

User guidance

The standard form following is for the preparation of a Request for Tender document for **Consultancy Services: Fee over \$30,000**

Part 3: Conditions of Agreement

Guide notes

This standard form contains guidance in hidden text, ie:

GUIDE NOTES:

Guide Note examples

Viewing guide notes

1. If the guide notes are not visible, click on the **Show/Hide** button .
2. If still not visible, then :
 - Go to Microsoft Word **Options**;
 - Select the **Display** tab;
 - Tick the **Hidden Text** check box and click the **OK** button.

General

Insertion points

Each '»' shows where input is required. Click onto each '»' and overwrite.

When completed

1. Remove all guide notes manually or by the following steps:
 - On the **Editing** menu click **Replace**, then (if required)
 - Click the **More** button;
 - Click the **Format** button, click on **Font**;
 - Tick the **Hidden** check box and click the **OK** button;
 - Click the **Special** button, click on **Any Character**; then
 - Click the **Replace All** button.
2. Delete this **User guidance**, along with the following **Page Break**.

Conditions of Agreement

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Conditions of Agreement

1 Definitions

Agreement

The contract between the Consultant and the Principal constituted by the Agreement Documents, which supersedes all understandings, representations and communications between the parties related to the subject matter of the Agreement made before the Date of Agreement

Agreement Documents

Agreement Documents include:

- Conditions of Agreement;
- Agreement Information;
- The Services;
- Appendices;
- Drawings and documents;
- Letter of Award and any other documents listed therein.

Business Day

Any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.

Consultant

The entity named in Item 2 of the Agreement Information.

Contract Material

All material brought or required to be brought into existence as part of, or for the purpose of, performing the Services, including but not limited to documents, equipment, information and data stored by any means.

Date of Agreement

The date of the Letter of Award.

Fee

The fee described in Clause 5.

Intellectual Property

All rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Letter of Award

A letter from the Principal to the Consultant awarding the contract to the Consultant.

Principal

The entity named in Item 1 of the Agreement Information.

Services

The services described in The Services.

Conditions of Agreement

2 Engagement

- .1 The Principal engages the Consultant in the capacity set out in Item 3 of the Agreement Information to perform the Services, and the Consultant accepts the engagement and undertakes to perform the Services, on the terms set out in this Agreement.

3 Consultant's obligations

Professional Standard of Care

- .1 The Consultant must perform the Services to that standard of care and skill to be expected of a consultant who regularly acts in the capacity in which the Consultant is engaged and who possesses the knowledge, skill and experience of a consultant qualified to act in that capacity.

Knowledge of Requirements of the Principal

- .2 The Consultant must use all reasonable efforts to inform itself of the requirements of the Principal and must regularly consult with the Principal during the performance of the Services.

Personnel

- .3 The Consultant must:
 - .1 ensure that all personnel engaged by it in connection with the Services are appropriately qualified, competent and experienced in the provision of the type of services required by the Principal;
 - .2 engage persons named by the Consultant and agreed by the Principal to carry out the services nominated.
- .4 The Consultant's responsibility for the performance of the Services and for the work and performance of its personnel is not altered in any way by Clause 3.3 or by anything done in accordance with Clause 3.3.

Discrepancies In Information

- .5 If the Consultant considers that information, documents and other particulars made available to it are inadequate or contain errors or ambiguities, the Consultant must give written notice as soon as practicable to the Principal detailing the errors or ambiguities.

Program or Plan

- .6 The Consultant must, by the time specified in Item 4 of the Agreement Information, submit to the Principal a program or plan for the performance and completion of the Services within the time specified in Item 5 of the Agreement Information.

Timely Provision of Services

- .7 The Consultant must perform the Services expeditiously and in accordance with the program.

Change of Scope or Timing

- .8 As soon as practicable after becoming aware of any matter which has changed or is likely to change the scope or timing of the Services, the Consultant must give written notice to the Principal detailing the circumstances and extent or likely extent of the change or delay and whether the Consultant will be proposing a variation in accordance with Clause 6.

Alterations to Approved Documents

- .9 The Consultant must not make any substantial alteration to, addition to or omission from the plans, drawings, layouts, designs, specifications or other material previously approved, without the prior written approval of the Principal.

Conditions of Agreement

Principal's Materials

- .10 The Consultant must protect and keep safe and secure all materials and documentation provided by the Principal to the Consultant.
- .11 Upon discharge of this Agreement by performance or termination, the Consultant must promptly return to the Principal those materials and documentation.

Co-operation by the Consultant

- .12 The Consultant must liaise, co-operate and confer with others as directed by the Principal.

Obtain All Necessary Approvals

- .13 The Consultant must obtain all approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services, except where obtained by the Principal as set out in Item 6 of the Agreement Information.

Consultant's Relationship with the Principal

- .14 The Consultant must not act outside the scope of the authority conferred on it by this Agreement and must not bind the Principal in any way or hold itself out as having any authority to do so, except where authorised by this Agreement.

Confidentiality

- .15 The Consultant and its employees or agents must not without the prior written consent of the Principal disclose any information in connection with the Services or this Agreement to any person not a party to this Agreement other than:
 - .1 as necessary to perform the Services; or
 - .2 with respect to any matter already within public knowledge.

Consultant's Representative

- .16 The person named in Item 7 of the Agreement Information will be responsible on behalf of the Consultant for all aspects of the Services and has authority to act on behalf of the Consultant in all matters relating to this Agreement. Any substituted representative must be notified promptly in writing to the Principal.

Subcontracting and Assignment

- .17 The Consultant must not assign or subcontract any part of the Services without the prior written approval of the Principal.
- .18 An approval given by the Principal permitting the Consultant to subcontract any portion of the Services does not relieve the Consultant from its obligations and liabilities pursuant to this Agreement.

Statutory Requirements

- .19 The Consultant must ensure that all work done in connection with the Services complies with the requirements of all applicable legislation, codes and Authorities' requirements and all relevant Australian standards applicable to the Services.

Conflict of Interest

- .20 The Consultant warrants that it has no conflict of interest at the date of this Agreement.
- .21 The Consultant must immediately inform the Principal in writing upon becoming aware of the existence, or possibility, of a conflict of interest.

Conditions of Agreement

Security of Premises

- .22 When using the Principal's premises and facilities, the Consultant must comply with all directions, procedures and policies relating to work health and safety and security at those locations.

Access to Consultant's Premises

- .23 The Consultant must, upon reasonable notice, permit the Principal access to the Consultant's premises in order for the Principal to inspect, discuss or assess anything in connection with the Services.

Insurances

- .24 The Consultant must provide the Principal with proof of all insurance required to be maintained by the Consultant under this Agreement.

4 Principal's obligations

Provide Information

- .1 The Principal will as soon as practicable, or as required by this Agreement, make available to the Consultant all relevant instructions, information, documentation or data or any other material required for the performance of the Services.

Appoint a Representative

- .2 The person named in Item 8 of the Agreement Information, or any other person the Principal nominates in writing, will act as the Principal's Representative and will have authority to act on behalf of the Principal in all matters relating to this Agreement.

5 Payment

Payment

- .1 In consideration of the provision of the Services the Principal will pay the Consultant the Fee calculated in the manner stated in Item 9 of the Agreement Information, subject to the conditions of this Agreement.

Right of Set-Off

- .2 The Principal may deduct from amounts otherwise payable to the Consultant any amount due from the Consultant to the Principal in connection with the Services.

Effect of Payment of the Fee

- .3 Payment of the Fee, whether in part or in full, does not constitute acceptance by the Principal of the Services and does not amount to a waiver of any right or action which the Principal may have at any time against the Consultant.

Reimbursable Expenses

- .4 The Principal will reimburse the Consultant the reasonable costs, expenses, fees or charges incurred by the Consultant limited to those items set out in Item 10 of the Agreement Information, provided that in all cases the Consultant has first obtained the Principal's prior written approval to incur or pay those costs, expenses, fees or charges.

Timing of Payment

- .5 At the times specified in Item 11 of the Agreement Information, and upon Termination pursuant to Clause 11, the Consultant must lodge with the Principal a payment claim for the Services performed (and for approved reimbursable expenses, if any, incurred) during the specified period. The payment claim must be accompanied by a completed and true Combined Subcontractor's Statement and Supporting Statement in the form of Schedule 1, executed on the date of the payment claim.

Conditions of Agreement

- .6 Within 10 Business Days after the Consultant's payment claim is served, the Principal will provide to the Consultant a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. Reasons will be given if the amount is less than that claimed.
- .7 The Principal will pay the Consultant the amount due within 15 Business Days after the Consultant's payment claim is served.
- .8 Payment by the Principal will be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Consultant. No payment will be due to the Consultant until details of the nominated account (name of financial institution, account name and account number) are notified in writing to the Principal. The Consultant shall promptly notify the Principal in writing of any change to the nominated account but the Principal will not be responsible for any payments made into a previously nominated account prior to notification of such change being received by the Principal.

Recipient Created Tax Invoices

- .9 The Principal will issue payment schedules in the form of Recipient Created Tax Invoices. The Consultant must not issue Tax Invoices in respect of the Agreement.
- .10 Each party warrants it is registered for GST at the time of entering into the Agreement, and must notify the other party if it ceases to be registered for GST or to satisfy any requirements for the issue of Recipient Created Tax Invoices.
- .11 The Principal will issue Adjustment Notes in respect of adjustment events known to the Principal. The Consultant must notify the Principal of details of any adjustment event not known to the Principal if it ceases to satisfy any requirements for the issue of Recipient Created Tax Invoices.

Pay as You Go

- .12 If the Consultant does not quote its ABN in its Tender or on its claims or invoices, or otherwise advise the Principal of its ABN relating to the Services, the Principal will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999* (Cwlth).

Payment claims for lump sum items

- .13 A claim for payment of any proportion of a lump sum, including any lump sum in a *Schedule of Rates* or *Schedule of Prices*, must be expressed as a percentage.

6 Variations

- .1 The Principal may instruct variations in writing and the Consultant must comply with the instructions, providing the variations are generally consistent with or of a similar nature to the Services.
- .2 The Consultant must take all reasonable steps to minimise the effects of variations on the time to complete the Services.

Variations proposed by the Principal

- .3 When requested by the Principal, the Consultant must, within the time specified in the request, advise the Principal of its price (including any delay costs) for a proposed variation and the effect on the time to complete the Services, or on any other matter specified in the request.
- .4 Unless the Principal instructs the Consultant to proceed, the Consultant must not begin to carry out a variation until the parties have agreed on the price and time implications (including any delay costs).

Variations claimed by the Consultant

- .5 If the Consultant considers that a variation applies but the Principal has not instructed a variation, the Consultant must make its claim for a variation within 5 Business Days from the start of the event giving rise to the alleged variation, or from the time when the event

Conditions of Agreement

should have become known to the Consultant with reasonable diligence on its part. If the Principal does not agree that a variation applies, the Principal must advise the Consultant in writing.

Valuation

- .6 If the parties agree that a variation applies they must endeavour to agree in writing on its price and its effect on the time to complete the Services. Failing agreement on price or time, the provisions of Clause 12 apply.
- .7 Unless otherwise agreed, the price of a variation will be determined using the hourly rates set out in Tender Schedules - Hourly Rates for Variations. If the Agreement does not include Tender Schedules - Hourly Rates for Variations or the tendered hourly rates are not relevant to the variation, reasonable rates and prices will apply.
- .8 The Fee must be adjusted to account for the price of a variation.

7 Copyright and Intellectual Property

Vesting

- .1 Subject to Clause 7.2, title to and Intellectual Property in or in relation to Contract Material (other than the Contract Material listed in Item 13 of the Agreement Information) vests upon its creation in the Principal. The Consultant must, upon request by the Principal, do all things necessary to vest that title or that Intellectual Property in the Principal.
- .2 If title to Intellectual Property in or in relation to Contract Material is not capable of being vested in the Principal under Clause 7.1 because the Consultant itself does not own that Intellectual Property, the Consultant must ensure that the Principal is irrevocably licensed (whether by sub-licence from the Consultant or direct licence from the owner) to use that Contract Material or Intellectual Property.
- .3 The Principal indemnifies the Consultant against any costs, claims, actions or expenses incurred by the Consultant as a result of any reproduction, adaptation or commercialisation by the Principal of any Intellectual Property or Contract Material vested in the Principal under Clause 7.
- .4 The Consultant indemnifies the Principal against any claims, actions, and loss or damage arising out of any infringement of Intellectual Property rights by the Consultant, its officers, employees, agents or subconsultants in connection with the performance of the Services or the use by the Principal of the Contract Material for any purpose reasonably contemplated under the agreement.

Delivery of Contract Material

- .5 On, or as soon as practicable after, the expiration or earlier termination of this Agreement, the Consultant must deliver to the Principal all Contract Material.

8 Indemnity – People and property

- .1 The Consultant indemnifies the Principal from and against all actions, claims, costs, expenses and damages (including the costs of defending or settling any action or claim) in respect of:
 - .1 loss of or damage to property of the Principal; or
 - .2 personal injury (including death) to any person or loss of or damage to any property,arising out of or by reason of anything done or omitted intentionally or negligently by the Consultant in respect of the Services.
- .2 The Consultant's liability to indemnify the Principal is reduced proportionally to the extent that an act or omission of the Principal or employees or agents (other than the Consultant) of the Principal may have contributed to the injury, damage or loss.
- .3 Subject to Clause 8.4, the Consultant's liability under Clause 8 is limited to the amount specified in Item 14 of the Agreement Information.

Conditions of Agreement

- .4 Clause 8.3 does not apply to liability for damages arising from:
 - .1 the death of, or injury to, a person;
 - .2 a breach of trust; or
 - .3 fraud or dishonesty.
- .5 The Consultant's liability under clause 8 may be limited by the *Professional Standards Act, 1994* (NSW) if the Consultant is a member of an occupational association with an approved Scheme under that Act.

9 Insurance

Professional Indemnity Insurance

- .1 The Consultant must have insurance covering liability for errors in provision of the Services. The insurance must be with an insurer approved by the Principal (which approval will not be unreasonably withheld) and provide coverage for an amount not less than the amount shown in Item 15 of the Agreement Information.

Workers' Compensation

- .2 Where the Consultant is not a sole trader, the Consultant must ensure that an insurance policy is effected prior to commencing performance of the Services and remains current for the duration of this Agreement, covering liability for death of or injury to persons employed by the Consultant and related liability as required or under the *Workers' Compensation Act 1987* (NSW).
- .3 Where the Consultant is unable to obtain workers' compensation insurance because the Consultant is a sole trader or partnership, the Consultant must hold appropriate personal accident insurance.

Public Liability

- .4 The Consultant must obtain and maintain a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services.
- .5 The policy must be:
 - .1 with an insurer and under conditions approved by the Principal (which approval will not be unreasonably withheld);
 - .2 obtained prior to commencing the carrying out of the Services;
 - .3 maintained for the duration of the Agreement; and
 - .4 for an amount not less than that stated in Item 16 of the Agreement Information in respect of any single occurrence.
- .6 The policy must cover the Consultant, the Principal, the Principal's Representative and all subconsultants employed from time to time for or in relation to the Agreement and the Services for their respective rights and interests and cover their liabilities to third parties.
- .7 The policy must also provide that:
 - .1 in so far as the policy covers more than one insured party, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured party;
 - .2 failure by any insured party to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured parties;
 - .3 any non-disclosure by one insured party does not prejudice the right of any other insured party to claim on the policy; and
 - .4 a notice to the insurer by one insured party will be deemed to be notice by all insured parties.

Conditions of Agreement

10 Inspection of records

Records

- .1 The Consultant must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, reimbursable expenses and fees and reimbursements payable to others engaged to assist in providing the Services.

Access

- .2 The Consultant must, within a reasonable time of any request, give the Principal access to, or verified copies of, any information which may reasonably be required to enable any claim to be substantiated and verified.

11 Termination

Termination by the Principal other than for Default by the Consultant

- .1 The Principal may terminate the whole or any part of the performance of the Services at any time, by written notice addressed to the Consultant.
- .2 The Consultant must, after receipt of a notice under Clause 11.1:
 - .1 cease work on the terminated Services by the date specified in the notice; and
 - .2 comply with any reasonable directions given by the Principal in relation to performance of the Agreement.
- .3 As soon as practicable after ceasing work under Clause 11.2, the Consultant must lodge with the Principal a statement of the amount of the Fee (and any approved reimbursable expenses) claimed by the Consultant to be payable for Services performed to the earlier of:
 - .1 the date of cessation of the terminated Services; and
 - .2 the date by which the Consultant was required to cease work on those Services.

The statement must be accompanied by supporting information as reasonably required by the Principal.

Termination by the Principal for Default by the Consultant

- .4 If the Consultant:
 - .1 becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors;
 - .2 fails to carry out the Services with due diligence and competence;
 - .3 without reasonable cause suspends the carrying out of the Services; or
 - .4 commits a substantial breach of this Agreement,the Principal may:
 - .5 in the case of the default specified in Clause 11.4.1, forthwith terminate this Agreement by written notice addressed to the Consultant; and
 - .6 in the case of any other specified default, terminate this Agreement by written notice addressed to the Consultant if the Consultant fails to remedy the default within 14 days from the date of service of a notice by the Principal on the Consultant specifying the relevant default.

Termination by the Consultant

- .5 If the Principal fails to pay the Consultant any amount in accordance with this Agreement which is not in dispute, or commits a fundamental breach of the Agreement, the Consultant may give notice requiring the Principal to remedy the default within 10 Business Days after receiving the notice.

Conditions of Agreement

- .6 If the Principal fails to remedy the default or to propose steps reasonably acceptable to the Consultant to do so within the time specified in Clause 11.5, the Consultant may issue a notice terminating the Agreement.
- .7 The Principal must pay the amounts prescribed in Clause 11.12.

Consultant's Continuing Liability

- .8 Termination by the Principal or Consultant will not release the Consultant from liability in respect of any breach, or non-performance, of any obligation pursuant to this Agreement.

Effect of Termination

- .9 Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of each party.

Adjustment of the Fee on Termination

- .10 If any of the Services are terminated pursuant to Clause 11.1, the Principal will pay the Consultant:
 - .1 a reasonable amount for the Services performed by the Consultant up to the date of termination, as adjusted by any additions or deductions in accordance with this Agreement, and
 - .2 a further amount calculated in the manner set out in Item 17 of the Agreement Information

in full and final satisfaction of any claim the Consultant has or may have.

- .11 If this Agreement is terminated pursuant to Clause 11.4, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant up to the date of termination, adjusted to take into account loss or damage suffered, or reasonably likely to be suffered, by the Principal as a consequence of breach by the Consultant. The Principal may recover any short-fall from the Consultant as a debt due and payable.
- .12 If this Agreement is terminated pursuant to Clause 11.6, the Principal will pay the Consultant:
 - .1 a reasonable amount for the Services performed by the Consultant up to the date of termination, as adjusted by any additions or deductions in accordance with this Agreement, and
 - .2 a further amount calculated in the manner set out in Item 17 of the Agreement Information

in full and final satisfaction of any claim the Consultant has or may have.

12 Dispute resolution

- .1 If the Principal's Representative and the Consultant's Representative are unable to resolve a disagreement, the matter must be referred to senior executives of both parties, who will meet to attempt to negotiate a resolution.

Nomination of an Expert

- .2 If a dispute between the Consultant and the Principal is not resolved by negotiation under Clause 12.1, then before either party has recourse to litigation, the party must submit the dispute to expert determination. If the Consultant and the Principal do not agree upon an independent expert ("Expert"), either may request the Chief Executive Officer, Australian Disputes Centre (tel. 02 9239 0700) to nominate an Expert.
- .3 Once an Expert has been agreed or nominated, the Principal will appoint the Expert in writing on behalf of both parties, with a copy to the Consultant.

Submissions

- .4 Within 14 days after the appointment of the Expert, the claimant will submit in writing to the Expert the claim and all the evidence which the claimant wishes the Expert to take

Conditions of Agreement

into account. Within 28 days thereafter the other party will submit in writing to the Expert that party's response to the claim, particulars of any counterclaim and all the evidence which that party wishes the Expert to take into account.

Procedure

- .5 Copies of documents sent to the Expert must be sent to the other party at the same time. The Expert may meet with the parties jointly but not separately and may ask questions of the parties which must be answered orally or in writing as requested by the Expert.

Determination

- .6 As soon as possible the Expert must give the parties the Expert's determination in writing as to:
 - .1 the respective rights and entitlements of the parties, and
 - .2 the amount or service if any which the Expert considers is due from one party to the other.
- .7 The determination of the Expert shall be made as an Expert and not as an Arbitrator and shall be final and binding on the parties except where the Expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out work, in excess of \$100,000. Such determination shall not be final and binding, provided either party gives notice to the other party of its dissatisfaction within 28 days of the determination being given.

Liability

- .8 The Expert will not be liable to the parties for negligence in the conduct of the determination.

Costs

- .9 The Principal and the Consultant will be jointly and severally liable to the Expert for the fees of the Expert. As between themselves, the Principal and the Consultant will each bear half the Expert's fee and each will bear their own costs of the determination.

Continuing Performance

- .10 Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

13 Notices

- .1 Any notice given under this Agreement:
 - .1 must be in writing addressed to the intended recipient at the address shown in Item 18 of the Agreement Information or the address last notified by the intended recipient to the sender;
 - .2 must be signed by an authorised officer of the sender; and
 - .3 will be taken to have been given or made when delivered, received or left at the specified address.
- .2 If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent or later than 4.00 pm (local time), it will be taken to have occurred at the commencement of business on the next Business Day in that place.

14 Protection of children and other vulnerable people

- .1 The Consultant must ensure that all persons performing services on the site or sites under the Agreement, including but not limited to the Consultant's employees and managers, subconsultants and suppliers (Consultant Employees) understand and comply with the requirements shown below:

Conditions of Agreement

- .1 All Consultant Employees must gain permission to enter the school or facility before performing related services and they may only enter approved areas. The Consultant's Representative or where a subconsultant is performing services without the supervision of the Consultant, the subconsultant's representative, must report their presence to the person in charge of the school or facility on arrival each day and record, in the Site Visit Log, the details of all Consultant Employees performing services at the site or sites that day.
- .2 Consultant Employees should avoid talking with, touching or interacting with any children or residents or other users of the school or facility except where performing services requires it or in an emergency or safety situation.
- .3 Consultant Employees must only use approved toilets and other facilities, unless the person in charge of the school or facility gives written authority to use alternative arrangements.
- .4 Appropriate privacy must be maintained when performing services on toilets and similar facilities. Consultant Employees must ensure that toilets and similar facilities are not occupied or in use by children, residents or other users before entering to perform the services, and that performance of services does not continue when use of the facilities is required. Where practicable male employees should perform services on male facilities and female employees on female facilities.
- .5 Consultant Employees should report any concerns about children's behaviour or child abuse to the person in charge of the school or facility.
- .6 Consultant Employees must wear or carry an identity card at all times when on the site or sites.

15 Communication

- .1 The parties agree and consent that notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).

Agreement Information

AGREEMENT INFORMATION

Item

- 1 The Principal

Mentioned in clause 1

The Principal is: »
- 2 The Consultant

Mentioned in clause 1

The Consultant is: the entity nominated in the Consultant's Tender, as accepted by the Principal.
- 3 Capacity in which the Consultant is engaged

Mentioned in clause 2

The capacity in which the Consultant is engaged is: »
- 4 Time by which Consultant must provide program or plan

Mentioned in clause 3.6

The time by which the Consultant must provide a program or plan to the Principal is: » Business Days.
- 5 Time to complete the Services

Mentioned in clause 3.6

The time to complete the Services is: » weeks from date of Letter of Award.
- 6 Approvals obtained by Principal

Mentioned in clause 3.13

Approvals obtained by Principal: »
- 7 Consultant's Representative

Mentioned in clause 3.16

The Consultant's Representative is: the person nominated in the Consultant's Tender, as accepted by the Principal.
- 8 Principal's Representative

Mentioned in clause 4.2

The Principal's Representative is: »
- 9 The Fee

Mentioned in clause 5.1

The Fee: »
- 10 Reimbursable expenses

Mentioned in clause 5.4

Reimbursable expenses are: »
- 11 Payment claim timetable

Mentioned in clause 5.5

Payment claims may be submitted: »
- 12 Payment timetable

Mentioned in clauses 5.6, 5.7 and 5.8

Agreement Information

Payment will be made:

within 15 Business Days after the payment claim is served, subject to Clause 10.2.

13 Intellectual property

Government policy is that the Principal retains sole intellectual property rights. If a consultant seeks to amend this, the Principal will determine whether to accept the proposal and what conditions will apply.

Mentioned in clause 7.1

Intellectual property not vesting in the Principal is:

Nil.

14 Limitation on liability

Mentioned in clause 8.3

The Consultant's liability is limited to:

»

If no amount is stated here, the Consultant's liability is unlimited.

15 Professional indemnity insurance

Mentioned in clause 9.1

Quantum of professional indemnity insurance:

»

16 Public liability insurance

Mentioned in clause 9.5.4

Quantum of public liability insurance:

\$20M

17 Fee adjustment on termination

Mentioned in clauses 11.10 and 11.12

The Fee adjustment payable on termination (other than for default by the Consultant) is:

2% of the Fee that would have been payable for the Services that will not be provided due to the termination.

18 Notices

Mentioned in clause 13

Notices to the Principal

For notices to the Principal the intended recipient is the Principal's Representative:

Office address:
(for delivery by hand)

»
»
»
»

Postal address:
(for delivery by post)

»
»
»
»

Agreement Information

E-mail address:

»

Notices to the Consultant

For notices to the Consultant the intended recipient is the Consultant's Representative:

Office address:
(for delivery by hand)

As nominated in the Consultant's Tender
and accepted by the Principal.

Postal address:
(for delivery by post)

As nominated in the Consultant's Tender
and accepted by the Principal.

E-mail address

As nominated in the Consultant's Tender
and accepted by the Principal.

FOR INFORMATION

Schedule 1

Combined Subcontractor's Statement and Supporting Statement

Refer to clause 5.5 of the Consultancy Services Conditions of Agreement.

For the purposes of this Statement the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

The Consultant is the ‘Contractor’ in terms of this Statement and may be both a “head contractor” in terms of the *Building and Construction Industry Security of Payment Act 1999*, and a “subcontractor” in terms of the *Workers Compensation Act 1987*, *Payroll Tax Act 2007* and *Industrial Relations Act 1996*, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor to sign the statement).

Relevant legislation includes *Workers Compensation Act 1987*, s175B; *Payroll Tax Act 2007*, Schedule 2 Part 5; *Industrial Relations Act 1996* s127; and *Building and Construction Industry Security of Payment Regulation 2008* cl 19.

Information, including Notes, Statement Retention and Offences under various Acts, is included at the end of this Schedule.

Main Contract

Contractor:

ABN

(Business name of the Contractor)

:

of

(Address of the Contractor)

has entered into a

ABN

contract with

(Business name of the Principal)

:

(Note 2)

Contract number/identifier

(Note 3)

Subcontracts

The Contractor has entered into contracts with the subconsultants (‘subcontractors’) listed in the attachment to this Statement.

Period

This Statement applies for work between:

and

inclusive,

(Note 4)

subject of the payment claim dated:

(Note 5)

I, _____ a director or a person authorised by the Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

- (a) The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick ☐ if true and comply with (b) to (h) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick ☐ and only complete (e) to (h) below. You must mark one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Contractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated _____. (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement. (Note 9)

Schedule 1

- (e) Where the Contractor is also a 'principal contractor' to subcontracts in connection with the work, the Contractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f) All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).

(g) Signature

Full name

(h) Position/Title

Date

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 of the *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'
Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
 - (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor;
- or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

In terms of s 13(8) of the *Building and Construction Industry Security of Payment Act 1999* a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or NSW Industrial Relations website, <http://www.industrialrelations.nsw.gov.au>. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

FOR INFORMATION