

**THIS SERVICE AGREEMENT** is entered into on

**BETWEEN**

(1) whose principal place of business is at (the **Consultant**)

(2) whose principal place of business is at (the **Client**)

**WHEREAS**

The parties agree that the Work shall be carried out in accordance with and subject to this Agreement hereto.

It is agreed as follows:

**1. Interpretation**

**Definitions**

**Agreement** means any agreement made subject to the terms and conditions below;

**Deliverable Materials** means any deliverables as outlined in the Scope of Work in Schedule 1;

**Work** means the services and deliverables more particularly set out in Schedule 1;

**Completion Date** means or as may otherwise be agreed between the Client and the Consultant (including any extended date for completion fixed hereunder);

**Fees** means the fees as calculated as per the fee schedule more particularly set out in Schedule 2;

**2. Consultant's obligations**

2.1 The Consultant shall with reasonable care, skill and diligence and in a good and professional manner carry out the Work under this Agreement.

2.2 The Consultant shall also comply with any instructions or variations issued by the Client (or any authorised representative of the Client) in relation to the Work. If instructions are given orally, they shall be confirmed in writing by the Client within the following 3 days. If any such instruction or variation is likely to result in any delay to the Completion Date, the Consultant may, within 3 days of the issue of the relevant instruction or variation but not otherwise, claim in writing for an extension of time under Clause 3.1 which shall be granted to the extent fair and reasonable in the circumstances.

2.3 The Consultant shall at all reasonable times appoint a competent person in charge and any instructions given to him by the Client shall be deemed to have been issued to the Consultant.

2.4 The Consultant shall comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or byelaws applicable to the Work.

### **3. Completion of the work**

3.1 The Consultant shall have fulfilled its obligations by completing the Work, including delivery to the Client of the materials listed in the Schedule 1 entitled "Deliverable Materials" (if any) and the Client accepts such activities and materials without unreasonable objections. No response from the Client within 3 business days of deliverables being delivered by Consultant is deemed acceptance.

3.2 The Work shall be completed by the Completion Date. If it becomes apparent that the Work will not be completed by the Completion Date for good reason, then the Client may grant such an extension of the time for completion as it thinks fair and reasonable to take account of the reasons for delay.

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3.3 If the Work is not completed by the Completion Date, then the Client shall be entitled to liquidated damages at the rate of % per week (if any) specified in the Agreement for every week or part of a week during which the Work remains uncompleted.

### **4. Liability of the Consultant**

4.1 If the Consultant fails to use such reasonable care and skill or shall otherwise be in breach of its obligations in respect of the supply of services under this Agreement, the remedy of Client shall be to require the Consultant to carry out as promptly as practicable such repeat or remedial services as shall be appropriate to ensure that the relevant services are carried out (save only as to the time of their performance) as originally planned.

4.2 In no event shall the Consultant be liable to the Client for loss of profits or other indirect or consequential loss of any kind whether arising from negligence, breach of contract or otherwise.

4.3 Without prejudice to any other limitation or exclusion of liability under this Agreement, the total liability of Consultant to Client arising in respect of any claim, shall not exceed two times the total Agreed Price for the Work.

### **5. Supplies and Equipment**

The Consultant, at their own expense, shall furnish their own supplies and equipment necessary to deliver and complete the Services as defined under this Agreement unless otherwise agreed upon by the parties. Should the Client not furnish the agreed upon supplies, the Client understands they will be responsible for reimbursing the Consultant for all expenses incurred.

### **6. Premises**

6.1 The Consultant shall comply with any health and safety or other applicable regulations in relation to premises owned by the Client prior to the commencement of the Work.

6.2 The Client may issue instructions requiring the exclusion from its premises of any person employed by the Consultant.

### **7. Payment**

7.1 The Client will be invoiced for the consulting services and expenses in accordance with Schedule 2. Invoices will be sent to the address below.

7.2 The Consultant agrees to keep an exact record of any and all expenses acquired while performing the Services. The Consultant will submit an invoice itemizing each expense, along with proof of purchase and receipt upon completion of such Services.

7.3 If any one expense is over , the Consultant agrees to obtain the Client's written consent before making the purchase.

7.4 The Client shall notify the Consultant in writing of any dispute with an invoice along with any substantiating documentation or a reasonably detailed description of the dispute within days from the date of the Client's receipt of such invoice subject to dispute.

7.5 Client will be deemed to have accepted all invoices for which the Consultant does not receive timely notification of a dispute and shall pay all undisputed amounts due under such invoices within the period set forth in this Agreement. The Parties shall seek to resolve all such disputes expeditiously and in good faith.

7.6 Terms of payment for each invoice are due within days upon receipt by the Client of a proper invoice. The Consultant shall provide the Client with sufficient details to support its invoices, including time sheets for services performed and expense receipts and justifications for authorized expenses, unless otherwise agreed to by the parties. Payments for services invoiced that are not received within days from date of invoice will be subject to a 5% late charge per calendar month.

## **8. Intellectual Property**

8.1 The Parties acknowledge and agree that the Client will hold all intellectual property rights in any work product resulting from the Work including, but not limited to, copyright, moral rights, goodwill, trade secrets, applications for registrations or relevant registration, rights to any trademark, patent, copyright, trade name, and industrial design and trademark rights ("**Intellectual Property**").

8.2 The Consultant and its licensors shall retain ownership of all Consultant's intellectual property rights.

8.3 The Consultant grants the Client, or shall procure the grant to the Client, a worldwide, non-exclusive, royalty-free licence to use Consultant's intellectual property rights for the duration of Work period to such extent as is necessary to enable the Client to make reasonable use of the Work. The Client shall not sub-licence or transfer any the Consultant's intellectual property rights.

## **9. Confidentiality**

9.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by Clause 9.2.

9.2 Each Party may disclose the other Party's Confidential Information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

9.4 The parties' obligation of confidentiality will survive the termination of this Consulting Agreement and stay in place for two years after the termination of this Agreement.

## **10. Termination**

10.1 Either party may by notice in writing forthwith terminate the Agreement if the other party becomes bankrupt or makes any composition or arrangement with his creditors or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up is passed or a receiver or manager of its business or undertaking is duly appointed or possession is taken by or on behalf of any creditor of any property the subject of a charge.

10.2 The Client may also terminate the Agreement by notice in writing to the Consultant if the Consultant without reasonable cause fails to proceed diligently with the Work or wholly suspends the carrying out of the Work before completion. The right of termination shall be without prejudice to any other rights or remedies which the Client may possess.

10.3 The Client understands that the Consultant may terminate this Agreement at any time if the Client fails to pay for the Services provided under this Agreement or if the Client breaches any other material provision listed in this Consulting Agreement in the manner as defined above. Client agrees to pay any outstanding balances within 7 days of termination.

10.4 In the event of termination, the Consultant shall immediately give up possession of the site of the Work and deliver any copies of any drawings or plans prepared or held by the Consultant for the purpose of the Work. The Client shall have no further liability to pay any sums to the Consultant save for such fair and reasonable sum to compensate for the value of the Work which has been completed at the date of termination.

## **11. No rights under Contracts (Rights of Third Parties) Ordinance**

A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.

## **12. Governing Law and Jurisdiction**

The parties shall use all reasonable endeavours to resolve any dispute amicably and in good faith.

### **13. Notices and service**

13.1 Any notice so served by hand, e-mail or post shall be deemed to have been duly given:

- a. in the case of delivery by hand, when delivered;
- b. in the case of fax or electronic mail on a Business Day prior to 5.00 pm, at the time of receipt ;
- c. in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by e-mail occurs after 5pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

13.2 The addresses of the parties for the purpose of clause 13.1 are as follows:

#### **Consultant**

Address:

E-mail:

For the attention of:

#### **Client**

Address:

E-mail:

For the attention of:

### **14. Nature of Agreement**

14.1 Subject as provided in clause 14.2, this Agreement is personal to the Consultant, which may not without the written consent of the Client, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder.

14.2 Client and Consultant expressly agree and understand that the above-listed Consultant is an independent contractor hired by the Client and nothing in this Agreement shall be construed in any way or manner, to create between them a relationship of employer and employee, principal and agent, partners or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of the Agreement.

14.3 Accordingly, the Consultant acknowledges that neither the Consultant or the Consultant's Employees are eligible for any benefits, including, but not limited to, health insurance, retirement plans or stock option plans. The Consultant is not the agent of Client or its Company and is not authorized and shall not have the power or authority to bind Client or its Company or incur any liability or obligation, or act on behalf of Client or its Company. At no time shall the Consultant represent that it is an agent of the

Client or its Company, or that any of the views, advice, statements and/or information that may be provided while performing the Services are those for the Client.

14.4 The Consultant is not entitled to receive any other compensation or any benefits from the Client. Except as otherwise required by law, the Client shall not withhold any sums or payments made to the Consultant for social security or other federal, state, or local tax liabilities or contributions, and all withholdings, liabilities, and contributions shall be solely the Consultant's responsibility. The Consultant further understands and agrees that the Services are not covered under the unemployment compensation laws and are not intended to be covered by workers' compensation laws.

14.5 The Consultant is solely responsible for directing and controlling the performance of the Services, including the time, place and manner in which the Services are performed. The Consultant shall use its best efforts, energy and skill in its own name and in such manner as it sees fit.

14.6 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties.

14.7 This Agreement sets out the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement supersedes all previous agreements, arrangements and understandings between the parties with respect to the subject of this Agreement, which shall cease to have any further force or effect. It is agreed that:

(a) neither party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other party which is not expressly set out or referred to in this Agreement, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law;

(b) a party may claim in contract for breach of Warranty under this Agreement but shall have no claim or remedy under this Agreement in respect of misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or untrue statement made by the other party;

(c) this clause shall not exclude any liability for fraudulent misrepresentation.

14.8 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

14.9 This Agreement may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

14.10 The Parties subject to this Agreement understand and acknowledge that this Agreement is not exclusive. Each Party respectively agree that they are free to enter into other similar Agreements with other parties.

## **15. Force majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the time for performance shall be

extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for one (1) month, the party not affected may terminate this Agreement by giving 1 (one) week's written notice to the affected party.

## **16. Assignment**

The Consultant shall not assign the Agreement or sub-contract the performance thereof without the prior written consent of the Client.

As witness this Agreement has been signed by the duly authorised representatives of the Parties the day and year first before written.

## **SCHEDULE 1**

### **Scope of Work**

The Consultant shall provide the Services and Deliverable(s) as follows:

### **Deliverables**

### **Scope of Work**

The Consultant shall provide the Services as follows:

**SCHEDULE 2**

**Fee Schedule**

This engagement will be conducted on a Time & Materials basis. The total value for the Services pursuant to this shall not exceed unless otherwise agreed to by both parties via the project change control procedure, as outlined within. A new quotation will be issued specifying the amended value.

This engagement will be conducted on a Time & Materials basis.

This figure is based on the following functional/rate structure.

<b>Item</b>	<b>Description</b>	<b>Number of Resources</b>	<b>Hourly Rate ()</b>	<b>Number of Hours</b>	<b>Discount (%)</b>	<b>Final Amount ()</b>
				<b>Subtotal</b>	<b>()</b>	
				<b>Total</b>	<b>()</b>	