

Consultancy Agreement – Country Racing Program – Version 2

Parties:

RQ: **The Racing Queensland Board (trading as Racing Queensland)**
ABN 80 730 390 733

Address: Racecourse Road, Deagon QLD 4017

Telephone: (07) 3869 9795

Email: procurement@racingqueensland.com.au

Attention: Procurement Team

Provider: The Provider named in the Application Schedule

Recitals:

- (A) RQ is the approved control body under the Racing Act.
- (B) RQ wishes to engage the Provider to perform the Services.
- (C) The Provider represents to RQ that the Provider has the necessary skills, expertise, personnel, materials and equipment to perform the Services.
- (D) The parties have agreed that the Services will be performed on the terms and conditions set out in this Agreement.

Terms

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, except to the extent that the context requires otherwise:

Agreement means this agreement and includes all annexures and schedules to this agreement including without limitation the Application Schedule notwithstanding that the Application Schedule is not physically attached to this Agreement.

Application Schedule means the Application Schedule executed by the Provider and RQ adopting this Agreement.

Approved Workers means the Provider's approved employees, agents or Subcontractors listed in Item 9 of the Application Schedule.

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, statutory authority, local

authority, tribunal or agency having jurisdiction in relation to the performance of the Services.

Background IP means the Intellectual Property of a party which was owned by the party prior to the Commencement Date or developed independently of this Agreement and which is made available to the other party for the purposes of the Agreement.

Business Day means any day other than a Saturday, Sunday, bank holiday or public holiday in Queensland.

Claims means any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or claim for abatement of any monetary obligation.

Commencement Date means the commencement date set out in Item 3 of the Application Schedule, or if no date is specified, the date that RQ executes and delivers this Agreement to the Provider.

Confidential Information means the trade secrets and all other information regarding RQ's affairs (or those of any predecessor of RQ) in whatever form that is disclosed to the Provider as confidential or is by its nature confidential and that relates to any business or activities conducted or proposed to be conducted by RQ including, without limitation, information that:

- (a) would be of commercial value to a competitor of RQ;
- (b) relates to RQ's financial affairs, including financial information, accounts work, financing information, management reports and performance or profitability reports and margins;
- (c) relates to RQ's operational requirements;
- (d) relates to any arrangements or transactions between RQ and stakeholders in the racing industry;
- (e) relates to RQ's customers, including customer details, customer lists, details of customer requirements, details of customer prospects, the identity of any customer, their requirements and their financial affairs;
- (f) relates to any functions the Provider performs in relation to the regulation, licensing, administering of racing;
- (g) relates to or is contained in any of RQ's computer data bases or software;
- (h) relates to any arrangements or transactions between RQ and its respective suppliers or contractors, including their identity and the price or charges in respect of the supplies or services RQ acquires from them;
- (i) relates to or is contained in any manuals or handbooks produced by RQ;
- (j) relates to RQ fees, quotations, prices or charges in respect of services or products;
- (k) relates to the marketing and selling techniques used by RQ, including marketing plans, sales plans, research and data surveys;
- (l) relates to trade secrets, technical specifications, know how, plans, design concepts, ideas, design specifications, manufacturing or development processes, research, formulae, processes, applications, unique features or techniques in respect of any of RQ's products, services or operations, whether existing or in development;
- (m) relates to or is associated with any of RQ's technology or software, or any related products or services, including any source code, programming, plans, concepts, specifications, alterations or additions, content, features, operation opportunities, benefits or market appeal, whether produced by the Provider, its Workers or otherwise; and
- (n) is prepared by RQ or anybody else based on or incorporating information referred to in paragraphs (a) to (m) above, including all notes and other records, whether written or

otherwise, and any copies of the information, notes and other records referred to in paragraphs (a) to (m) above,

but does not include information that:

- (o) was rightfully in the Provider's or a Worker's possession and not subject to an obligation of confidentiality before the commencement of the Provider's engagement with RQ (or any negotiations in relation to same), whether pursuant to this Agreement or otherwise; or
- (p) is or after the commencement of the Provider's engagement becomes, available in the public domain other than as a result of a breach of this Agreement.

Defect means any deficiency, fault, error, omission or non-compliance with the requirements of the Agreement (and **Defective** has a corresponding meaning).

Deliverable means any document, drawing, specification, piece of equipment, data listing or other creation required to be provided or delivered to RQ in order to complete the performance of the Services.

Expiry Date means, subject to clauses 11.3(a)(i) and 23:

- (a) the date referred to in Item 4 of the Application Schedule; or
- (b) if no date is specified, the date that the Services are performed (as applicable) in accordance with this Agreement.

GST has the same meaning as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

Insurance means the insurance set out in clause 14.

Intellectual Property means any and all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents, trademarks, service marks, designs, circuit layouts, performance protection, secrets, drawings, know-how, secret process and other similar proprietary rights) whether or not now existing and whether or not registered or registrable, and includes any application or right to apply for the registration of such right and all renewals and extensions.

Legislative Requirements means, without limitation:

- (a) all applicable acts, ordinances, regulations, by-laws, orders, awards and proclamations;
- (b) all applicable anti-discrimination, Safety Laws, and privacy legislation;
- (c) certificates, licences, consents, permits, approvals and requirements of any Authority

having jurisdiction in connection with the performance of this Agreement; and

- (d) all relevant codes and standards (including Standards Australia, the Building Code of Australia or equivalent standards).

Location for Performance means the location where the Services are to be performed as specified in Item 6 of the Application Schedule.

Moral Rights means each right defined as a 'moral right' in Part IX of the *Copyright Act 1968* (Cth), and if work or any document relating to the Services is used in any jurisdiction other than Australia, any similar right capable of protection under the laws of that jurisdiction.

Normal Business Hours means 8 am to 5 pm inclusive on any Business Day.

Performance Date(s) means the date(s) on which the Services are to be performed as specified in Item 6 of the Application Schedule.

Project Director means the person nominated from time to time by RQ as being responsible for administration of this Agreement.

Provider means the provider named in Item 2 of the Application Schedule.

Racing Act means the *Racing Act 2002* (Qld).

RQ Equipment means:

- (a) the equipment described in Item 7 of the Application Schedule; and
- (b) such other equipment provided by RQ (at its sole discretion) to the Provider throughout the Agreement to assist the Provider to provide the Services.

Safety Laws means all work health and safety statutes, by-laws and regulations or relevant policies or procedures as in force from time to time in the relevant jurisdiction affecting or in any way relating to the Services, (including but not limited to compliance with work health and safety policies and procedures on any relevant worksite on which the Provider must attend to complete the Services).

Service Fees means the consideration payable by RQ to the Provider for the performance of the Services, as set out in Item 6 of the Application Schedule.

Services means the Services described in Item 6 of the Application Schedule.

Specifications means the specifications of any Services to be performed under this Agreement as specified in Item 6 of the Application Schedule.

Subcontractors means the Provider's subcontractors and suppliers, and their employees, agents and other personnel.

Supply and Tax Invoice have the same meaning as in the GST Act.

Worker(s) means an employee, agent or Subcontractor of the Provider and any other party for whom the Provider is responsible.

Working Hours means the hours specified by the Project Director.

1.2 Interpretation

- (a) This Agreement, including the Schedules to it, constitutes the entire agreement between RQ and the Provider relating to the performance of the Services.
- (b) Failure or omission by RQ at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision, or the right of RQ to avail itself of the remedies it may have in respect of any breach of a provision, in any way.
- (c) This Agreement may not be changed or modified in any way after it has been signed, except in writing signed by or on behalf of all the parties.
- (d) Any provision of this Agreement which is or becomes illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability and will not invalidate the remaining provisions.
- (e) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and altogether constitutes one agreement.
- (f) This Agreement will be governed by and construed with reference to the laws in force in the State of Queensland and the parties irrevocably submit to the jurisdiction of the Courts of that State.
- (g) In this Agreement:
- (i) terms used with an initial capital letter (in both singular and plural forms) have the meaning assigned to them;
- (ii) headings are for ease of reference only and do not affect the construction of this Agreement;
- (iii) "including" and similar expressions are not words of limitation;
- (iv) the term "may", when used in the context of a power, right or remedy exercisable by RQ, means that RQ can exercise that power, right or remedy in its absolute and unfettered discretion and RQ has no obligation to do so; and
- (v) a reference to:
- (A) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;

- (B) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (C) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation or regulations issued under it;
 - (D) a party to the Agreement or to any other deed or agreement includes a permitted substitute or a permitted assign of that party; and
 - (E) time for doing any act or thing under the Agreement shall, if it ends on a day which is not a Business Day, be deemed to end on the Business Day next following.
- (c) The Provider shall keep the applicable part of the Location(s) for Performance clean and tidy and shall regularly remove rubbish.
 - (d) The Provider must:
 - (i) provide all things and take all measures necessary to protect people and property;
 - (ii) avoid interference with the passage of people and vehicles (including RQ's operations and works being undertaken by RQ's other contractors, agents, employees and invitees); and
 - (iii) prevent nuisance and unreasonable noise and disturbance.
 - (e) The Provider acknowledges and agrees that it must coordinate the Services with other works and activities being carried out by RQ and its contractors, employees, invitees and agents at the Location(s) for Performance and the Service Fee is deemed to include a proper allowance for such coordination and all interference from other works and activities at the Location(s) for Performance.

2. Term

This Agreement will commence on the Commencement Date and will continue until the earlier of the Expiry Date or the date this Agreement is terminated by RQ or the Provider in accordance with clause 23 (Term).

3. Early Services

The parties agree that to the extent the Provider has commenced any of the Services prior to the Commencement Date, those services are deemed to form part of the Services and be governed by this Agreement, and any payments made by RQ are deemed to have been made under this Agreement.

4. Project Director

- (a) The Project Director is RQ's representative under the Agreement.
- (b) The Project Director may exercise all the functions and powers of RQ, unless otherwise stated by RQ, and is RQ's agent and not an independent certifier.

5. Security and access

Where the Location(s) for Performance include RQ's premises or locations directed by RQ:

- (a) The Provider must work on the Location(s) for Performance only during the Working Hours unless the prior approval of the Project Director to a change in the Working Hours is obtained, which approval may be granted (either absolutely or conditionally) or withheld in the Project Director's absolute discretion.
- (b) RQ shall give the Provider from the Commencement Date sufficient access to the Location(s) for Performance to enable the Provider to perform the Services.

6. Performance of Services

6.1 Manner of performance of the Services

- (a) The Provider must perform the Services:
 - (i) in accordance with the terms of this Agreement;
 - (ii) in a proper, timely and efficient manner;
 - (iii) with due skill, diligence, prudence, foresight and care that would reasonably be expected from a prudent, expert and experienced provider of services which are similar to the Services;
 - (iv) to the best of the Provider's knowledge and expertise; and
 - (v) in compliance with all Legislative Requirements.
- (b) Subject to this Agreement, the Provider is not subject to RQ's direction and control as to the manner in which the Provider performs the Services.
- (c) The Provider must carry out its obligations and duties and complete the performance of the Services to the reasonable satisfaction of RQ.

6.2 Time and Venue for performance of Services

- (a) The Provider shall provide the Services at the Location for Performance and in compliance with any time limits for the performance of the Services (including any Performance Dates) as:
 - (i) specified in Item 6 of the Application Schedule; or

(ii) otherwise agreed in writing between the parties.

(b) The Provider shall ensure that the provision of the Services is not delayed or hindered by work undertaken by the Provider for other persons.

(c) The Provider must be available to provide the Services during Normal Business Hours and be flexible to provide the Services beyond those hours or at other times if required.

6.3 Utmost good faith

The Provider shall act with the utmost good faith in all of the Provider's dealings with RQ.

6.4 Reporting to RQ

(a) Regularly, and if requested by RQ, the Provider shall inform and consult with RQ via the Project Director (or other persons as advised by the Project Director from time to time) about all aspects of the Services including providing reports, recommendations and advice in relation to the performance of the Services and providing any information requested by RQ in connection with the Services.

(b) The Provider shall ensure that RQ is kept informed of all matters pertaining to the Services of which RQ ought reasonably be made aware, or which affects in any manner the way in which RQ manages its affairs or conducts its business.

6.5 Subcontracting

(a) The Provider may delegate elements of the Services to an Approved Worker or to a Worker that is not an Approved Worker, provided that RQ approves the particular Worker.

(b) An approval given to the Provider by RQ under this clause 6.5 does not relieve the Provider from any of the Provider's obligations under this Agreement.

(c) Services may only be delegated to persons who are properly qualified and adequately experienced to perform the Services delegated to them, and who have demonstrated a high standard of work and conduct, and may be relied upon not to breach the terms of this Agreement, including those relating to confidentiality.

(d) The Provider must immediately cease to use a Worker if RQ notifies the Provider that, in the opinion of RQ, that Worker has not performed the Services in a satisfactory manner.

6.6 Compliance with legislation and policies

In performing the Services the Provider must comply with:

- (a) all Legislative Requirements; and
- (b) any policies, procedures, codes of conduct or compliance manuals of RQ as they apply to the Provider and/or its Workers which are

brought to the Provider's attention or published on RQ's website.

6.7 Deliverables

(a) The Provider must ensure that each Deliverable set out in Annexure 1 of the Application Schedule meets the objective for that Deliverable.

(b) RQ has defined certain minimum requirements for each Deliverable, however the Provider acknowledges and agrees that these are indicative minimum requirements only and are not an exhaustive list of the requirements for each Deliverable.

(c) The Provider must submit any Deliverables to RQ for review at the time specified in this Agreement, and if not specified in this Agreement on a progressive basis throughout the time the Services are being performed, for RQ to review and comment on the Deliverables.

(d) Upon submission of the Deliverables, RQ will have 7 Business Days to:

- (i) accept the Deliverables; or
- (ii) if the Deliverables do not meet the requirements specified in Annexure 1 of the Application Schedule, request reasonable amendments to the Deliverables.

(e) If RQ does not respond to the Provider in accordance with clause 6.7(d) within 7 Business Days of receiving the Deliverables:

- (i) the Provider must provide RQ with a written notice requesting RQ to provide a response to the Deliverables; and
- (ii) if RQ does not provide a response within 7 Business Days of receiving the Provider's written notice, the Deliverables will be deemed to have been accepted by RQ.

(f) If RQ provides notification of amendments to the Deliverables in accordance with clause 6.7(d)(ii), the Provider has 3 Business Days to resubmit the Deliverables to RQ at no additional cost to RQ.

(g) Following resubmission of the Deliverables by the Provider, RQ must either:

- (i) confirm that the amendments have been correctly interpreted and incorporated and accept the Deliverables; or
- (ii) provide further information to correctly reflect the requested amendments.

(h) If RQ does not respond to the Provider in accordance with clause 6.7(g) within 7 Business Days of receiving the resubmitted Deliverables:

- (i) the Provider must provide RQ with a written notice requesting

RQ to provide a response to the resubmitted Deliverables; and

- (ii) if RQ does not provide a response within 7 Business Days of receiving the Provider's written notice, the resubmitted Deliverables will be deemed to have been accepted by RQ.
- (i) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, the Deliverables (including design documents) or any other document or information prepared or submitted by the Provider, by RQ or anyone on behalf of RQ will:
 - (i) relieve the Provider from, or alter or affect the Provider's liabilities or responsibilities whether under this Agreement or otherwise according to law;
 - (ii) prejudice RQ's rights against the Provider whether under this Agreement or otherwise according to law; or
 - (iii) affect any warranty given by the Provider under this Agreement.
- (j) Unless specified otherwise in the Agreement, the Provider must supply to RQ 3 hard copies and an electronic copy (in native file format) of any Deliverables to be supplied by the Provider under the Agreement.

6.8 Key personnel

- (a) The Provider must:
 - (i) employ those people in the positions described in Item 5 of the Application Schedule (**Key Personnel**) and ensure that the Key Personnel maintain those positions;
 - (ii) not replace any Key Personnel without the Project Director's prior informed consent unless the person:
 - (A) dies, becomes ill or incapacitated so as to be unable to perform their position; or
 - (B) resigns from the Provider's employment (other than to be employed by an associated entity of the Provider); and
 - (iii) ensure that any people replacing Key Personnel with the consent of the Project Director, have at least equivalent ability, experience and expertise as the Key Personnel replaced.
- (b) If any Key Personnel are replaced in accordance with clause 6.8(a), the Contractor must (except in circumstances contemplated by clause 6.8(a)(ii)(A)) ensure that the person and the replacement work together for at least 5 Business Days, to

ensure an adequate handover of responsibilities.

6.9 Variations

- (a) RQ may vary the Services at any time by written notice to the Provider including by increasing or decreasing the scope, nature or requirements for the Services (**Variation**) provided the Variation is within the general scope of this Agreement.
- (b) The Provider must, before complying with the notice (but in any event within five Business Days after receipt of the written notice) notify RQ in writing of any:
 - (i) impact on the time for performing the Services;
 - (ii) adjustment to the Service Fees payable for the performance of the Services; and
 - (iii) potential conflict in any Legislative Requirement,
 as a result of a proposed Variation.
- (c) If the Provider does not give the notice required in clause 6.9(b), the Provider is not entitled to make any claim against RQ relating to that Variation under or in connection with this Agreement, including any adjustment to the Service Fees or time for performing the Services.
- (d) The adjustment to the Service Fees arising from a Variation will be determined by agreement between the parties or if not agreed within 10 Business Days (or such other period as agreed by the parties in writing) of receipt of a notice under clause 6.9(b) by the Project Director using:
 - (i) rates and prices stated in this Agreement; or
 - (ii) where there are no rates or prices stated in this Agreement, reasonable rates and prices.
- (e) If RQ directs the Provider to vary the Services by omitting or deleting part of the Services, RQ may either carry that those services out itself or have those services carried out by engaging any other person to do so.

7. Equipment

7.1 Provider Equipment

Subject to clause 7.2, the Provider must supply all things necessary for performing the Services, including all:

- (a) labour, equipment, hardware and software; and
- (b) documents, manuals, drawings and data sheets.

7.2 RQ Equipment

Where Item 7 of the Application Schedule has been completed this clause 7.2 applies and:

- (a) RQ will provide the Provider with the RQ Equipment to assist the Provider to provide the Services;
- (b) the Provider must provide all other equipment necessary to perform the Services; and
- (c) the Provider acknowledges and agrees:
 - (i) that the RQ Equipment will at all times remain the property of RQ;
 - (ii) that the RQ Equipment may only be used by the Provider for the purposes of performing its obligations under this Agreement;
 - (iii) to take reasonable care of the RQ Equipment and to indemnify RQ for any loss or damage to the equipment (fair wear and tear excepted);
 - (iv) to return the RQ Equipment directly to RQ on termination of this Agreement in working order (fair wear and tear excepted), along with all original operating instruction manuals and other related materials; and
 - (v) that if the Provider fails to return the RQ Equipment within 7 days after termination of this Agreement, the Provider shall be liable to RQ for the replacement cost of the RQ Equipment, and the Provider authorises RQ to deduct from any sums owed to the Provider the replacement cost of the RQ Equipment.

8. Inspection of Services

8.1 Inspection of Services

The Provider must:

- (a) allow RQ to oversee or inspect the performance of the Services at any time; and
- (b) provide such reports as reasonably required by RQ,

to verify that the Services are being performed in accordance with the requirements of this Agreement.

8.2 Defective Services

- (a) If any inspection of Services discloses that the Services are Defective, RQ may issue a notice to the Provider requiring the Provider to remedy the Defective Services within the time period specified in the notice.
- (b) The Provider must rectify any Defective Services within the time period specified in the notice issued under clause 8.2(a), failing which RQ may, in its absolute discretion:
 - (i) have the Defects rectified by another party, the costs of which will be a debt due and payable by the Provider; and/or
 - (ii) terminate the Agreement under clause 23.1.
- (c) The Provider indemnifies RQ for all costs, losses, expenses or damages incurred by RQ and for all Claims that may be brought against

RQ by third parties, arising out of, or in connection with, any Defective Services.

9. Invoicing and Payment

9.1 Payment for Services

Subject to this Agreement, RQ will pay the Provider the Service Fees for the Services performed.

9.2 Date of Invoice

Unless RQ directs otherwise, the Provider may only submit Invoices on account of the Services, following the performance of those Services in accordance with the terms of this Agreement during each calendar month, not more than 7 days after the end of that calendar month (**Invoice**).

9.3 Contents of Invoice

Each Invoice must:

- (a) include the Provider's ABN;
- (b) include the Purchase Order number;
- (c) specify the GST amount (if any) payable and the extent to which each sale on the invoice is a taxable sale;
- (d) include a description of the Services performed;
- (e) contain sufficient details to enable RQ to verify the time spent by the Provider performing the Services;
- (f) identify the date of completion of the Services and the Location for Performance;
- (g) identify the amount claimed together with an itemised break down of that amount, being the Service Fees for the Services performed in accordance with the terms of this Agreement during the relevant calendar month;
- (h) include supporting documentation and other information as may be necessary (or as RQ reasonably requires) to enable RQ to assess and verify that the amounts claimed in the Invoice are properly due and payable under the Agreement; and
- (i) comply with the requirements for a Tax Invoice.

9.4 Assessment of Invoices

- (a) Upon receipt of an Invoice from the Provider under clause 9.2 which complies with the requirements of clause 9.3, RQ will review the Invoice and if satisfied with its content, will approve the Invoice in whole or part and pay the Provider the approved amount within 30 days after the date RQ receives the Invoice.
- (b) The Provider will not be entitled to any consideration from RQ:
 - (i) in respect of Services performed, in excess of the agreed Services Fees; and
 - (ii) unless the Provider submits an Invoice in accordance with this Agreement.

9.5 Expenses

Any expenditure incurred by the Provider to provide the Services will only be reimbursed:

- (a) with prior written approval by the Project Director (before the expense is incurred); and
- (b) when RQ receives a Tax Invoice for the expense and is satisfied that the expenses have been properly incurred.

9.6 Payments

All payments to be made by RQ to the Provider will be made by electronic funds transfer to the bank account nominated by the Provider or such other account as notified to RQ in writing from time to time, provided that the Provider has given RQ at least 30 days' notice in writing of such change.

9.7 Set-off

RQ may deduct or set-off from any amounts that RQ owes to the Provider under the Agreement:

- (a) any amount required by law to be deducted; or
- (b) any amounts that RQ claims are due and owing by the Provider to RQ (or which are likely to become due and owing) under the Agreement or otherwise.

10. GST

- (a) Except where the context suggests otherwise, terms used in this clause 10 have the meanings ascribed to those terms by the GST Act.
- (b) The parties acknowledge and agree that each Supply made by the Provider under this Agreement is made:
 - (i) on a progressive or periodic basis;
 - (ii) for consideration that it is to be provided on a progressive or periodic basis; and
 - (iii) each progressive or periodic component of the Supply is to be treated as a separate Supply.
- (c) Any part of a Supply that is treated as a separate Supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate Supply for the purposes of this clause 10.
- (d) Unless stated otherwise, all consideration to be provided under or in connection with the Agreement, other than under this clause 10, is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a Supply for the purpose of this clause 10.
- (e) If a party is required under the Agreement to reimburse or pay another party an amount calculated by reference to a cost, expense, or amount paid or incurred by that other party, the reimbursement or payment will be limited to the total cost, expense or amount less the

amount of any input tax credit entitlement arising in respect of any acquisition to which that cost, expense or amount relates.

- (f) If GST is payable in relation to a Supply made under or in connection with the Agreement, then the party (**Recipient**) providing consideration to another party (**Supplier**) for that Supply must pay an additional amount to the Supplier equal to the GST payable in relation to that Supply at the same time as any other consideration is to be first provided for that Supply subject to the issue of a Tax Invoice by the Supplier to the Recipient.
- (g) If the GST payable in relation to a Supply made under or in connection with the Agreement varies from the additional amount paid by the Recipient under this clause 10, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (h) Any payment, credit or refund under this clause 10 is deemed to be a payment, credit or refund of the additional amount payable under this clause 10.
- (i) Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the adjustment event.

11. Delays

11.1 Provider's obligation to prevent delays

The Provider must take all reasonable steps and precautions to prevent and minimise the risk of any delays to the performance of the Services.

11.2 Notice of delay

If the Provider becomes aware that it will be unable to perform any of the Services by the Performance Date the Provider must immediately give notice to RQ of such delay, together with details of the actions it is taking to mitigate the delay and the date on which it expects to be able to perform the relevant Services.

11.3 RQ's discretion

- (a) In the event of any delay to the performance of the Services, RQ may, in its absolute discretion:
 - (i) agree an extension to the Performance Date of the Services and, where necessary to enable this extension, to the Expiry Date;
 - (ii) refuse or allow the Provider to perform the Services; or
 - (iii) terminate the Agreement without any liability to the Provider.
- (b) Nothing in this clause 11.3 will prevent or restrict RQ from claiming damages for delay from the Provider.

12. Suspension

- (a) RQ may suspend the Services in whole or in part at any time by written notice to the

Provider stating the extent and effective date of such suspension. The Provider must suspend the Services to the extent specified including any Services in progress by Subcontractors.

- (b) RQ may lift the suspension by giving notice in writing to that effect to the Provider at any time, after which the Provider must promptly resume the performance of the Services.
- (c) The Provider is entitled to an adjustment to the Service Fees for any direct costs reasonably and necessarily incurred by the Provider solely as a consequence of the suspension, unless the suspension was caused or contributed to by a breach of this Agreement by the Provider or an act, default or omission on the part of the Provider or any of those for whom it is responsible including any Subcontractor.
- (d) The Provider must provide RQ with written evidence of the direct costs reasonably and necessarily incurred by the Provider.
- (e) The adjustment to the Service Fees will be determined by agreement between the parties or if not agreed within 10 Business Days (or such other period as agreed by the parties in writing) of provision of the evidence required under clause 12(d), by the Project Director using:
 - (i) rates and prices stated in this Agreement; or
 - (ii) where there are no rates or prices stated in this Agreement, reasonable rates and prices.

13. Warranties

13.1 Information provided by RQ

The Provider acknowledges that RQ:

- (a) has endeavoured to ensure that information provided to the Provider in connection with the Agreement (**Information**) is accurate, sufficient and complete;
- (b) does not accept any liability for and has not made any representation about, the accuracy, sufficiency and completeness of the Information and the use of it by the Provider; and
- (c) has provided the Information for the convenience of the Provider and it does not form part of the Agreement unless specified.

13.2 Warranty as to Services and Deliverables

The Provider represents and warrants that the Services and any Deliverables:

- (a) will comply with the Agreement, including the Specifications;
- (b) are of a high quality, professional standard and are fit for their intended purpose and any other purpose specified in this Agreement or otherwise disclosed by RQ; and
- (c) will comply with all Legislative Requirements.

13.3 Additional Warranties

The Provider warrants that:

- (a) it and its Workers possess the necessary qualifications, skills, expertise, personnel, materials and equipment to perform the Services;
- (b) the Provider will not infringe the Intellectual Property of any third party or otherwise breach any Legislative Requirements or obligation to any third party in the performance of the Provider's obligations pursuant to this Agreement;
- (c) the Provider has informed RQ of any criminal convictions held by the Provider and/or its Workers;
- (d) the Provider has informed RQ in writing of any pre-existing medical conditions which, taking into account the nature of any Services to be provided under this Agreement, may adversely affect its Workers' ability to carry out the Services or pose a risk of injury to others;
- (e) the Provider has freely entered into this Agreement after having the opportunity to carefully consider its contents and obtain advice on the matters in this Agreement;
- (f) it has carefully perused the several documents forming the Agreement and there are no discrepancies, inconsistencies or ambiguities in or between those documents that would be apparent to an experienced and competent contractor; and
- (g) it has made proper allowance for all matters contained in or capable of inference from the several documents forming the Agreement.

14. Insurance

- (a) The Provider must take out and maintain the following insurance (**Insurance**):
 - (i) public liability insurance:
 - (A) for the Term of the Agreement;
 - (B) with a limit of indemnity of not less than \$20,000,000 per occurrence and unlimited in the aggregate; and
 - (C) otherwise on terms reasonably satisfactory to RQ;
 - (ii) professional indemnity insurance:
 - (A) for the Term of this Agreement plus 7 years thereafter;
 - (B) with a limit of not less than \$20,000,000 per claim and unlimited in the aggregate; and
 - (C) otherwise on terms reasonably satisfactory to RQ;
 - (iii) worker's compensation insurance:
 - (A) for the Term of this Agreement;
 - (B) as required by law in the relevant jurisdiction in which

the Provider is providing the Services, in respect of the Provider and any Workers engaged by the Provider; and

- (iv) any other insurance as may be required under any Legislative Requirement, specified in the Application Schedule or that the Provider ought reasonably to effect and maintain, having regard to the nature of the Services to be performed under the Agreement.
- (b) If the Provider fails to hold the Insurance, then RQ may at its election, refuse to perform its obligations under this Agreement until the Provider obtains the Insurance.
- (c) Without limiting the generality of the foregoing, the Insurance must insure the Provider in respect of the Provider's liability to indemnify RQ in accordance with clause 15.2 of this Agreement.
- (d) When this Agreement is signed by the Provider and whenever RQ requests, the Provider will provide RQ with a certificate evidencing the currency of the Insurance and copies of the current policies. If the Provider fails to do so, then RQ may, at RQ's election, refuse to perform its obligations under this Agreement until the Provider does so.

15. Provider's liability and indemnity

15.1 Provider's liability

The Provider acknowledges that, as an independent contractor, it is responsible for:

- (a) providing the Services; and
- (b) subject to this Agreement, any loss or damage to RQ or any third party arising from any breach of this Agreement or negligence of the Provider or its Workers.

15.2 Provider's indemnity

- (a) The Provider indemnifies and releases RQ against all liabilities, losses, costs (including legal costs), expenses, claims, demands, judgments or actions which may be brought against RQ or suffered or incurred by RQ whatsoever or howsoever arising, regardless of their form, whether in contract, tort (including in negligence), breach of statutory duty or otherwise, arising out of or in connection with the Services except to the extent that the liability, loss, cost, expense, claim, demand, judgment or action was caused by a wilful or negligent act or omission of RQ or any of its officers, servants or agents.
- (b) This indemnity is a continuing obligation, separate and independent from the other obligations of the parties, and survives the cessation of the Term or the termination of this Agreement howsoever occurring.
- (c) It is not necessary for RQ to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

- (d) The Provider will pay on demand money due to RQ under an indemnity provided by this Agreement.

16. Health and safety

- (a) The Provider and its Workers will:
 - (i) comply with Safety Laws and will keep RQ indemnified against all fines, penalties, losses or damages incurred by reason of, and/or any claim made as a result of any breach by the Provider or its Workers of the Safety Laws;
 - (ii) comply with any direction given by RQ with respect to work health and safety and in the performance of the Services;
 - (iii) not wilfully or recklessly interfere with or misuse anything provided for work health and safety at the Location(s) for Performance of the Services;
 - (iv) not wilfully place at risk the work health and safety of any other person in the performance of the Services; and
 - (v) not wilfully injure themselves.
- (b) The Provider must immediately remove any Workers if RQ notifies the Provider that, in the opinion of RQ, those Workers are guilty of misconduct, are incompetent, unqualified, negligent or unsuitable or engage in conduct inconsistent with this clause 16.

17. Nature of relationship

- (a) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- (b) No contractual relations or employment relationship will arise between a Worker and RQ as a result of RQ's relationship with the Provider.
- (c) The Provider will not hold itself as representing RQ except in accordance with clause 18.
- (d) Neither the Provider nor any Worker is entitled to fees, payments, commissions, bonuses, wages, superannuation, annual leave, long service leave, personal/carer's leave, parental leave, termination pay, redundancy pay or any similar entitlements from RQ, other than for fees or payments for the provision of Services expressly agreed in this Agreement. The Provider is responsible for providing Workers with those entitlements.
- (e) The Provider is responsible for making appropriate tax deductions and payments and superannuation contributions in respect of any payment or benefits provided to the Provider by RQ or to any Worker by the Provider.
- (f) The Provider is responsible for the acts and omissions of the Workers as if those acts and

omissions were of the Provider under this Agreement.

18. No representations

Unless expressly authorised in writing by RQ, the Provider:

- (a) does not have the right or authority to act on RQ's behalf, bind RQ or speak on RQ's behalf; and
- (b) agrees not to represent that it has any authority to expressly or impliedly bind or attempt or purport to bind RQ to any contract or commitment.

19. Conflicts of interest

- (a) The Provider agrees and acknowledges that the relationship with RQ is not exclusive and that the Provider can and will perform work other than the provision of Services under this Agreement, subject to this clause 19.
- (b) The Provider must not, and the Provider warrants that the Provider will not, undertake any activities or be interested in (directly or indirectly) any business or activity which is likely to give rise to a conflict of interest with the Provider's obligations and duties under this Agreement. A conflict of interest may be direct or indirect, actual, potential or perceived.
- (c) In particular the Provider agrees that it will not undertake any appointment, position or work, without the prior written consent of RQ that:
 - (i) is in conflict with the business of RQ, either directly or indirectly;
 - (ii) otherwise materially adversely affects RQ; or
 - (iii) unreasonably hinders the Provider's performance of its duties owed to RQ under this Agreement
- (d) The Provider must not accept any payment or other benefit from any person as an inducement or reward for any act or forbearance with any matter or operation transacted by RQ or on its behalf.

20. Confidentiality

- (a) The Provider will not at any time, before or after termination of this Agreement, use or disclose any Confidential Information, other than:
 - (i) to Workers who have a need to know the Confidential Information, and only to the extent that each needs to know in order for the Provider to complete the Services;
 - (ii) with RQ's prior written permission; or
 - (iii) where legally obliged to disclose by a court, commission or tribunal (and the Provider will inform the Project Director within 7 days of such a request made directly to it).
- (b) If Confidential Information is disclosed in accordance with clause 20(a) above, the

Provider will ensure that the person to whom the information is disclosed is made aware of its confidential nature and the obligations restricting its use and disclosure and will do everything in the Provider's power to ensure that any persons to whom Confidential Information is disclosed does not use or disclose that information.

- (c) The Provider accepts responsibility for any use or disclosure of Confidential Information contrary to this clause 20 by any Workers and will be liable for any damage, loss or expense suffered by RQ as a result of any such use or disclosure.
- (d) If the Provider is uncertain about whether information is Confidential Information, or is lawfully within the public domain, the information is taken to be Confidential Information unless the Provider is advised by RQ in writing that the information is not Confidential Information.

21. Media Releases and Photography

The Provider must not, without the prior written approval of RQ:

- (a) issue any information, publication, document or article for publication concerning the Services in any media;
- (b) advertise at the Location for Performance;
- (c) participate in a media interview that mentions or refers to the Services; or
- (d) take photographs or make sketches of any part of RQ's operations except for the purposes of the Agreement.

22. Intellectual property and moral rights

22.1 Documents relating to the Services

- (a) Subject to each party retaining title to its Background IP, title to, copyright in and other Intellectual Property in any documents or other property created by the Provider for or in connection with the Services, including but not limited to the Deliverables (**Provider's Documents**) vests in RQ on creation and RQ grants the Provider an irrevocable licence to use the Provider's Documents in connection with the performance of the Services.
- (b) The Provider grants or shall procure the granting to RQ of a royalty-free and irrevocable licence to use the Provider's Background IP in connection with the Services and the use of the Deliverables.
- (c) RQ may sub-licence use of the Provider's Background IP in connection with the Services without the consent of the Provider.

22.2 Moral rights

The Provider:

- (a) consents (and where relevant will procure the Workers to consent) to RQ infringing any Moral Rights that the Provider may have or become entitled to in any work created, developed, modified or enhanced in the course of completing the Services;

- (b) indemnifies RQ, its officers, agents, contractors and employees against any liability, cost, loss or damage (including for costs on an indemnity basis) suffered or incurred that arises out of any breach of clause 22.2(a); and
 - (c) must do all things requested by RQ, including signing or procuring the signature of particular forms, to give full effect to clause 22.2(a).
- manufacturer specified by RQ;
or
- (C) services and materials furnished by RQ; and
 - (ii) the Provider did not offer or recommend such specifications, drawings, processes or products to RQ.

22.3 Right to use and maintain

If RQ is prevented from using or maintaining any drawings, plans or reports prepared by a Provider in performing the Services, as a result of any actual or alleged infringement of the Intellectual Property, the Provider must, at its cost, take all reasonable steps necessary to procure for RQ the right to use or maintain those drawings, plans for reports for their intended purpose.

22.4 Modification or replacement

If the Provider fails to procure the necessary rights in accordance with clause 22.3 within a reasonable time, the Project Director may direct the Provider at its cost to promptly:

- (a) modify the drawings, plans or reports or the relevant part of them to avoid the infringement of Intellectual Property; or
- (b) replace the drawings, plans or reports or the relevant part of them with drawings, plans or reports that do not infringe Intellectual Property.

22.5 IP Indemnity

- (a) The Provider indemnifies RQ and its employees, contractors and agents from and against, any and all royalties, damages, liabilities and costs, including reasonable legal fees, arising from or in connection with any action, claim or proceeding against the Provider or RQ alleging (each an **IP Claim**):
 - (i) any infringement or misuses of any Intellectual Property by the Provider or the Workers under this Agreement;
 - (ii) the misuse by the Provider or the Workers of any confidential information or secret processes of any third party; or
 - (iii) that the Services, any of the Provider's Documents, or use of any of them by RQ is an infringement of the Intellectual Property of, or a misuse of any confidential information or secret processes of, another person.
- (b) The Provider is not liable to indemnify RQ under clause 22.5(a) if:
 - (i) the IP Claim relates solely to:
 - (A) specifications and drawings furnished by RQ;
 - (B) a particular process or the product of a particular

23. Termination

23.1 Termination by RQ

- (a) RQ may terminate this Agreement immediately, without the provision of notice, at any time if:
 - (i) the Provider or any of its Workers engage in serious misconduct or dishonesty, including in the provision of the Services;
 - (ii) the Provider and/or its Workers commits a breach of any of the provisions of this Agreement (other than a breach that cannot be remedied) and RQ gives the Provider notice specifying the breach and the Provider does not rectify that breach within 5 Business Days from the date of that notice;
 - (iii) the Provider and/or its Workers commits a breach of any provision of this Agreement that cannot be remedied or repeats a breach of the type referred to in clause 23.1(a)(ii);
 - (iv) the conduct of the Provider and/or its Workers means that RQ is in breach of its obligations under the Racing Act or any other legislation in force from time to time;
 - (v) the Provider:
 - (A) becomes an externally administered body (within the meaning of the *Corporations Act 2001* (Cth)) or a controller (within the meaning of the *Corporations Act 2001*(Cth)) is in possession or has control of any of the Provider's property;
 - (B) is, or indicates that it is, unable to pay its debts when they fall due;
 - (C) threatens to cease to carry on the Provider's business or is (or states that it is) insolvent (within the meaning of the *Corporations Act 2001* (Cth)); or
 - (D) if an individual, is made bankrupt;
 - (vi) the Provider becomes aware that there is a real or potential conflict of interest and the matter is not resolved to RQ's satisfaction within 14 days of RQ giving notice to the Provider of RQ's concern;

- (vii) the Provider and/or its Workers are continually or significantly neglectful of the Provider's obligations under this Agreement; or
 - (viii) the Provider and/or its Workers are charged with any criminal offence which, in RQ's reasonable opinion, brings the Provider or RQ into disrepute.
- (b) RQ may terminate this Agreement in its absolute discretion and without cause by giving the Provider 10 Business Days' notice.

23.2 Termination by agreement

This Agreement may be terminated at any time by mutual agreement between the parties.

23.3 Entitlements on termination

- (a) If the Agreement is terminated under clause 23.1(a), the parties remedies, rights and liability shall be the same as they would have been under the law governing the Agreement had the defaulting party repudiated the Agreement and the other party elected to treat the Agreement as at an end and recover damages.
- (b) If the Agreement is terminated under clause 23.1(b), RQ must pay for Services performed up to the time of termination and the direct costs reasonably and necessarily incurred by the Provider (which the Provider must provide written evidence of) in closing out the Services (including necessary wind down activities) in accordance with RQ's written instructions and the amounts payable will be the Provider's sole remedy for termination of this Agreement by RQ under this clause 23. RQ may either carry out the remainder of the Services itself or may engage another contractor to perform any part of the Services in respect of which this Agreement is terminated without being in breach of this Agreement.

23.4 Post termination

- (a) At the end of this Agreement, the Provider must immediately deliver to RQ all property belonging to RQ in the Provider's and/or its Workers' possession or control.
- (b) Termination or expiration of this Agreement will not prejudice any accrued rights or liabilities of either party or excuse any party from a breach of this Agreement occurring prior to termination or expiration.
- (c) The obligations under clauses 14, 15, 20, 22 and 24 of this Agreement will survive the termination or expiration of this Agreement.

24. Dispute Resolution

- (a) Any dispute on any matter arising out of or pursuant to this Agreement must be resolved in accordance with this clause 24.
- (b) Either party may give a notice in writing to the other giving formal notice and details of a dispute between the parties (**Notice of Dispute**).

- (c) The parties must meet within five Business Days of service of the Notice of Dispute to attempt to resolve the dispute.
- (d) If the dispute remains unresolved 20 Business Days after the service of a Notice of Dispute, either party may refer the dispute to any court of competent jurisdiction.
- (e) Despite the existence of the dispute the parties must continue to perform their obligations under this Agreement.
- (f) This clause 24 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

25. Notices

- (a) Subject to clause 25(b), all written notices required or permitted to be given under this Agreement must be given by either Party to the other by:
 - (i) hand;
 - (ii) posting a copy of the notice in a sealed envelope with postage prepaid;
 - (iii) facsimile; or
 - (iv) email,
 which must be given, addressed or sent to the respective Party at the address shown in the Application Schedule (as applicable).
- (b) Service of a notice under clauses 23 or 24 shall only be valid if effected in accordance with clauses 25(a)(i), 25(a)(ii) and 25(a)(iv).
- (c) If the notice is sent or delivered in a manner provided by clause 25(a), it must be treated as given to and received by the party to which it is addressed:
 - (i) if sent by post, on the second Business Day (at the address to which it is posted) after posting;
 - (ii) if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt;
 - (iii) if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery; or
 - (iv) if sent by email, at the time shown in the delivery confirmation report generated by the sender's email system (unless an answerback code is received by the sender which indicates the email transmission has not been successful).
- (d) The Provider will ensure at all times there is a contact person who may issue and receive notices on behalf of the Provider.

26. Assignment

- (a) RQ may assign or novate all or any part of the Agreement at any time, in its absolute discretion and the Provider must take all steps as may be reasonably required by RQ to effect any assignment or novation.
- (b) The Provider must not assign the Provider's rights or novate the Provider's rights and/or obligations under this Agreement without the prior written consent of RQ, which consent must not be unreasonably withheld.

27. Governing Law

This Agreement is to be governed by the laws of the State of Queensland.

28. Severability

If any part of this deed is unenforceable, illegal or void then it is severed and the rest of this deed remains in force.