

## PART 1 DEFINITIONS

1.1 In this General Consultancy Agreement “(GCA)”, the following words have the following meanings:

- (1) “Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated legislation and regulations;
- (2) “Commencement Date” has the meaning set out in Schedule 1;
- (3) “Completion Date” has the meaning set out in Schedule 1;
- (4) “Confidential Information” means the proprietary and confidential data and information relating to all aspects of the Consultant’s engagement and the provision of the Services in oral, written or electronic form, including technical or non-technical data, formulas, patterns, compilations, programs, software, systems, devices, methods, techniques, know-how, patents, drawings, charts, maps, processes, financial data, financial plans, product plans, lists of actual or potential customers, clients, licences that derive economic value, actual or potential, notes, reports, documents and materials of whatever nature to the extent that any such materials include or are derived from such data and information, whether original, copied, recompiled, modified or translated;
- (5) “Copyright” means the copyright subsisting in literary and artistic works including sketches, plans, drawings, software and in all other documents and models prepared by the Consultant as part of the Services, and all copyright which arises by virtue of the International Copyright Conventions and all such rights of copyright as may be hereafter conferred by the law throughout the World whether by way of new rights or extension of the period relating to copyright, but not now comprised therein;
- (6) “GCA” means the General Consultancy Agreement;
- (7) “Fees” means the fees set out in Schedule 1;
- (8) “GST” means the goods and services tax imposed by the Act;
- (9) “Insurance” means the insurance set out in Schedule 2;
- (10) “Intellectual Property” includes copyright, design rights, patent rights, trademarks, trade secrets, technical information and all rights specified and included in the definition of *Intellectual Property* in the Convention establishing the World Intellectual Property Organisation of 14 July 1967, Article 2(viii), and all future rights and new developments;
- (11) “the Parties” means the parties to this GCA;
- (12) “Trade Secrets” includes all technical information, know-how and Confidential Information;
- (13) “Schedule” means the schedule attached to and forming part of this GCA;
- (14) “Services” means the services described in Schedule 1;
- (15) “Taxable Supply” means a taxable supply under the Act;
- (16) “Term” means the term of the Consultant’s engagement as provided for in clause 12.

## 1.2 Interpretation

In this GCA, unless the contrary intention appears:

- a) The singular includes the plural and the plural includes the singular.
- b) A reference to a gender includes a reference to each other gender.
- c) A reference to a person includes a reference to a firm, corporation or other corporate body.
- d) A reference to a statute, regulation or provision of a statute or regulation includes a reference to that statute, regulation or provision as amended or re-enacted from time to time.
- e) A reference to writing includes a reference to printing, typing and other methods of reproducing words in a visible form.
- f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- g) Headings have been inserted for ease of reference and do not affect the construction of this GCA.
- h) A reference to an associate of a person means another person who is associated with that person by application of any of the provisions of Sections 10 to 17 of the *Corporations Act 2001*.
- i) This GCA binds the parties' respective successors and permitted assigns and/or administrators.
- j) References to monetary sums are to Australian dollars.
- k) If a party consists of more than one person this GCA binds them both jointly and severally.
- l) Ejusdem Generis rule not to apply: Where particular words are followed by general words, the general words are not limited to the same kind as the particular words and "including" must not be interpreted as a word of limitation.

## PART 2 PROVISION OF SERVICES

### 2.1 Services

The Consultant agrees that from the Commencement Date it will provide the Services in a timely manner until the termination of this GCA.

### 2.2 Skills, resources and experience

Subject to any specific directions or limitations given to or placed upon the Consultant by Savcor ART, the Consultant shall:

- a) Confer, counsel and advise Savcor ART with respect to the objectives which Savcor ART desires to achieve by the provision of the Services.
- b) At all times act with reasonable expedience in a sound and commercially reasonable manner, with the standard of care, diligence and skill reasonably to be expected of a professional and suitably qualified person engaged to provide comparable Services, and in accordance with generally accepted practices appropriate to the kind of Services being performed.

- c) Act at all times in a diligent and competent manner and to the best of the Consultant's ability.
- d) Use all reasonable endeavours to promote Savcor ART's interests.
- e) Not exceed any specific authority granted by Savcor ART to the Consultant from time to time.

The Consultant, in agreeing to perform the Services, represents and warrants to Savcor ART that it has the necessary skills, resources and experience to successfully perform the Services in a proper, skilful, careful and diligent manner.

## 2.3 Inform itself

The Consultant shall use all reasonable efforts to fully inform itself of Savcor ART's requirements for the Services and for that purpose it must consult with Savcor ART throughout the performance of the Services.

## 2.4 Co-ordination and co-operation

The Consultant must co-ordinate the performance of the Services with Savcor ART's requirements and co-operate with Savcor ART's business colleagues, contractors and other consultants during the process.

## 2.5 Compliance

The Consultant must ensure that performance of the Services complies with the requirements of this GCA and comply with the applicable laws.

## 2.6 Variations

Savcor ART may vary the Services and the Consultant must carry out any such variation as directed by Savcor ART. The Consultant must not vary the Services except as directed and approved by Savcor ART.

If Savcor ART directs a variation to the Services:

- a) Savcor ART must provide to the Consultant full details of any variation.
- b) upon receipt of the variation required by Savcor ART the Consultant must, before proceeding, provide to Savcor ART details of the additional charges to be made by the Consultant as a result of the variation and obtain the written consent of Savcor ART to the additional charges.

In the event the Consultant, as a result of his expertise, recommends any variations to the Services then:

- a) any variation proposed by the Consultant must be submitted to Savcor ART in writing together with a full and detailed costing of the additional expense to be incurred by Savcor ART as a result of the variation; and
- b) the Consultant must obtain from Savcor ART its written consent to the variations including the additional costings prior to implementing the variations.

## 2.7 Suspension

Savcor ART may require the Consultant to suspend provision of the Services (or any part) at any time and for any reason (Suspension period). Savcor ART will notify the Consultant when the suspension period has ended and when the Consultant should resume provision of the Services.

The Consultant will resume the Services as soon as reasonably practicable after being given notice to resume the Services. Savcor ART will not be liable for any costs incurred by the Consultant during the suspension period.

## **PART 3 FEES AND PAYMENT**

### **3.1 Fees**

In consideration of the Services, Savcor ART shall pay the Consultant the Fees.

### **3.2 Goods and Services Tax**

To the extent that any Taxable Supply occurs under this GCA then:

- (i) the party who is the supplier will, be entitled to increase the consideration for the Taxable Supply identified in this GCA ('net consideration') by the amount of any applicable GST calculated in accordance with the Act; and
- (ii) the recipient shall pay such increased consideration.

The supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid.

### **3.3 Payment**

- a) The Consultant shall submit compliant tax invoices for Services provided during each fortnight to Savcor ART. Payment will be made to the Consultant within forty-five (45) calendar days from receipt and acceptance of the consultant's tax invoice. Where any part of a tax invoice submitted by the Consultant is disputed by Savcor ART or cannot be satisfactorily substantiated by the Consultant, then, pending resolution of the dispute or difference, Savcor ART will pay to the Consultant that part of the invoice which is not in dispute.
- b) The Consultant must include with each tax invoice required in clause 3.3(a), a statutory declaration confirming that all remuneration or other amounts payable by the Consultant to any of its employees, subcontractors or other consultants have been paid by law or under any legislation in respect of the Services.
- c) Savcor ART may withhold any payment due to the Consultant until it receives from the Consultant the relevant statements required by clauses 3.3(b) and 3.3(c).

### **3.4 On account only**

The payment of any money under a progress claim shall be taken to be payment on account only and not evidence of the value of the Services. Where an error with respect to payment of any progress payment is identified, Savcor ART may correct the error and adjust a subsequent payment to the Consultant accordingly.

### **3.5 Set-off**

Without limiting Savcor ART's rights under any other provision of this GCA, Savcor ART may recover any debt owed to it by the Consultant from any retention money held by Savcor ART or any money owed to the Consultant by Savcor ART.

## **PART 4 TAXES AND OTHER COSTS**

- a) The Consultant will be responsible for payment of all taxes and levies whatsoever, whether arising under a State or Commonwealth law, including any goods and services tax, income tax, "pay as you go", payroll tax, group tax, fringe benefits tax, stamp duties or fees, levies and charges that may apply to the performance by the Consultant of the Services or on any payment due or payable to the Consultant by Savcor ART.
- b) The Consultant will be responsible for all other costs or any other out of pocket expenses that arise in the provision of the Services under this GCA.
- c) The Consultant must make all agreed and mandatory payments with respect to the engagement of its employees for the supply of the Services, including payment of costs related to the provision of superannuation or sickness and accident insurance schemes. In respect of these matters, the Consultant must permit Savcor ART to have reasonable access to all relevant business records and correspondence relating to the provision of the Services for auditing purposes during the term of this GCA and for seven years following its termination.

## **PART 5 OCCUPATIONAL HEALTH AND SAFETY**

The Consultant must ensure that, if the Consultant enters any Savcor ART site for the purpose of carrying out the Services, it will be responsible for the safety of its own employees, personnel, agents and equipment and that it will comply in all respects with any site safety instructions and all statutory obligations regarding occupational health and safety.

## **PART 6 INSURANCE**

### **6.1 Insurance**

Before commencing the provision of the Services, the Consultant must effect and maintain the Insurance throughout the Term.

### **6.2 Insurance generally**

- a) All Insurance must:
  - (i) be effected with insurers approved by Savcor ART (which approval must not be unreasonably withheld) and must be on terms approved by Savcor ART;
  - (ii) name Savcor ART as an interested party; and
  - (iii) be constructed to provide that insurers shall have no right of subrogation against Savcor ART.
- b) The Consultant must:
  - (i) give Savcor ART (before the Commencement Date and at other times requested by Savcor ART) a certificate of currency of insurance for the Insurance;
  - (ii) give Savcor ART certified copies of all policies, renewal certificates and endorsement slips, as soon as it receives them;
  - (iii) ensure that all insurance premiums in respect of the Insurance are paid on time, that all deductibles are paid promptly and that all conditions of insurance are otherwise complied with.

- c) The Consultant must inform Savcor ART promptly in writing of any occurrence or accident giving rise to or likely to give rise to a claim under the Insurance.

## **PART 7 INDEMNITY, LIABILITY**

### **7.1 Consultant's indemnity**

The Consultant must indemnify and keep indemnified Savcor ART and its directors, officers and employees from and against all claims (including third party claims), demands, actions, suits, proceedings, judgments, orders or damages (including consequential damages), costs, losses, expenses and liabilities of any nature whatsoever suffered or incurred by Savcor ART and its directors, officers and employees, arising out of the performance or non-performance of the Services by the Consultant under this GCA.

### **7.2 Savcor ART's liability**

Savcor ART will not be liable to the Consultant for any indirect or consequential loss under this GCA, in tort, in equity or otherwise at law.

The maximum amount Savcor ART is liable to the Consultant under this GCA, in tort, in equity or otherwise at law, is limited to the Fees.

## **PART 8 WARRANTY**

### **8.1 The Consultant warrants to Savcor ART that:**

- a) it will exercise all reasonable skill and care in conformity with the best standards of the practice of its profession in the performance of the Services;
- b) It will perform the Services in accordance with the requirements set out in Schedule 1; and
- c) the Services will comply with:
  - (i) all applicable laws; and
  - (ii) any of Savcor ART's policies, as notified by Savcor ART to the Consultant from time to time, including without limitation, Savcor ART's Code of Business Conduct and Safety Rules.

## **PART 9 DOCUMENTS AND INTELLECTUAL PROPERTY**

### **9.1 Documents to be provided**

The Consultant will provide all necessary documents required to complete the Services under this GCA.

### **9.2 Intellectual property**

All Intellectual Property brought into existence by the Consultant pursuant to this GCA will upon its creation vest exclusively in Savcor ART. Intellectual Property owned by the Consultant prior to its execution of this GCA will remain the property of the Consultant and the Consultant hereby grants to Savcor ART an irrevocable royalty free licence to use the Consultant's intellectual property for the purposes of this GCA.

## 9.3 Return of documents

Upon the termination of this GCA or on the request of Savcor ART for any reason, the Consultant must return to Savcor ART all documents or data containing Confidential Information or all documents or data making reference to any intellectual property owned by Savcor ART by virtue of this GCA.

## **PART 10 CONFIDENTIAL INFORMATION**

### 10.1 Confidentiality

The Consultant agrees that it must:

- a) not use the Confidential Information communicated to it for any purpose other than for the purpose of the performance of the Services under this GCA.
- b) maintain the confidentiality of Confidential Information and restrict access to the Confidential Information to only those of its employees, contractors and personnel who agree to abide by this confidentiality clause; and
- c) not disclose Confidential Information to any third party.

### 10.2 Exemptions

The obligations and restrictions provided in this clause 11 will not apply to Confidential Information which:

- a) becomes available to the public otherwise than by breach of this GCA by the Consultant;
- b) is in the unrestricted possession of the Consultant prior to receipt from Savcor ART;
- c) is lawfully disclosed to the Consultant by a third party without restrictions as to use and disclosure; or
- d) is information required to be disclosed by the operation of any law or any regulation having the force of law, subject to the Consultant claiming such immunity, privilege or restriction as it is reasonably able to claim.

### 10.3 Continuing obligation

The obligations under this clause 10 will remain in force indefinitely.

## **PART 11 RELATIONSHIP**

The Consultant will provide the Services as an independent contractor and nothing in this GCA will be construed so to constitute:

- a) the Consultant or its employees (as the circumstances require) as an employee of Savcor ART; or
- b) a partnership between the Parties; or
- c) either Party as the agent or legal representative of the other Party.

## **PART 12 TERM AND TERMINATION**

### **12.1 Term**

This GCA will commence on the Commencement Date and will terminate upon the earlier of:

- a) completion of the Services; or
- b) on Savcor ART providing 14 days written notice to the Consultant that the Services are no longer required; or
- c) the Completion Date set out in Schedule 1.

### **12.2 Termination**

- a) Subject to clause 13.1, if a Party is in breach of any term of this GCA it must remedy any such breach within 7 days of receiving a written notice from the other Party ("Remedy Notice"). If the breach is not remedied within 7 days, or if the breach is not capable of being remedied the Party not in breach may terminate this GCA. The Consultant agrees that if the breaching Party is Savcor ART:
  - (i) the maximum amount for which Savcor ART is liable to the Consultant is the amount of the Fees; and
  - (ii) Savcor ART will not be liable to the Consultant for any indirect or consequential loss.
- b) Where an investigation has found that the Consultant has breached Savcor ART's Code of Business Conduct, Savcor ART may terminate this GCA without any need for Savcor ART to serve a Remedy Notice.
- c) A breach by the Consultant of Savcor ART's Safety Rules will be a breach of an essential term of this GCA. A breach of an essential term entitles Savcor ART to terminate this GCA immediately without any requirement for Savcor ART to serve a Remedy Notice.

## **PART 13 SUBCONTRACTING AND ASSIGNMENT**

### **13.1 Subcontracting, novating or assigning with consent**

The Consultant must not subcontract, novate or assign all or any part of this GCA without the prior written approval of Savcor ART, and then only on terms acceptable to Savcor ART.

Approval by Savcor ART for the Consultant to subcontract any part of the Services shall in no way relieve the Consultant of any of its obligations or liabilities under this GCA.

## **PART 14 SPECIAL CONDITIONS**

The special conditions outlined in Schedule 3 form part of this GCA.

## **PART 15 DISPUTES**

### **15.1**

If there is a dispute between the parties concerning the terms of this GCA or any other agreement between them, a Party may give written notice of the dispute to the other Party ("the notice") which shall state that it is a notice under this Part and shall specify full particulars of the dispute concerned ("the dispute").



- 15.2 If the dispute is not settled by agreement within fourteen days of service of the notice, the dispute shall be referred to conciliation, and if necessary to arbitration, by a single conciliator and (if necessary) arbitrator appointed by agreement of the parties, or if they fail to agree by the Accord Group, Level 2 The Chambers, 370 Pitt Street, Sydney, acting on the request of a party.
- 15.3 A conciliator or arbitrator must not be a present or former member, officer, employee or agent of either party.
- 15.4 The conciliation and/or arbitration shall be conducted:
- a) at a location to be determined by the conciliator or arbitrator (as the circumstances require); and
  - b) in accordance with the rules for the time being prescribed by the Accord Group.
- 15.5 If arbitration becomes necessary, the parties agree to be bound by the decision of the arbitrator in all matters and things, including the payment of costs.
- 15.6 The Parties agree that compliance with this clause 16 is a prerequisite to the commencement to legal action in a court.

### **PART 16 GOVERNING LAW**

- 16.1 This GCA is governed by the laws of the State (including the Independent State of Papua New Guinea), Territory or Province in which the GCA originates, and the parties submit to the jurisdiction in that State, Territory or Province.

### **PART 17 NOTICE**

- 17.1 A notice or other communication required or permitted to be given by a party to another pursuant to this GCA shall be in writing and:
- (i) delivered personally; or
  - (ii) sent by post, postage prepaid
- to that party's address set out in this GCA or as notified by each party from time to time.
- 17.2 A notice or other communication is deemed given:
- (iii) if personally delivered, upon delivery;
  - (iv) if posted, upon the expiration of two business days after posting.

### **PART 18 FORCE MAJEURE**

- 16.1 The obligations of a party, shall be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by force majeure.
- 16.2 Force majeure means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected, and includes inevitable accident, storm, flood, fire, earthquake, explosion, perils of navigation, hostility, war (declared or undeclared), insurrection, executive or administrative order or act of either general or particular application of any government, whether de jure or de facto, or of any official purporting to act under the authority of that government, prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, breakdown or damage to or confiscation of property.

- 16.3 A party affected by force majeure shall:
- a) as soon as possible after being affected give to the other party full particulars of the force majeure and the manner in which its performance is thereby prevented or delayed; and
  - b) promptly and diligently take appropriate action to enable it to perform the obligations prevented or delayed by force majeure.
- 16.4 The parties shall use reasonable endeavours to remove or mitigate any force majeure at the earliest possible time.

### **PART 19 SEVERABILITY**

- 17.1 Each word, phrase, sentence, paragraph and clause ("a provision") of this GCA is severable.
- 17.2 If a court determines that a provision is unenforceable, illegal or void then the court may sever that provision which:
- a) becomes inoperative; and
  - b) does not affect the other provisions of this GCA.

### **PART 20 FURTHER ASSURANCE**

Each party shall at its own costs from time to time do all things (including executing documents) necessary or desirable to give full effect to this GCA.

### **PART 21 VARIATION**

The variation or waiver of a provision of this GCA, or a party's consent to a departure from a provision by another party, is ineffective unless in writing, executed by the parties.

### **PART 22 WAIVER**

A party's failure or delay to exercise a power or right does not operate as a waiver of that, or any other, power or right.

### **PART 23 ENTIRE AGREEMENT**

This GCA contains the whole understanding of the parties relating to the subject matter dealt with herein and supersedes all prior negotiations, discussions and drafts of this GCA.