1. This Agreement is governed in accordance with the laws of the State of Victoria.
2. Nature of Agreement
   1. The Consultant must comply with its obligations under this Agreement including but not limited to providing the Services, and any agreed variation of the Services. The Principal shall pay the Consultant for the Services in accordance with this Agreement.
   2. The Consultant's engagement under this Agreement will commence on the Commencement Date and the Consultant must complete the Services by the Completion Date.
   3. If the Consultant fails to deliver the Services to the reasonable satisfaction of the Principal by the Completion Date then the Principal may:

(a) require the Consultant to remedy any deficiencies in the Services; or

(b) elect (in its sole discretion) to extend the Completion Date; or

(c) waive the right to insist on delivery of the Services; or

(d) elect (in its sole discretion) to terminate this Agreement pursuant to clause 17 by notice to the Consultant.

* 1. If the Consultant is delayed in performing the Services by the Principal’s acts or omissions, the Consultant shall be entitled to a reasonable extension of time for performing the Services.

1. Duties of the Consultant
   1. The Consultant must carry out the Services and any agreed variation to the Services to the satisfaction of the Principal.
   2. In performing its obligations under this Agreement, the Consultant will –

(a) exercise due care, skill and judgement and at all times act in accordance with professional principles and standards of a competent professional provider of such Services;

(b) ensure that the Services are adequate and suitable for the purposes for which they are required;

(c) ensure that any person employed by the Consultant to perform any Services under this Agreement possesses adequate levels of skill and experience to perform those Services to the satisfaction of the Principal;

(d) ensure that the Services and the provision of the Services comply with all applicable laws, regulations and standards, as current from time to time;

(e) perform the Services in a timely manner and within the time stipulated in this Agreement; and

(f) perform the Services in accordance with any directions issued by the Principal.

1. Consultant's Representative
   1. The Services must be carried out by the Consultant under the direction of the Consultant's Principal Officer, named in item 6 of the Schedule, and no other person, unless the Principal consents otherwise in writing.
   2. The Consultant's Principal Officer will represent the Consultant and be available at all reasonable times for consultation with the Principal.
2. Principal’s Representative
   1. The Principal may nominate a Principal’s Representative, who is authorised to execute and administer this Agreement.
3. Supervising Officer
   1. The Principal will nominate a person to act as the Supervising Officer to supervise performance of this Agreement for the duration of this Agreement or as otherwise notified to the Consultant.
   2. The Supervising Officer will be available at all reasonable times for consultation with the Consultant's Principal Officer in connection with the Services.
4. Variation of Agreement
   1. This Agreement may only be varied with the written consent of each party.
   2. Notwithstanding clause 8.1, the Principal may propose variations to the Services and the Consultant will use its best endeavours to agree to such proposals.
5. Payment
   1. The Consultant must –

(a) submit Invoices for payment for the Services monthly in arrears, or in accordance with such other schedule of payments as set out in the Fee Schedule in item 11;

(b) provide information in support of the value of any Invoice if requested by the Principal; and

(c) detail the amount of any GST included in the Invoice for payment for the Services.

* 1. Unless the Principal questions or disputes any amount stated in the invoice:

1. a Payment Schedule is deemed to have been issued with the Scheduled Amount being that claimed in the Invoice; and
2. the Principal will pay the invoiced amount within thirty (30) days of receiving the invoice.
   1. Any payment of moneys under this clause 9 is not:

(a) evidence of the value of the Services or that the Services have been satisfactorily carried out in accordance with the Agreement;

(b) any admission of liability; or

(c) approval by the Principal of the Consultant's performance and compliance with the Agreement;

but is only to be taken as payment on account.

* 1. The Consultant may only claim Expenses on the basis of actual Expenses incurred, in respect of items and in accordance with the limits set out in the Schedule in item 11, as evidenced to the satisfaction of the Principal, and only if the Principal agrees in writing before the Expense is incurred.
  2. Unless otherwise stated, an amount payable by the Principal under this Agreement in respect of a *supply* by the Consultant which is a *taxable supply*, represents the GST inclusive value of the *supply* and the Principal is not required to pay to the Consultant any additional amount for the GST payable in respect of the *supply.* Expressions set out in *italics* bear the same meaning as do those expressions in the GST Act. This clause 9.5 has no application where the Services are *input taxed* or *GST-free.*

1. Confidentiality
   1. Each party must keep all Confidential Information of the other party absolutely confidential and each party undertakes to the other that it will not communicate, publish or release, or permit the communication, publication or release of any Confidential Information except –
2. as is necessary for the parties to perform their obligations under this Agreement;
3. as required by Law; or
4. as is permitted under this Agreement or otherwise agreed in writing by the parties.
   1. The Consultant must ensure that each person employed or engaged by it in relation to this Agreement keeps all Confidential Information confidential. The Consultant must keep all Confidential Information secure for so long as that Confidential Information is within its control, and in so doing must ensure that the Confidential Information is protected at all times from access, use or misuse, damage or destruction, by any person not authorised by this Agreement to have access to it.
   2. The Consultant must return to the Principal all copies of the Principal’s Confidential Information at the end of this Agreement.
   3. Despite anything else in this Agreement:
5. the Principal may disclose the terms of this Agreement to the public, including disclosure on the internet, provided such disclosure does not involve trade secrets or proprietary information of a party where disclosure would result in a significant commercial disadvantage to that party;
6. if requested by the Auditor-General or the Ombudsman of the State of Victoria in the course of performing their statutory duties, Confidential Information and the terms of this Agreement may be disclosed to the Auditor-General or the Ombudsman as the case may be.
7. Privacy
   1. In respect of the provision of the Services under this Agreement, the Consultant acknowledges that it is bound by the Information Privacy Principles set out in the IP Act, and agrees:
   2. not to use and disclose Personal Information obtained during the course of providing the Services under this Agreement except to the extent reasonably necessary for the performance of its obligations; and
   3. to ensure that its officers, employees, other consultants and agents comply with the provisions of the above named Act and any applicable code of practice, with respect to any conduct for the purposes of this Agreement in the same way and to the same extent as the Principal would have been bound by such principles in respect of that conduct had they been engaged by the Principal.

This clause 11.1 applies only where the Consultant deals with Personal Information when, and for the purpose of, providing the Services under this Agreement.

1. Intellectual Property
   1. The Consultant retains ownership of its Intellectual Property in materials created independently of this Agreement. The Consultant warrants to the Principal that it is entitled to use and deal with any Intellectual Property rights which may be used by it in connection with the provision of the Services.
   2. Where the Services utilise any Intellectual Property referred to under clause 12.1 or of a third party, the Consultant grants to the Principal and the Principal accepts a non-exclusive, irrevocable, world-wide, royalty-free licence (including the right to sub-license) to use, reproduce, publish, communicate to the public, adapt and exploit that Intellectual Property to the extent necessary to enable the Principal to enjoy the full benefit of the Project and the Services.
   3. The Consultant retains the Intellectual Property rights in or in relation to any Intellectual Property created for the purposes of, or in connection with the Services or this Agreement. The Consultant grants to the Principal an irrevocable licence to use that Intellectual Property for any purpose for which the Services are provided, including any subsequent project repairs, maintenance or servicing, the supply of replacement parts, additions or alterations.
   4. The ownership of any Data, whether such Data is supplied by the Principal or created for the purposes of, or in connection with, the Services or this Agreement, vests in the Principal from the time of its creation.
   5. In relation to any work in which the Consultant or a person engaged by it has a moral right, the Consultant consents, and will procure the consent of any person engaged by it, to the Principal doing or omitting to do, anything that, but for this consent, would constitute an infringement of those moral rights.
2. Status of Consultant
   1. The Consultant is engaged as an independent contractor. Nothing in this Agreement creates any agency or employment relationship between the Consultant and the Principal.
3. Indemnity
   1. The Consultant indemnifies the Principal against all Liability the Principal may incur in respect of any Claim, including Claims in respect of:
4. personal injury or the death of any person;
5. loss of or damage to any property;
6. infringement of third party Intellectual Property rights; and
7. a contravention of the requirements of clause 11 or the applicable privacy legislation,

arising in any manner out of a breach by the Consultant of its obligations under this Agreement, any negligent or unlawful act or omission or wilful misconduct of the Consultant or any personnel employed or retained by the Consultant in the course of providing the Services.

* 1. For the purposes of clauses 14.1 and 14.2:
* “Liability” means all damages, costs, expenses, penalties and losses, including, without limitation, all legal costs on a full indemnity basis;
* “Claim” means all claims, demands, rights, actions, suits or proceedings of any kind; and
* “The Principal” includes (the relevant Department or public body), the State of Victoria and their officers, agents and employees.
  1. The Consultant's liability under clause 14.1 will be reduced to the extent that Liability is caused or contributed to by the negligent or unlawful act or omission of the Principal.
  2. The indemnities in this clause 14 are continuing obligations, separate and independent from other obligations of the parties, and survive termination of this Agreement.

1. Insurance
   1. Before commencing any work under this Agreement, the Consultant must effect –
2. a public liability insurance coverage for an amount not less than the amount indicated in item 9 of the Schedule for any one occurrence; and
3. unless item 10 in the Schedule states otherwise, professional indemnity insurance coverage for an amount not less than the amount indicated in item 10 of the Schedule for any one claim,

with an insurer authorised under the *Insurance Act 1973* (Cth) and must provide certificates of currency, or such other documentary evidence, to the satisfaction of the Principal, with respect to the currency and the details of insurances it is required to effect under this Agreement, if the Supervising Officer requests such in writing.

* 1. The Consultant must maintain the professional indemnity insurance coverage for at least six years after expiration or earlier termination of this Agreement.

1. Dispute Resolution
   1. Each of the parties will use its best endeavours to co-operatively resolve a dispute.
   2. If a dispute arises, either party may give notice of a dispute in writing to the other party. The dispute will be referred to the Consultant's Principal Officer and the Principal’s Representative for resolution.
2. Termination
   1. The Principal may terminate this Agreement for convenience at any time and in its sole discretion by giving ten (10) business days prior written notice to the Consultant.
   2. If the Principal terminates this Agreement under clause 17.1, the Principal will only be liable to pay the Consultant for:
   3. the Services carried out prior to the date of termination; and
   4. an amount equal to the extra costs necessarily incurred by the Consultant as a direct result of the termination (which must be evidenced to the Principal’s reasonable satisfaction).
   5. The Principal may immediately terminate this Agreement by notice to the Consultant if –
3. the Consultant is in breach of its obligations under this Agreement, and such breach is not remedied within seven (7) days of the receipt of a notice from the Principal requesting rectification of the breach;
4. the Consultant enters into any form of insolvency or external administration or bankruptcy;
5. there is a change in the identity of the person who has control of the Consultant from that which was in effect as at the date of this Agreement; or
6. the Consultant engages in any conduct which brings the reputation of the Consultant into disrepute and as a consequence the Principal believes that such may be detrimental to the reputation of the Principal.
   1. Upon termination of this Agreement, the Consultant must immediately deliver to the Principal any documentation provided to the Consultant by the Principal or produced by or on behalf of the Consultant under this Agreement.
   2. Any termination of the Agreement will not prejudice or affect the accrued rights, claims or liabilities of either party under this Agreement.
   3. The provisions of this Agreement dealing with intellectual property, confidentiality and privacy, insurance and consequences of termination survive the end of this Agreement and may be enforced at any time.