

## Minor Works Agreement (Standard) – Country Racing Program

### 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](mailto: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 Works.
- (C) The Provider represents to RQ that the Provider has the necessary skills, expertise, personnel, materials and equipment to perform the Works.
- (D) The parties have agreed that the Works 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 Works.

**BCIP Act** means the *Building and Construction Industry Payments Act 2004* (Qld).

#### **Business Day:**

- (a) for the purposes of RQ responding to an Invoice in accordance with clause 10, has the meaning given in the BCIP Act; and
- (b) for all other purposes, 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.

**Completion** means that stage in the execution of the Works when:

- (a) the Works are complete and ready for use except for minor omissions and minor defects that RQ determines can be rectified after Completion without prejudicing its use of the Works;
- (b) any tests required under the Agreement to be passed have been passed;
- (c) the Provider has provided RQ with any manuals, drawings or documents required by the Agreement; and
- (d) the Provider has cleared the Site and removed all rubbish, surplus material and plant and equipment.

**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 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.

**Date for Completion** means the date specified in Item 4 of the Application Schedule, as may be extended in accordance with this Agreement.

**Date of Completion** means the date certified by RQ to be the date on which Completion was achieved.

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

**Encumbrance** means any security or other interest that secures payment or performance of an obligation and includes:

- (a) unregistered encumbrances;
- (b) statutory encumbrances;
- (c) Security Interests as that term is defined by the *Personal Property Securities Act 2009 (Cth)*; and
- (d) charges, mortgages, liens or trusts for securing money.

**Fee** means the consideration payable by RQ to the Provider for the performance of the Works, as set out in Item 6 of the Application Schedule.

**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.

**Intellectual Property Rights** 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 and performance protection) whether or not now existing and whether or not registered or registrable, and includes any right to apply for the registration of such right and all renewals and extensions.

**Insurance** means the insurance set out in clause 15(a).

**Invoice** has the meaning in clause 10.2.

**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).

**Performance Date(s)** means (where applicable) the date(s) on which the Works 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 perform the Works.

**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 Works, (this includes but is not limited to compliance with work health and safety policies and procedures on any relevant worksite on which the Provider must attend to perform the Works).

**Site** means the location where the Works are to be performed as specified in Item 6 of the Application Schedule.

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

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

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

**Warranty Period** means a period of 12 months (or such other period as may be specified in the Application Schedule), commencing on the Date of Completion.

**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.

**Works** means the Works described in Item 6 of the Application Schedule.

## 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 Works.
- (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;
- (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.

## 2. Time

- (a) The Provider must:
  - (i) commence performance of the Works on the Commencement Date; and

- (ii) achieve Completion of the Works by the Date for Completion.

- (b) The Provider shall perform the Works in compliance with any time limits for the performance of the Works (including any Performance Dates):

- (i) specified in Item 6 of the Application Schedule; or
- (ii) otherwise agreed in writing between the parties.

- (c) The Provider shall ensure that the performance of the Works is not delayed or hindered by work undertaken by the Provider for other persons.

- (d) If the Provider fails to achieve Completion of the Works by the Date for Completion, the Provider shall be indebted to RQ for liquidated damages at the rate specified in Item 5 of the Application Schedule for every day after the Date for Completion to, and including, the date on which the Works achieve Completion or the date this Agreement is terminated, whichever is earlier.

- (e) The parties agree that the liquidated damages represent an agreed pre-estimate which is equal to or less than the losses likely to be suffered by RQ in the event of a failure by the Provider to achieve completion by the Date for Completion.

- (f) The Provider's liability under clause 2(d) is limited in aggregate to the amount specified as the liquidated damages cap in Item 5 of the Application Schedule.

- (g) The Provider must give RQ seven days' notice of when it anticipates the Works will achieve Completion. When the Provider is of the opinion that the Works have achieved Completion, the Provider shall request RQ in writing to issue a notice confirming Completion has been achieved. Within 14 days of receipt of a request from the Provider RQ shall give to the Provider a notice either confirming the Date of Completion or stating reasons for not confirming the Date of Completion.

## 3. Early Works

The parties agree that to the extent the Provider has commenced any of the Works prior to the Commencement Date, those works are deemed to form part of the Works 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. Care of the Works

- (a) The Provider shall be responsible for the care of the whole of the Works from and including the Commencement Date to 4:00 pm on the Date of Completion, at which time the responsibility for the care of the Works shall pass to RQ.
- (b) If loss or damage occurs to the Works during the period for which the Provider is responsible for the care thereof, the Provider shall, at the Provider's cost, rectify such loss or damage.

other contractors, agents, employees and invitees); and

- (iii) prevent nuisance and unreasonable noise and disturbance.

- (c) The Provider acknowledges and agrees that it must coordinate the Works with other works and activities being carried out by RQ and its contractors, employees, invitees and agents at the Site and the Fee is deemed to include a proper allowance for such coordination and all interference from other works and activities at the Site.

## 6. Performance of the Works

### 6.1 Manner of performance of the Works

- (a) The Provider must perform the Works:
- (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 works which are similar to the Works;
- (iv) to the best of the Provider's knowledge and expertise; and
- (v) in compliance with all Legislative Requirements.
- (b) The Provider must fully inform itself of RQ's requirements for the Works and the manner in which the Works are to be performed.
- (c) The Provider must carry out its obligations and duties and complete the performance of the Works to the reasonable satisfaction of RQ.

### 6.2 Site requirements

- (a) The Provider must work on the Site 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 Site to enable the Provider to perform the Works. The Provider shall keep the applicable part of the Site and the Works clean and tidy and shall regularly remove rubbish. 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

### 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 Works including providing reports, recommendations and advice in relation to the performance of the Works and providing any information requested by RQ in connection with the Works.
- (b) The Provider shall ensure that RQ is kept informed of all matters pertaining to the Works 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 subcontract elements of the Works to an Approved Worker or to a Subcontractor that is not an Approved Worker, provided that:
- (i) RQ approves the particular Subcontractor; and
- (ii) if required by RQ, the Provider provides RQ with an executed original Deed Poll in the form specified by RQ prior to the Worker commencing work.
- (b) An approval given to the Provider by RQ under clause 6.5 does not relieve the Provider from any of the Provider's obligations under this Agreement.
- (c) Works may only be subcontracted to persons who are properly qualified and adequately experienced to perform the Works 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 subcontract the Works to any Subcontractor if RQ notifies the Provider that, in the opinion of RQ, that

Subcontractor has not performed the Works in a satisfactory manner.

## 6.6 Compliance with legislation and policies

In performing the Works 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.

## 7. Variations

- (a) RQ may vary the Works at any time by written notice to the Provider including by increasing or decreasing the scope, nature or requirements for the Works (**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 Works;
  - (ii) adjustment to the Fee payable for the performance of the Works; 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 7(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 Fee or time for performing the Works.
- (d) The adjustment to the Fee 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 7(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 Works by omitting or deleting part of the Works, RQ may either carry that work out itself or have that work carried out by engaging any other person to do so.

## 8. Equipment

### 8.1 Provider Equipment

The Provider must supply all things necessary for performing the Works, including all:

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

### 8.2 RQ Equipment

Where Item 7 of the Application Schedule has been completed this clause 8.2 applies and:

- (a) RQ will provide the Provider with the RQ Equipment to assist the Provider to provide the Works;
- (b) the Provider must provide all other equipment necessary to perform the Works; and
- (c) the Provider acknowledges and agrees:
  - (i) the RQ Equipment will at all times remain the property of RQ;
  - (ii) 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.

## 9. Inspection and testing of Works

### 9.1 Inspection and testing of Works

If required by RQ the Provider must:

- (a) allow RQ to inspect and perform tests on the Works at any time;
- (b) perform (at its own cost) such tests as may be reasonably required by RQ to confirm conformity of the Works with the requirements of this Agreement (and the achievement of Completion), allow the Project Director to witness such tests and provide copies of the test results to RQ; and
- (c) provide such additional information as the Project Director may require, including and without limitation to records, reports or such any other information that RQ may reasonably require to verify that the

Works comply with the requirements of this Agreement.

## 9.2 Notice of Defective Works

If any inspection of the Works under clause 9.1 prior to Completion discloses that all or any of the Works are Defective, RQ may in its absolute discretion, issue a notice to the Provider:

- (a) requiring the Provider to rectify the Defective Works within the time period specified in the notice; or
- (b) advising the Provider that RQ accepts the Defective Works and that the Fee will be adjusted to deduct the cost of the Defective Works.

## 9.3 Defects identified during the Warranty Period

If all or any of the Works are or become Defective during the Warranty Period, RQ may, in its absolute discretion, issue a notice to the Provider requiring the Provider to rectify the Works within the time period specified in the Notice.

## 9.4 Rectification or replacement of Defective Works

- (a) If RQ issues a notice to the Provider under clause 9.2(a) or clause 9.3 requiring the Provider to rectify any Defective Works, the Provider must comply with such notice, at its own cost, within the time specified in the notice.
- (b) If the rectification of the Defective Works has not been effected within the time period specified in the notice, RQ may in its absolute discretion have the Defects rectified by another party, the costs of which will be a debt due and payable by the Provider.

## 9.5 No impact on rights

- (a) No inspection, examination or testing by RQ, its employees or agents will relieve the Provider of its obligations under the Agreement.
- (b) No action taken by RQ under clauses 9.2 to 9.4 inclusive will affect RQ's rights to claim damages at common law for breach of the Agreement or to exercise a right under clause 24.

## 10. Invoicing and Payment

### 10.1 Payment for Works

- (a) Subject to this Agreement, RQ will pay the Provider the Fee for the Works performed.
- (b) Any amounts paid by RQ to the Provider are payments on account only and will not constitute acceptance by RQ of all or any part of the Works.

### 10.2 Date of Invoice

Unless RQ directs otherwise, the Provider may only submit invoices on account of the Works, following the performance of those Works 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**).

### 10.3 Contents of Invoice

Each Invoice must:

- (a) include the Provider's ABN;
- (b) specify the GST amount (if any) payable and the extent to which each sale on the invoice is a taxable sale;
- (c) include a description of the Works performed;
- (d) contain sufficient details to enable RQ to verify the costs of the Works performed;
- (e) identify the Site and Date for Completion;
- (f) identify the amount claimed together with an itemised break down of that amount, being the Fee for the Works performed in accordance with the terms of this Agreement during the relevant calendar month;
- (g) 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
- (h) comply with the requirements for a Tax Invoice (as that term is defined in the GST Act).

### 10.4 Assessment of Invoices

- (a) Upon receipt of an Invoice from the Provider under clause 10.2 which complies with the requirements of clause 10.3, RQ will review the Invoice.
- (b) If RQ is satisfied with the content of the Invoice, RQ will pay the Provider the invoiced amount within 15 Business Days of the date RQ receives the Invoice.
- (c) If RQ disputes any part of the Invoice, RQ must within 10 Business Days of receipt of the Invoice, provide a payment certificate stating the amount RQ determines is payable and the reasons why the amount approved by RQ is different from the full amount claimed by the Provider.
- (d) If RQ issues a payment certificate under clause 10.4(c) the Provider must within 2 Business Days (and without prejudicing its right to dispute RQ's assessment of its original Invoice) provide RQ with a re-issued Invoice for the amount of the payment certificate.
- (e) Subject to the Provider's compliance with clause 10.4(d), RQ must pay the Provider the amount stated in the payment certificate within 15 Business Days of the date the Provider submitted its original Invoice under clause 10.2.

**10.5 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.

**10.6 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.

**11. GST**

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (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.
- (d) Unless stated otherwise, all consideration to be provided under or in connection with the Agreement, other than under this clause, 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.
- (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, 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 is deemed to be a payment, credit or refund of the additional amount payable under this clause.
- (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.

**12. Delays and Extensions of Time****12.1 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 Works.

**12.2 Notice of delay**

If the Provider becomes aware that there will be any delay to the Works, the Provider must immediately (and no later than 5 Business Days of the delay commencing) give notice to RQ of such delay, together with details of the delay, the actions it is taking to mitigate the delay, and the date on which it expects to be able to perform the relevant Works.

**12.3 Extensions of time**

- (a) If the Provider is or will be delayed in achieving Completion by the Date for Completion because of:
  - (i) any act, default or omission of RQ, the Project Director or an employee, consultant or agent of RQ;
  - (ii) a suspension of the Works under clause 13 other than a suspension that 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 Worker; or
  - (iii) a Variation under clause 7,
 and the Provider:
  - (iv) gives a notice of that delay to RQ in accordance with clause 12.2;
  - (v) takes all reasonable steps to minimise and mitigate the delay; and



- (vi) submits a claim for an extension of time within 10 Business Days of the delay commencing, specifying the number of days claimed, the date on which the cause of the delay first arose and the effect of the delay,

the Provider shall be entitled to an extension of time for Completion. If the Provider is entitled to an extension of time for Completion, RQ shall, as soon as practical, grant a reasonable extension of time and notify the Provider in writing of the extension of time granted and the new Date for Completion.

- (b) Whether or not the Provider has made, or is entitled to make, a claim for an extension of time under this clause 12.3, RQ may (in its absolute discretion and solely for the benefit of RQ without being under any obligation to the Provider to do so for its benefit), at any time and from time to time by written notice to the Provider unilaterally extend the Date for Completion.
- (c) If the Provider fails to lodge a claim strictly in accordance with clause 12.3, the Provider is not entitled to an extension of the Date for Practical Completion.
- (d) A delay by RQ or the failure of RQ to grant a reasonable extension of time shall not cause the Date for Completion to be set at large.

### 13. Suspension

- (a) RQ may suspend the Works 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 Works to the extent specified including any Works 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 Works.
- (c) The Provider is entitled to an adjustment to the Fee 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 Fee 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 13(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.

## 14. Warranties

### 14.1 General Warranties

The Provider warrants that:

- (a) it and its Workers possess the necessary qualifications, skills, expertise personnel, materials and equipment to perform the Works;
- (b) the Provider will not infringe the Intellectual Property Rights 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 Approved Workers;
- (d) the Provider has informed RQ in writing of any pre-existing medical conditions which, taking into account the nature of any Works be provided under this Agreement, may adversely affect its Workers' ability to carry out the Works or pose a risk of injury to others; and
- (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.

### 14.2 Subcontractor's warranties

Where requested by RQ, the Provider must obtain warranties from all Subcontractors under this Agreement which must be:

- (a) procured by the Provider in RQ's name (or otherwise be assigned to, and be capable of being enforced by, RQ); and
- (b) delivered to the Project Director, identifying the description of the Works to which the warranties relate.

## 15. Insurance

- (a) The Provider must take out and maintain the insurances identified in Item 8 of the Application Schedule on the following terms (**Insurance**):
- (i) public liability insurance:
- (A) with a limit of indemnity of not less than \$20,000,000 per occurrence and unlimited in the aggregate; and
- (B) otherwise on terms reasonably satisfactory to RQ;

- (ii) contract works insurance:
- (A) at all times while the Works are at the Provider's risk; and
- (B) with a limit of indemnity of not less than the full replacement value of the Works;
- (iii) worker's compensation insurance as required by law in the relevant jurisdiction in which the Provider is providing the Works, in respect of the Provider and any Workers engaged by the Provider;
- (iv) compulsory statutory motor vehicle insurance for injury or death to any persons;
- (v) non-act motor vehicle insurance for liability for loss or damage to property caused by or arising out of the use of (on public roads or otherwise) all vehicles used in respect of the Works to be carried out under the Agreement;
- (vi) constructional plant insurance covering:
- (A) material damage to the Provider's plant and equipment including all accessories and spare parts;
- (B) damage following machinery breakdown;
- (C) recovery costs and expediting expenses;
- (D) costs of hiring alternative plant or equipment; and
- (E) the difference between market value payment and the actual amount payable to a finance or leasing company as a result of a total loss; and
- (vii) 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 Works 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 16.2 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.
- 16. Provider's liability and indemnity**
- 16.1 Provider's liability**
- The Provider acknowledges that, as an independent contractor, it is responsible for:
- (a) providing the Works; 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.
- 16.2 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 Works 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 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.
- 17. 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 Works;

- (iii) not wilfully or recklessly interfere with or misuse anything provided for work health and safety at RQ's workplace for the performance of the Works;
- (iv) not wilfully place at risk the work health and safety of any other person in the performance of the Works; 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 17.

## 18. 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 19.
- (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 the Works expressly agreed in this Agreement. The Provider is solely 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.

## 19. 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.

## 20. 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 Works under this Agreement, subject to this clause.
- (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.

## 21. 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 Works;
  - (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 21(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 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.

## 22. 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 Works in any media;
- (b) advertise at the Site;
- (c) participate in a media interview that mentions or refers to the Works; or
- (d) take photographs or make sketches of any part of RQ's operations except for the purposes of the Agreement.

## 23. Intellectual property and moral rights

- (a) RQ owns all Intellectual Property Rights which may arise in respect of, or as a result of, the completion of the Works or the performance of any work in order to complete the Works.
- (b) The Provider must do everything required to give RQ, or RQ's nominee, full legal ownership of the Intellectual Property Rights referred to in clause 23(a) or to protect those rights and the Provider is not entitled to an assignment fee or similar payment other than the Fee.
- (c) The Provider 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 performing the Works.
- (d) For the purposes of this clause 23, "work" has the meaning given to that term in the *Copyright Amendment (Moral Rights) Act 2000* (Cth) and "moral rights" refers to any right arising under the provisions of that legislation, or similar legislation.

## 24. Termination

### 24.1 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 Works;

- (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 24.1(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.

#### 24.2 Termination by agreement

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

#### 24.3 Entitlements on termination

- (a) If the Agreement is terminated under clause 24.1(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 24.1(b), RQ must pay for Works 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 Works (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. RQ may either carry out the remainder of the Works itself or may engage another contractor to perform any part of the Works in respect of which this Agreement is terminated without being in breach of this Agreement.

#### 24.4 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 determination 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 15, 16, 21, 23 and 25 of this Agreement will survive the termination of this Agreement.

#### 25. Dispute Resolution

- (a) Any dispute on any matter arising out of or pursuant to this Agreement must be resolved in accordance with this clause.
- (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 25 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

#### 26. Notices

- (a) Subject to clause 26(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 24 or 25 shall only be valid if effected in accordance with clauses 26(a)(i), 26(a)(ii) and 26(a)(iv).

- (c) If the notice is sent or delivered in a manner provided by clause 26(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.

**27. 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.

**28. Governing Law**

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

**29. Severability**

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

**30. Encumbrances**

RQ may require the Provider to furnish complete waivers or releases of any and all such Encumbrances with respect to all Works for which payment is being made.