



Consultancy agreement

Mackay Basketball Incorporated

[Consultant - insert full name]



Table of contents

Parties	1
Background	1
Agreed terms	1
1 Definitions and Interpretation	1
1.1 Definitions	1
1.2 Interpretation	8
1A Pre-Start Meeting	9
2 The Services	10
2.1 Consultant to undertake Services for the Term	10
2.2 Option	10
2.3 Representation	10
2.4 Variation of Services	11
2.5 Valuation of Variation	11
2.6 Notice of Variations	12
2.7 No Variation	12
3 Obligations of the Consultant	12
4 WH& S Requirements	13
5 Quality of Services	15
5.1 Consultant Warranty	15
5.2 Compliance with demonstrated Services	16
5.3 Supply of items	16
5.4 Indemnity for breach of promise	16
6 Completion of Services	16
6.1 Direction	16
6.2 Key Personnel	16
6.3 Consultant not relieved of liability	17
6.4 Consultant to maintain licences	17
6.5 No inducements	17
6.6 Ensure compliance of Personnel	17
6.7 Provision of replacement Personnel	17



7	Quality Assurance -----	17
7.1	Quality Assurance System	17
7.2	Purpose of Quality Assurance	18
8	Inspection and information-----	18
8.1	MBI to be kept fully informed	18
8.2	Records	18
8.3	Provision of information	18
8.4	Inspection and Review	18
9	Assignment and subcontracting-----	18
10	Meetings and reporting -----	19
10.1	Meeting	19
10.2	Progress Reports	19
11	Payment of Fee and invoicing -----	19
11.1	Fee Payable	19
11.2	Method of payment and calculation of Fee	19
11.3	Invoicing requirements	19
11.4	Payment of Invoice	20
11.5	Fee cap	20
11.6	Correction of payments	20
11.7	Set off	20
11.8	Final Claim	21
12	Reimbursement of expenses -----	21
13	GST -----	21
13.1	Definitions	21
13.2	GST exclusive	22
13.3	Taxable Supply	22
13.4	Reimbursement or indemnity	22
14	Labour, Plant and Equipment-----	22
14.1	Consultant to Supply	22
14.2	Use of Plant and Equipment	22
14.3	Obligations of Consultant	23
15	Relationship-----	23
15.1	Principal and independent contractor	23
15.2	No contractual relationship	23



15.3	No right or authority	23
15.4	No entitlements	23
15.5	No responsibility	23
15.6	Representatives	23
16	Confidentiality -----	23
16.1	Information to be kept confidential	23
16.2	Permissible disclosure	24
16.3	Consultant to keep information confidential	24
16.4	Disclosure to Consultant's Personnel	24
16.5	Confidentiality undertaking	24
16.6	Consequence of wrongful disclosure	24
17	Intellectual Property -----	24
17.1	Assignment of Intellectual Property	24
17.2	Disclosure of Intellectual Property Rights	25
17.3	Execution of documents	25
17.4	Survival of obligations	25
17.5	Moral Rights	25
17.6	Indemnity	25
18	Non-compliant services -----	25
18.1	Rectification of non-compliant Services	25
18.2	Consultant's obligations not effected	26
19	Delay -----	26
19.1	Completion of Services	26
19.2	Notice of Delay	26
19.3	No liability	27
19.4	Review of Claim	27
19.5	No additional payment	27
19.6	Extension of time	27
19.7	Disputed determination	27
19.8	Earlier completion	27
20	Liquidated damages -----	28
20.1	Liquidated damages for delay	28
20.2	Genuine pre-estimate	28
20.3	Time liquidated damages are payable for	28
20.4	No liquidated damages for period of extension	28



20.5	Without prejudice to other rights	28
21	Suspension -----	28
21.1	Suspension of Services	28
21.2	No Claim	29
21.3	Resumptions of Services	29
22	Insurance-----	29
22.1	Insurance required	29
22.2	Consultant to provide documents	30
22.3	Cancellation or lapse of Policy	30
22.4	Notification of Claims	30
22.5	Effect of Insurance	30
23	Indemnity -----	30
23.1	Consultant's indemnities	30
23.2	Payment on demand	30
23.3	Failure to comply	31
23.4	Survival of indemnity	31
23A	Consequential Loss and limits to liability -----	31
24	Termination -----	31
24.1	Termination by notice	31
24.2	Termination for default	32
24.3	Termination by Consultant	32
24.4	Return of Confidential Information	32
24.5	Payment on termination	33
24.6	No representation	33
24.7	Effect of termination	33
25	Restraint of trade-----	33
25.1	Agreed restraint	33
25.2	Validity not effected	34
25.3	Release from restraint	34
26	Privacy and Personal Information -----	34
26.1	Personal Information	34
26.2	Executed Deed of Privacy	34
26.3	Breach	34
27	Representations and warranties -----	35



28	Dispute resolution	35
28.1	Mediation	35
28.2	Termination of mediation	35
28.3	Rights unaffected	35
28.4	Continued performance	36
29	Conflict of Interest	36
29.1	Acknowledgement	36
29.2	If a Conflict of Interest arises	36
27A	Novation of Consultant	36
30	Notices	36
30.1	Method of giving notice	36
30.2	When is notice given	37
30.3	Address for notices	37
31	General	37
31.1	Amendments	37
31.2	Counterparts	37
31.3	No merger	37
31.4	Entire agreement	37
31.5	Further assurances	38
31.6	No waiver	38
31.7	Governing law and jurisdiction	38
31.8	Severability	38
Schedule 1		39
	Details	39
Schedule 2		40
	Services	40
Schedule 3		41
	Confidentiality undertaking	41
Schedule 4		43
	Program	43
Schedule 5		44
	Fee (calculation)	44
Execution		45



Consultancy agreement

Dated

Parties

MBI **Mackay Basketball Incorporated ABN INSERT**

Of INSERT, Mackay, Queensland

Consultant **[Consultant name] ABN [Insert]**

of [Insert]

Background

- A. MBI intends to carry out works including [Insert] (Project).
- B. The Consultant carries on the business of providing design, engineering, construction management and project delivery services to a range of industries, including to local governments.
- C. MBI has agreed to engage the Consultant as an independent contractor to provide the Services set out in this document and the Consultant agrees to accept such appointment on the following terms and conditions.

Agreed terms

1 Definitions and Interpretation

1.1 Definitions

In this document:

Term	Definition
Business Day	means a day that is not: <ul style="list-style-type: none">(a) a Saturday or Sunday or a public holiday in Mackay; or(b) 27, 28, 29, 30 or 31 December in any year.
Claim	means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Commencement Date	means the date specified in Schedule 1, or if no date is described, the date this document is signed.



Term	Definition
Completion Date	<p>means:</p> <ul style="list-style-type: none"> (a) the date or dates specified in Schedule 1 for completion of the Services, or for the completion of a stage or stages of the Services; or (b) if no dates are specified, the date that is derived by adding the fixed time period stated in Schedule 1 as being the Term to the Commencement Date.
Confidential Information	<p>means all information and records belonging to MBI in whatever form, and includes:</p> <ul style="list-style-type: none"> (a) information which MBI indicates or has indicated is confidential or which might reasonably be considered confidential by MBI; (b) information which by its very nature might reasonably be understood to be confidential relating to or concerning MBI's Activities; (c) information which is commercially valuable to MBI, including any notes, advices, papers or other communications in connection with MBI's Activities provided to or by or prepared for or by MBI's other service providers and advisers, including by other consultants and contractors and by MBI's lawyers and which are given to, copied, or otherwise in the possession of the Consultant; (d) information which relates to MBI's financial affairs and its dealings with government and government departments and authorities; (e) information which relates to any of MBI's contracts with a third party, including contractors, other consultants and service providers and suppliers or to any arrangements or transactions between MBI and any other local government or state or federal government or authority, department or elected representative; (f) information which relates to trade secrets, intellectual property or Intellectual Property Rights; (g) information which is found in MBI's manuals or Policies and Plans; (h) information which relates to MBI's Activities which are current, proposed, developed or being developed by or on behalf of MBI, or for which MBI is negotiating the provision of, including quotations, strategies, reports, concepts, plans, designs, drawings and programs; (i) all notes and other records prepared by MBI or anybody else, based on or incorporating information referred to in sub-clauses (a) to (h) above; and



Term	Definition
	<p>(j) all copies of the information, notes and other records referred to in sub-clauses (a) to (h) above;</p> <p>except for information that:</p> <p>(k) is or, after the Commencement Date, becomes available in the public domain (other than as a result of a breach of this document); or</p> <p>(l) is required to be disclosed by law.</p>
Conflict of Interest	means a commercial or professional conflict of interest, either real, perceived, anticipated or identified as a risk or as a possibility of arising, identified by either party in respect to the ongoing performance of the Services (either pursuant to obligations and rights arising under this document or any other arrangement or agreement, with the Consultant or with others, either past, current or in the future).
Consequential Loss	means indirect, economic, special or consequential loss or damage, loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production and loss of profit whether arising in contract, tort or otherwise.
Deliverable	means any report, plan, design, drawing, specification, program, model or document required to be produced by the Consultant as part of the Services, including but not limited to as may be described in the description of the Services found in Schedule 2 or in the Program in Schedule 4.
Fee	is the fee payable by MBI to the Consultant for the Services as stated in Schedules 1 and calculated in accordance with Schedule 5.
Fit for Purpose	means the assurance to be given to MBI by the Consultant that the Services shall be fit for the purposes for which they are intended and that the Services will be capable of meeting or exceeding MBI's requirements, as those intentions and requirements, the Services and the Project's requirements are described in this document.
Good Faith	<p>means:</p> <p>(a) being fair, reasonable and honest; and</p> <p>(b) doing all things reasonably expected of it by the other party and by this document,</p> <p>and means further in respect to the Consultant that it will give as much weight to the interests of the Project (including MBI's interests in the Project) as to its own self interest.</p>
Good Industry Practice	means the standards (including any relevant Australian Standard), practices, methods and procedures generally followed or approved by relevant industries and consultants in Australia with respect to the Services and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be



Term	Definition
	expected from a skilled and experienced consultant engaged in similar work or services.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Insolvency Event	<p>means any of the following events occurring in relation to a party:</p> <ul style="list-style-type: none"> (a) if an application is filed for the winding up of the party (winding up application) and the winding up application is not dismissed or withdrawn within 10 Business Days of that application being filed; (b) if an order is made for the winding up of the party and the winding up is not stayed indefinitely or terminated within 5 Business Days of the winding up order being made; (c) if the party's shareholders pass a resolution for its winding up; (d) if a receiver, receiver and manager, controller (as defined in section 9 <i>Corporations Act 2001</i>), or similar person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of the party; (e) if a provisional liquidator is appointed to the party; (f) if: <ul style="list-style-type: none"> (i) the party is placed into administration (as defined in section 9 <i>Corporations Act</i>) or enters into a deed of company arrangement (as defined in section 9 <i>Corporations Act 2001</i>); or (ii) the party or any other person takes any step towards placing the party into administration or towards entering into a deed of company arrangement; (g) if the party: <ul style="list-style-type: none"> (i) advises the other party that it is financially unable to proceed with or meet any of its obligations under this document; (ii) without the written consent of the other party, suspends payment of its debts other than as the result of a failure to pay a debt or claim which is the subject of a genuine dispute; (iii) ceases or threatens to cease to carry on all or a material part of its business; (iv) is or states that it is unable to pay its debts as and when they fall due and payable; or



Term	Definition
	(v) is taken to fail to comply with a statutory demand under section 459F <i>Corporations Act 2001</i> ;
	(h) if the party, without the consent of the other party:
	(i) begins negotiations with one or more of its creditors seeking a general readjustment or rescheduling of its indebtedness to one or more of its creditors;
	(ii) takes any steps toward entering into, or enters into, any compromise or arrangement with one or more of its creditors under part 5.1 <i>Corporations Act 2001</i> ; or
	(iii) makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors;
	(i) if the party:
	(i) commits an act of bankruptcy under section 40 <i>Bankruptcy Act 1966</i> ; or
	(ii) is made bankrupt;
	(j) if the party becomes or takes any step that could result in the party becoming an insolvent under administration (as defined in section 9 <i>Corporations Act 2001</i>); or
	(k) if the party enters into or takes any step that could result in the party entering into a personal insolvency agreement under part X <i>Bankruptcy Act 1966</i> ;
	(l) if the party enters into or takes any step that could result in the party entering into a debt agreement under part IX <i>Bankruptcy Act 1966</i> ;
	(m) if execution is levied against the party by a creditor;
	(n) if any matter relating to the party becomes subject to a direction under, or has effect as if it were a direction under, section 14 <i>Australian Securities Commission and Investment Act 2001</i> (Cth), or to an investigation under, or taken to be under that Act; or
	(o) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition, unless:
	(i) the event takes place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place; and
	(ii) the implementation of the reconstruction,



Term	Definition
	amalgamation, merger or consolidation complies with the terms of the approval.
Intellectual Property Rights	means 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), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.
Key Personnel	means the Personnel of the Consultant listed in Schedule 1 and any other employee, agent, sub-contractor or officer of the Consultant who is approved by MBI in accordance with clause 6.2 of this document.
Legislative Requirements	includes: <ul style="list-style-type: none"> (a) Acts, ordinances, regulations, local laws, by-laws, orders, awards and proclamations of MBI, of local governments in Queensland, of the Commonwealth or of the State or Territory applicable to the Services; (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with or recognised generally as authorities in respect of the carrying out of the Services, including the requirements of any local government or other authority, the requirements of any development consent issued in relation to any project to which the Services relate. (c) Australian Standards, the Building Code of Australia and any other relevant standards; and (d) the Codes of Practice of the State or Territory applicable to the Services and other appropriate codes for the construction industry.
Material Terms	means clauses 1A, 2, 3, 5, 6.4, 6.5, 9, 15.3, 16, 17, 22, 23.1, 25, 27 and 29 of this document.
Milestone Date	means any date identified in this document (including in its Schedules) for the performance or completion of the Services or a part of the Services, including in respect to a Deliverable.
MBI's Activities	means the functions and responsibilities that MBI carries out pursuant to the <i>Local Government Act (Qld) 1993</i> including its arrangements or transactions with any other local government or a state or federal government or authority, department or elected representative and includes any contracts, arrangements or transactions between MBI and any third party, including contractors, other consultants and service providers and suppliers.



Term	Definition
Personnel	means any officer, employee, agent or sub-contractor of a party and in respect to the Consultant, includes the Key Personnel.
Policies and Plans	<p>means MBI's published or to be published policies and plans which may be amended from time to time, or any policies and plans required to be prepared by the Consultant pursuant to the Contract, including but not limited to those concerning:</p> <ul style="list-style-type: none"> (a) its operations; (b) environment; (c) health and safety; (d) employment and industrial relations; (e) quality assurance; (f) cultural heritage; (g) community; and (g) code of conduct.
Pre-Start Meeting	means the meeting referred to in clause 1A.
Program	means the Consultant's Program for its performance of the Services, including in respect to Deliverables and Milestone Dates as set out in Schedule 4.
Project	has the meaning given in Background paragraph A of this document.
Quality Assurance System	means the Consultant's system which establishes the qualities and performance of the Services including, all quality manuals, plans, management structures and responsibility statements, techniques for identification and management of non-conforming or disputed Services and audit and other critical issues relating to quality assurance, and which must comply with and be third party accredited to 1S09001.
Representatives	has the meaning given in clause 15.6 and Schedule 1.
Schedule	means one of the schedules numbered 1 to 5 attached to this document.
Security Interest	means any encumbrance or other arrangement or agreement that secures the payment of money or the performance of an obligation, or any other interest or arrangement of any kind.
Services	means the services to be performed by the Consultant for MBI as set out in Schedule 2 as may be varied in accordance with this document.
Tax Invoice	has the meaning given to that term in the GST Act.
Term	<p>means, subject to:</p> <ul style="list-style-type: none"> (a) any agreement in writing between the parties that the Term will be extended;



Term	Definition
	(b) any extension of time to the Completion Date made in accordance with this document; or
	(c) earlier termination of this document in accordance with clause 24,
	the period that commences on the Commencement Date and expires on the Completion Date.

Other terms may be defined in the text of this document.

1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) headings are, in the interpretation of this document, to be disregarded;
- (d) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (e) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (h) a reference to this document includes the agreement recorded by this document;
- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (j) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (k) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity.
- (l) in the construction and interpretation of this document, no rule of construction or interpretation applies to MBI's disadvantage or to the Consultant's advantage on the basis that MBI prepared or caused this document to be prepared on its behalf or because MBI relies on a provision of this document as a reason (if required) for any action or inaction on its part or to protect itself;



- (m) wherever the words 'include', 'included' or 'including' are used in this document, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative; and
- (n) if the Consultant is a consortium or made up of more than one person, a reference to the Consultant is a reference to both persons and:
 - (i) an obligation of those persons is joint and several; and
 - (ii) any reference to the Consultant is to each of those persons separately so that any promise, representation or warranty is given by each of them separately.

1A Pre-Start Meeting

- (a) The Consultant shall prior to commencing the Services, attend a Pre-start Meeting to be held in Mackay at a time and date nominated by MBI and at that meeting shall satisfy MBI of the:
 - (i) payment of all insurances required by, and evidence of insurance policies strictly in accordance with this document;
 - (ii) payment of any fees required pursuant to any Legislative Requirements; and
 - (iii) fulfilment of the consultation obligations under the Workplace Health and Safety Act 1999 (Qld) ('**WHS Act**'), being that where the Consultant is for the purposes of the WHS Act a:
 - (A) 'designer' of a 'structure' that is, or is part of, 'construction work' – that the Consultant has engaged in necessary consultation with MBI and other relevant parties about how the construction work in connection with the design can be undertaken in a way that prevents or minimises all risks to health and safety;
 - (B) 'project manager' for 'construction work' – that the Consultant has engaged in necessary consultation with MBI and other relevant parties about how the construction work can be planned and managed in a way that prevents or minimises all risks to health and safety; and
 - (C) 'principal contractor' for 'construction work' – that the Consultant has engaged in necessary consultation with MBI and other relevant parties about how the construction work can be undertaken in a way that prevents or minimises all risks to health and safety.
- (b) At this meeting the Consultant shall also present to MBI for MBI's approval:
 - (i) Confidentiality Undertakings in the form set out in Schedule 3;
 - (ii) a Program and confirmation of the Completion Date;
 - (iii) a list of its Key Personnel and an acknowledgement of the terms of clauses 5.1(f) and 6.2 in so far as those Key Personnel are concerned; and



- (iv) evidence to MBI's satisfaction of the Consultant's compliance with the Policies and Plans and of its Quality Assurance System.
- (c) The meeting may also address the following matters:
 - (i) lines of communication and authority levels;
 - (ii) frequency and venue of monthly and other meetings, including pursuant to clause 10.1;
 - (iii) the requirements and particulars required in progress reports to be provided by the Consultant pursuant to clause 10.2;
 - (iv) invoicing procedures; and
 - (v) any site induction/accreditation of the Consultant's Personnel.
- (d) Until each of the issues in clause 1A(a) and (b) has been satisfactorily addressed and resolved to MBI's satisfaction, the Consultant shall have no right to invoice under clause 11 or to otherwise seek payment of its Fee and has no other Claim .

2 The Services

2.1 Consultant to undertake Services for the Term

The Consultant agrees to undertake and complete the Services during the Term, in accordance with this document.

2.2 Option

- (a) MBI may extend the Term for up to 12 months at a time, on the same terms as this document. If MBI wishes to extend the Term it will give the Consultant at least three months written notice prior to the Completion Date.
- (b) The Term may be extended more than once.

2.3 Representation

The Consultant agrees and represents to MBI that:

- (a) it has carefully reviewed the description of the Services in Schedule 2 prior to entering into this document;
- (b) subject to clause 12, the Fee includes all costs and expenses which may be incurred by the Consultant as a result of the matters referred to, identified in, or to be reasonably inferred from, or contemplated by this document;
- (c) it has made its own investigation and assessment of the work and risks involved in providing the Services and it has reviewed and satisfied itself about the information that MBI has made available to it about the Services and this document; and



- (d) the scope of the Services includes all incidental and related work which may arise from matters referred to, identified in, or to be reasonably inferred from or contemplated by the description of the Services in Schedule 2.

2.4 Variation of Services

- (a) MBI may direct the Consultant to vary or add to the Services and the Consultant must comply with this direction.
- (b) The Consultant shall not vary the Services except as directed in writing by MBI, approved in writing by MBI or agreed in writing. For the purposes of this clause, a direction by MBI shall refer only to a direction in writing given by MBI which states that it is a direction given under this clause 2.4 and otherwise no entitlement to Claim arises.
- (c) The Consultant is bound only to execute a variation which is within the general scope of this document.
- (d) If MBI directs a variation omitting any part or all of the Services, MBI will not be in breach of this document if it thereafter either performs those Services itself or employs or engages another person to carry out and perform the omitted Services. The Services which have been omitted shall be valued under clause 2.5 and the Consultant shall have no other Claim of any nature against MBI.

2.5 Valuation of Variation

- (a) The valuation of any variation may be agreed to by the parties in writing including how much the Consultant is entitled to charge MBI for any additional services or, alternatively, the basis on which the Consultant will calculate the amounts that it may charge MBI.
- (b) Unless MBI and the Consultant agree upon the price for a variation, a variation shall be valued under this clause.
- (c) MBI may direct the Consultant to provide a detailed quotation for the Services the subject of a variation supported by measurements or other evidence of cost. The detailed quotation must provide a breakdown of the rates claimed and any other information which MBI may require. The rates must be competitive market rates for the Services to be performed.
- (d) Where this document provides that a valuation shall be made under this clause, MBI shall pay or allow the Consultant or the Consultant shall pay or allow MBI as the case may require, an amount determined by MBI as follows:
 - (i) if this document prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
 - (ii) to the extent that clause 2.5(d)(i) does not apply, reasonable rates or prices shall be used; and
 - (iii) in determining the deduction to be made for Services which are omitted, the deduction shall include a reasonable amount for profit and overheads.



2.6 Notice of Variations

- (a) Without limiting clause 2.4(b), if the Consultant is of the opinion that a direction give by MBI is a variation even though it was not expressly identified as a variation by MBI then, within five Business Days of receiving the direction the Consultant shall notify MBI of its opinion in writing and endorse that letter or notice 'Notice of Variation'.
- (b) Within seven days of receiving such a notice, MBI shall confirm in writing whether or not the direction is a variation to the Services.
- (c) If MBI confirms that the direction is a variation, it shall be valued in accordance with clause 2.5.
- (d) If the Consultant does not agree with the response from MBI or if MBI does not respond within the time period prescribed, the Consultant shall within 10 Business Days of receiving the direction give a further notice called 'Claim for Variation'.
- (e) If the Consultant fails to give either or both of the notices required by this clause strictly in accordance with this clause, the Consultant shall not be entitled to make any Claim with respect to any direction of MBI.

2.7 No Variation

Despite any other provision of this document and without limiting clauses 2.4(b) or 2.6, the Consultant shall not be entitled to any Claim, if a variation results from:

- (a) a defect in the Services;
- (b) any Services not being in accordance with this document;
- (c) the Consultant otherwise being in breach of this document; or
- (d) any negligent or wilful act or omission of the Consultant or its subconsultants or subcontractors and suppliers and their respective employees, contractors or agents.

3 Obligations of the Consultant

- (a) The Consultant will complete the Services:
 - (i) with due care and skill, to the best of its knowledge and experience and in Good Faith;
 - (ii) in a thorough and professional manner in accordance with relevant professional principles and standards and to Good Industry Practice;
 - (iii) in accordance with:
 - (A) all Legislative Requirements including all applicable safety, health and environmental laws and regulations;
 - (B) all Policies and Plans, guidelines, rules and procedures relating to the MBI's Activities knowledge of which is deemed to be held by the



Consultant, including such Policies and Plans, guidelines, rules and procedures which may be provided to the Consultant by MBI; and

- (C) all reasonable directions and orders given by MBI; and
- (iv) with due expedition and without delay and at all times in accordance with the Program; and
- (v) by the Completion Date.
- (b) If at any time the Consultant considers that any information or material given or provided to it by MBI in respect to the Services and the Project is inadequate, deficient, incorrect or incomplete or that it contains any errors, discrepancies or ambiguities, the Consultant must give written notice to MBI within five Business Days of its discovery of such things including full particulars of its concerns. MBI may consider the notice and give a direction to the Consultant. Unless the Consultant complies with this clause, it has no Claim.
- (c) the Consultant must ensure that the Services (including all Deliverables) are Fit for Purpose and suitable in all respects and acknowledges that MBI relies upon the skill and judgment of the Consultant in undertaking the Services.

4 WH& S Requirements

- (a) As a condition of this contract, Mackay Basketball Incorporated requires that any Consultant (or Consultant's sub-contractor) engaged to perform a service will at all times identify and exercise all necessary precautions for WH&S of all persons who may be affected by the services.
- (b) The Consultant will inform Mackay Basketball Incorporated of all its WH&S policies, procedures, or measures implemented for individual workplaces or in the event of not having effective policies and procedures, will adopt Mackay Basketball Incorporated relevant WH&S policies and procedures.
- (c) The Consultant will comply with any reasonable direction given by Mackay Basketball Incorporated relating to WH&S.
- (d) The Consultant has an obligation under the WH&S Act 1995 to provide a safe place and a safe system of work so as not to place at risk the Consultant's own employees and well as other workers and the general public at the workplace. The Consultant must comply with all relevant enactments, associated WH&S Regulation, Standards, Codes of Practices and Mackay Basketball Incorporated WH&S policies and procedures which are in any way applicable to this contract, or the performance of the services under this contract.
- (e) The Consultant has an obligation to take all practicable steps to ensure the WH&S of its employees, sub-contractors and their employees and other people (not employees) who may be affected by the Consultant's work practices.

The WH&S Management System of the Consultant must be the minimum requirement to demonstrate compliance with all duties of an employer specified under legislation. The Consultant must submit a copy of their company WH&S Management System documentation that must include as a minimum requirement:



- WH&S policy & objectives;
 - Organisational structure & responsibilities;
 - Relevant risk assessments & controls (sample);
 - Relevant safe working procedures (index);
 - WH&S training & induction processes and records (Certificates of competencies (ticket as an electrician) and licences (truck drivers));
 - WH&S inspections & auditing procedures;
 - WH&S consultative processes;
 - Incident reporting & investigation procedures; and
 - Performance monitoring mechanisms.
- (f) The Consultant will:
- Undertake a site hazard identification to systematically identify and assess hazards;
 - Establish and maintain a register (or form) of on-site hazards in which the Consultant will record each identified hazards, the date it was identified and the measures taken to control the hazard; and
 - The Consultant will make the register (or form) available to Mackay Basketball Incorporated for inspection.
- (g) The Consultant must prepare and submit risk assessments and relevant control strategies prior to commencement of work under the contract. The completed risk assessment and control strategies will be reviewed and approved by Mackay Basketball Incorporated prior to the commencement of work under the contract. Relevant generic risk assessments and controls will be acceptable.
- (h) The Consultant must ensure that all workplace staff are competent in the work being undertaken. The Consultant will provide the employees and sub-contractor with information about hazardous work processes or material and supervision.
- (i) All employees are to have a general induction and the Consultant is to produce records of their construction industry induction ticket.
- (j) Each person visiting a construction workplace are to receive a site-specific induction.
- (k) The Consultant is required to report any serious bodily injuries or dangerous events to the relevant authority within the specified time frame. In addition, the Consultant must promptly notify Mackay Basketball Incorporated of any accident, injury, property or environmental damage, which occurs during the carrying out of the contract work.
- (l) All lost time incidents are to be immediately notified to Mackay Basketball Incorporated. The Consultant must within 3 days of any such incident provide a report giving complete



details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future.

- (m) If during the performance of work under the contract Mackay Basketball Incorporated informs the Consultant that it is of the opinion that the Consultant is:
- i. Not conducting the work in compliance with the WH&S Legislation or relevant policies and procedures; or
 - ii. Conducting the work in such a way as to endanger the Health & Safety of the Consultant's employees, Mackay Basketball Incorporated employees or the general public.
 - iii. Mackay Basketball Incorporated may direct the Consultant to promptly remedy the breach of WH&S or may direct the Consultant to suspend work until such time as the Consultant satisfies Mackay Basketball Incorporated that the work will be resumed in a safe manner (QA procedures and forms for non-compliance would apply).
 - iv. If the Consultant fails to rectify any breaches of Health & Safety for which work has been suspended, or if the Consultants performance has involved recurring breaches of WH&S, Mackay Basketball Incorporated will notify Workplace Health and Safety Queensland and requests that an inspector visit the workplace or may terminate the work forthwith, depending on the severity of the issue.

5 Quality of Services

5.1 Consultant Warranty

The Consultant warrants that the Services will:

- (a) be completed in accordance with this document including clause 3;
- (b) match the description of the Services as set out in this document;
- (c) be performed by appropriately qualified and trained Personnel;
- (d) be performed to Good Industry Practice;
- (e) be undertaken for the purpose or purposes:
 - (i) described in this document;
 - (ii) informed to the Consultant by MBI; and
 - (iii) for which these types of Services are commonly provided,

and the Consultant further warrants that:

- (f) without limiting this document including clause 1A, Key Personnel will be involved at all times in the performance of the Services and will not be removed or replaced by the Consultant except as provided for in clause 6.2; and



- (g) the Services (including all Deliverables) and other things required to be prepared and procured by the Consultant as part of the Services will be Fit for Purpose.

5.2 Compliance with demonstrated Services

Without limiting clause 5.1, if the Consultant:

- (a) provides or provided MBI with a demonstration of the Services before MBI entered into this document, the Services must correspond in nature and quality with the Services demonstrated; or
- (b) showed MBI a result achieved by the Services or similar services before MBI entered into this document, the Services must correspond in quality with the services that achieved that result.

5.3 Supply of items

Any items which the Consultant uses or supplies in connection with the Services must:

- (a) be of merchantable quality and be in accordance with clauses 3 and 5;
- (b) comply with any applicable Australian Standards and any other standards described in this document; and
- (c) be Fit for Purpose .

5.4 Indemnity for breach of promise

The Consultant shall indemnify MBI for any breach of a promise made in clause 5 or elsewhere in this document. It is not necessary for MBI to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.

6 Completion of Services

6.1 Direction

The Consultant must comply with any reasonable direction given to it by MBI in respect to the Services.

6.2 Key Personnel

The Consultant must:

- (a) not replace or remove any Key Personnel unless directed in writing by MBI or with MBI's prior written approval;
- (b) promptly replace any Key Personnel that leave the Consultant's employ with a person of comparable skill, experience and qualification, and obtain MBI's prior written approval to such replacement Key Personnel;
- (c) ensure that each of the Key Personnel is available at the times set out in this document or as otherwise required in writing by MBI; and



- (d) ensure that the Key Personnel properly perform their roles and responsibilities in accordance with this document or as otherwise agreed to in writing by MBI.

6.3 Consultant not relieved of liability

Approval to assign, subcontract, sublicense or transfer in accordance with clause 9 will not relieve the Consultant from any liability or obligation under this document. The Consultant will be liable to MBI for the acts and omissions of its subcontractors, employees, agents and assignees as if such acts or omissions were acts or omissions of the Consultant.

6.4 Consultant to maintain licences

The Consultant must maintain solely at the Consultant's own expense any licences, accreditations, certificates or registrations the Consultant or its Personnel are required to possess by any relevant Legislative Requirements in order to perform the Services.

6.5 No inducements

The Consultant will not accept any payment or other benefit from any person as an inducement or reward for any act or forbearance in connection with the Services. The Consultant must immediately disclose to MBI any of its interests which may compete or conflict with the interests of MBI or the Consultant's obligations under this document.

6.6 Ensure compliance of Personnel

The Consultant will ensure its Personnel comply with the requirements of clause 6 and any other relevant obligations under this document.

6.7 Provision of replacement Personnel

If any particular Personnel prove to be unsatisfactory to MBI for any reason, MBI may direct their removal in writing and the Consultant will immediately remove the Personnel concerned from performance or any other role in respect to the Services and will provide a replacement for such Personnel, as approved in accordance with clause 6.2, as soon as practicable and unless otherwise agreed in writing, at no extra cost to MBI.

7 Quality Assurance

7.1 Quality Assurance System

The Consultant must:

- (a) implement and carry out the Services under the Quality Assurance System and the requirements of this document; and
- (b) allow the MBI Representative access to the Consultant's Quality Assurance System at all reasonable times for purposes of quality monitoring and auditing.



7.2 Purpose of Quality Assurance

The Consultant's Quality Assurance System is only an aid to achieving compliance with this document and documenting that compliance and does not relieve the Consultant of its obligations under this document.

8 Inspection and information

8.1 MBI to be kept fully informed

The Consultant must keep MBI fully informed in respect to all aspects of the Services.

8.2 Records

The Consultant must keep proper accounts, records (including information stored by or accessible by computer or other electronic means or technology) and timesheets in accordance with Good Industry Practice, including best business and accounting principles, as well as full details of any costs and expenditures properly incurred by the Consultant in the performance of the Services.

8.3 Provision of information

The Consultant will provide to MBI, as requested from time to time by MBI, copies of all plans, designs, drawings, specifications, reports, data and other information relating to the Services to a standard which at all times meets the satisfaction of MBI and accords with Good Industry Practice.

8.4 Inspection and Review

At all reasonable times, MBI (by itself or by its agents) will have the right to inspect and review performance of the Services and the records and information created by the Consultant in the performance of the Services, including those referred to in this document, (including those records and information referred to at clauses 7, 8.2 and 8.3) at:

- (a) the site or premises at which the Services are being performed;
- (b) the Consultant's premises; and
- (c) at the premises of any of the Consultant's subconsultants or subcontractors,

and on request by MBI, MBI may itself (or may require the Consultant to) take or arrange for copies of any such records and information to be taken for its use.

9 Assignment and subcontracting

MBI may assign or transfer any of its rights, interests or obligations under this document by written notice to the Consultant. The Consultant must not assign, subcontract, sublicense or, transfer any of its rights or obligations under this document (including any part of the Services) without the prior written approval of MBI.



10 Meetings and reporting

10.1 Meeting

MBI and the Consultant shall meet monthly (and at other times as reasonably required by MBI) in Mackay to discuss:

- (a) the progress of the Services and the Project; and
- (b) any other matters which MBI may wish to raise at a meeting concerning the Services, the Project and this document.

The meeting shall be attended by the Representative of each party, plus one other person from or on behalf of each party and the meeting shall be chaired by one of the MBI attendees.

10.2 Progress Reports

The Consultant must, on the last Business Day of each month and at other times reasonably requested by MBI, provide MBI with detailed written progress reports as to the provision of the Services in such detail as allows MBI to ascertain whether the Services are being performed in accordance with this document including a report against Program, including Deliverables and Milestone Dates and in the form agreed at the Pre-Start Meeting or as may be directed by MBI. Updated Progress reports (as required) must be provided not less than two Business Days prior to the date of the monthly meeting (or any other meeting requested) pursuant to clause 10.1, and at other intervals reasonably requested by MBI.

11 Payment of Fee and invoicing

11.1 Fee Payable

The Consultant will undertake the Services for the Fee.

11.2 Method of payment and calculation of Fee

MBI agrees to pay the Consultant the Fee in accordance with the method of payment and calculation set out in Schedules 1 and 5.

11.3 Invoicing requirements

The Consultant will invoice MBI for the relevant part of the Fee incurred by it at that time on the last Business Day of each month or at the intervals set out in Schedule 1. All invoices issued pursuant to this document must be Tax Invoices and must state the Consultant's Australian Business Number and set out a detailed description of the Services undertaken, the calculation of the invoice (and if the Fee is based on hourly rates, details of the hours spent by the Personnel in performing the Services and in respect to any claim for reimbursement of expenses, the claim must be in accordance with clause 12) and of any other matters as directed by MBI or as may be agreed at the Pre-Start Meeting.



11.4 Payment of Invoice

- (a) Within 35 days of MBI receiving a Tax Invoice which complies with clause 11.3, then provided it has verified to its satisfaction the Tax Invoice details and the correctness of the Fee described in that Tax Invoice, MBI will pay the Consultant the Fee specified in the Tax Invoice, but if MBI has requested further particulars or records or information from the Consultant in respect to the Tax Invoice (including under clause 8) then the time for payment will be extended by the number of days elapsing between the date of MBI's request for more detail or access under clause 8 and the date that such further detail or access is given.
- (b) Despite clause 11.4(a), if MBI disputes some or all of the Tax Invoice, then MBI will advise the Consultant of this and the reasons why. MBI will pay the Consultant that part of the Tax Invoice with which it agrees (if any). If MBI and Consultant are unable to agree on the items in dispute, then it will be resolved in accordance with clause 26.
- (c) Payment will be made having regard to the proper calculation of the Fee for the Services performed to the date of the Tax Invoice less amounts:
 - (i) already paid; and
 - (ii) which MBI is entitled to deduct or set off.
- (d) Payment by MBI under this document shall not constitute acceptance or approval of any Services or other matter, nor shall it prejudice any rights of MBI.

11.5 Fee cap

Without limiting clauses 2.4 to 2.7, if the Fee exceeds or is likely to exceed \$[Insert], the Consultant must obtain MBI's prior written approval for any increase in the Fee over \$[Insert]. MBI will not be liable to pay the Consultant more than \$[Insert] unless prior written approval is obtained.

11.6 Correction of payments

MBI may at any time correct any error which has been discovered in any previous payments made. Without limiting the above or any other part of the document, at the time of each Tax Invoice and of any payments made under the document and at any other time MBI (in consultation with the Consultant if requested by MBI) may undertake a reconciliation of payments made to a relevant date and may make any adjustments to those payments and MBI may give further notice of approval, non approval or of adjustment to any prior or subsequent payments made.

11.7 Set off

Without limiting MBI's rights under any other part of this document, and despite any payment by MBI under this document, MBI may deduct from any moneys due to the Consultant any sum which may be or may become payable by the Consultant to MBI whether or not MBI's right to payment arises pursuant to an indemnity or by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to MBI's right to payment arises out of this document, any other contract between it and the Consultant, or is independent of any such contracts. Nothing in this clause shall affect the right of MBI to recover from the Consultant the whole of such moneys or any balance that remains owing.



11.8 Final Claim

- (a) Within 10 Business Days of the completion of the Services or of the Completion Date (whichever is the later), the Consultant shall lodge with MBI a final claim and endorse it 'Final Claim'.
- (b) The Consultant shall include in that claim all moneys which the Consultant considers to be due from MBI under or arising out of this document or any alleged breach of it. Any Claim by the Consultant must be in writing and must specify:
 - (i) the legal basis for the Claim, whether based on a term of the document or otherwise, and if based on a term of the document, clearly identifying the specific term;
 - (ii) the facts relied upon in support of the Claim in sufficient detail to permit proper verification and assessment by MBI; and
 - (iii) details of the quantification of the Claim, in all cases showing the basis of the calculations.
- (c) After the expiration of the period for lodging a Final Claim, any Claim which the Consultant could have made against MBI and which has not been made and any upward adjustment to the quantum of the Final Claim made shall be barred.

12 Reimbursement of expenses

Provided that any claim for expenses is submitted in accordance with clause 11 and subject to that clause, MBI will reimburse the Consultant for reasonable expenses incurred by the Consultant in completing the Services, provided that:

- (a) the expenses are incurred:
 - (i) at the request of MBI; and
 - (ii) with the prior written approval of MBI;
- (b) the cost claimed is the out of pocket cost to the Consultant, exclusive of any profit, overhead or other margin or mark up; and
- (c) the Consultant provides to MBI Tax Invoices and other supporting documentation substantiating that the expenses have been necessarily and properly incurred.

13 GST

13.1 Definitions

In this clause:

Term	Definition
GST	has the meaning given to that term in the GST Act.



Term	Definition
Input Tax Credit	has the meaning given to that term in the GST Act.
Joint Venture Operator	has the meaning given to that term in the GST Act.
Recipient	has the meaning given to that term in the GST Act.
Representative Member	has the meaning given to that term in the GST Act.
Supplier	means the entity making the Supply.
Supply	has the meaning given to that term in the GST Act.
Taxable Supply	has the meaning given to that term in the GST Act.

13.2 GST exclusive

Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

13.3 Taxable Supply

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

13.4 Reimbursement or indemnity

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

14 Labour, Plant and Equipment

14.1 Consultant to Supply

The Consultant will supply at its own expense all labour, plant, equipment, tools, appliances or other property and items the Consultant requires to fulfil its obligations under this document, unless otherwise provided in Schedule 1.

14.2 Use of Plant and Equipment

Any plant, equipment, tools, appliances or other property and items that MBI provides to the Consultant to enable it to complete its obligations under this document remain MBI's property and must only be used for the purposes of fulfilling the Consultant's obligations under this document.



14.3 Obligations of Consultant

The Consultant must keep MBI's property in good order and condition, subject to fair wear and tear.

15 Relationship

15.1 Principal and independent contractor

The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.

15.2 No contractual relationship

No contractual relationship will arise between any Personnel and MBI as a result of the Consultant's and MBI's relationship.

15.3 No right or authority

The Consultant does not have the right or authority to act on behalf of or bind MBI unless the Consultant has been expressly authorised by MBI in writing to do so.

15.4 No entitlements

Apart from the Fee, neither the Consultant nor the Personnel is entitled to any fees, payments, commissions, bonuses, wages, holiday pay, long service leave, sick pay, termination pay or any similar entitlement from MBI. The Consultant is solely responsible for providing the Personnel with these entitlements.

15.5 No responsibility

The Consultant is responsible for making appropriate tax deductions and payments and superannuation contributions in respect of any payments or benefits provided to the Consultant by MBI or to the Personnel by the Consultant.

15.6 Representatives

The persons named in Schedule 1 will act as Representatives for MBI and the Consultant respectively and will have authority to act on behalf of that party for all purposes in connection with this document. Subject to clause 6.2, a party's Representative may be changed by notice in writing given to the other party.

16 Confidentiality

16.1 Information to be kept confidential

The Consultant agrees and undertakes that it will keep confidential and will not use for its own purposes and will not without the prior written consent of MBI disclose to any third party, any Confidential Information which may become known to the Consultant as a result of it undertaking the Services.



16.2 Permissible disclosure

The Consultant will not at any time, before, during or after completion of the Services, use or disclose any Confidential Information, for any purpose other than:

- (a) as strictly necessary to complete the Services;
- (b) with MBI's prior written permission; or
- (c) where required to disclose by law.

16.3 Consultant to keep information confidential

If Confidential Information is disclosed in accordance with clause 16.2, the Consultant will:

- (a) 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
- (b) immediately notify MBI in writing of such disclosure.

16.4 Disclosure to Consultant's Personnel

Confidential Information may only be disclosed by the Consultant to those Personnel who:

- (a) have a need to know, and only to the extent that each needs to know, in order for the Consultant to complete the Services; and
- (b) who have agreed in writing to maintain the confidentiality of such Confidential Information prior to any disclosure to them of that Confidential Information taking place.

16.5 Confidentiality undertaking

In accordance with clause 1A(b), the Consultant will, prior to commencement of the Services and as a condition precedent to any entitlement of the Consultant to payment under or pursuant to this document, provide MBI with the original of a confidentiality undertaking in the form found in Schedule 3 signed by the Key Personnel or such other Personnel as may be nominated by MBI.

16.6 Consequence of wrongful disclosure

The Consultant accepts responsibility for any use or disclosure of Confidential Information contrary to clause 16 and will indemnify MBI for any damage, loss, cost or expense suffered by MBI in connection with any such use or disclosure.

17 Intellectual Property

17.1 Assignment of Intellectual Property

The Consultant assigns to MBI all Intellectual Property Rights which may arise in respect of, or as a result of, the performance of the Services and MBI grants to the Consultant a non-transferable, royalty free licence to use those Intellectual Property Rights in the performance of the Services.



17.2 Disclosure of Intellectual Property Rights

The Consultant must disclose to MBI any Intellectual Property Right promptly after it is brought into existence.

17.3 Execution of documents

The Consultant must execute all documents and do all other things reasonably necessary to:

- (a) enable MBI or its nominee to obtain letters patent, design registration or other official protection for MBI's interest in each of its Intellectual Property Rights; and
- (b) assign and transfer to MBI or its nominee the full ownership of each of its Intellectual Property Rights.

17.4 Survival of obligations

The obligations of the Consultant relating to Intellectual Property Rights created or arising pursuant to this document, continue after termination of this document.

17.5 Moral Rights

The Consultant consents to MBI infringing any Moral Rights that the Consultant may have or become entitled to in any Work created in the course of completing the Services. For the purpose of this consent, '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.

17.6 Indemnity

The Consultant agrees and undertakes to preserve MBI's Intellectual Property Rights. The Consultant will indemnify MBI for any damage, loss, cost or expense suffered by MBI arising from or in connection with any claims against MBI in respect of the ownership of or rights to use any intellectual property the Consultant uses, develops or creates and for any breach by the Consultant of clause 17.

18 Non-compliant services

18.1 Rectification of non-compliant Services

If MBI is not satisfied that the Services comply with the requirements of this document, MBI may, at its option:

- (a) require the Consultant, within a reasonable time, to take such steps as are necessary to ensure that the Services comply with this document and the Consultant agrees that no Fee or extra Fee, costs, damages or other Claim will be payable to the Consultant by MBI for any work done to rectify the non-compliance;
- (b) notify the Consultant that MBI rejects the Services which do not comply with this document and the Consultant agrees to refund to MBI any payments made by MBI in respect of the Services which do not comply with this document; or



- (c) rectify, either itself or by others, the Services which do not comply with this document and the Consultant agrees to reimburse MBI for any costs, losses, expenses or damages MBI incurs in rectifying any Services which do not comply with this document, which costs, losses, expenses or damages are deemed a debt due by the Consultant to MBI,

and without limiting any of MBI's other rights, any damages, losses, costs or expenses incurred by MBI pursuant to this clause may be set off in accordance with clause 11.7.

18.2 Consultant's obligations not effected

MBI's rights under clause 18.1 do not in any way change or affect the Consultant's obligations under this document or affect MBI's rights to claim for any cost, expense, loss or damage that MBI may suffer or incur because of the Consultant's failure to fulfil its obligations under this document or to exercise other rights under this document, including under clause 24.2.

19 Delay

19.1 Completion of Services

The Consultant must:

- (a) complete the Services:
- (i) in accordance with this document including the Program;
 - (ii) with due expedition and without delay; and
 - (iii) by the Completion Date; and
- (b) take all possible steps to avoid or if it cannot be avoided, to minimise, any delay.

19.2 Notice of Delay

The Consultant must give written notice to MBI advising:

- (a) all relevant details of any matters causing a delay;
- (b) the duration of the delay;
- (c) the impact of the delay on the time frames (if any) for completion of the Services, the Completion Date and any other requirements including for Deliverables and Milestone Dates as may be set out in this document, including in the Program;
- (d) the Consultant's recommendation as to how to minimise the impact of the delay on its ability to complete the Services in accordance with this document; and
- (e) any other information reasonably requested by MBI,

within five Business Days after becoming aware or within five Business Days from the first time that it ought to have become aware, whichever is the earlier, of anything which is likely to cause, or has caused, delay to the Consultant in providing the Services or which will or may affect the time frames for completion of the Services.



19.3 No liability

MBI will not be liable for any Claim arising from a delay which has not been made strictly in accordance with clause 19.2.

19.4 Review of Claim

On receipt of a notice from the Consultant in accordance with clause 19.2, MBI will review its content and if a request has been made by the Consultant in accordance with clause 19.2, may grant a reasonable extension of time to the Consultant and adjust the Completion Date (and any necessary adjustments to the dates for Deliverables and Milestone Dates) accordingly, provided:

- (a) the delay:
 - (i) has been directly caused by an act, omission or default of MBI;
 - (ii) is critical in that its occurrence will affect the Consultant's ability to provide the Services by the Completion Date;
 - (iii) is not concurrent with a delay for which the Consultant is responsible; and
 - (iv) has not been caused or contributed to, directly or indirectly, by the Consultant; and
- (b) the Consultant has complied with clauses 19.1 and 19.2.

19.5 No additional payment

Except for where the Consultant may become entitled under clause 21.2, the Consultant will not be entitled to any additional payment or to any Claim as a result of any granting of an extension of time to the Completion Date or to the dates for Deliverables or Milestone Dates or for any other Claim, including for delay or disruption.

19.6 Extension of time

MBI may at any time, in its absolute discretion, grant the Consultant an extension of time to the Completion Date or to the dates for Deliverables or Milestone Dates. This clause is for MBI's benefit and MBI will not be required to exercise its discretion under clause 19.6 for the benefit of the Consultant.

19.7 Disputed determination

If the Consultant disputes MBI's determination under clause 19.4, it may refer the matter to be resolved under clause 28 within 10 Business Days after MBI notifies the Consultant of its decision under clause 19.4. Otherwise, MBI will have no further liability with respect to any Claim.

19.8 Earlier completion

MBI may direct the Consultant to complete the Services on a date earlier than the Completion Date and the Consultant must comply with that direction at no extra cost to MBI, unless the Consultant can demonstrate that it will unavoidably incur extra costs.



20 Liquidated damages

20.1 Liquidated damages for delay

The Consultant must pay liquidated damages to MBI in accordance with the amount for liquidated damages described in Schedule 1 for a delay in:

- (a) completing the Services by the Completion Date;
- (b) providing the Deliverables by the dates for Deliverables as set out in Schedule 2 and the Program; and
- (c) achieving the Milestone Dates.

20.2 Genuine pre-estimate

Each party acknowledges that the liquidated damages amount, if any, that is specified in Schedule 1 is a genuine and realistic pre-estimate of the loss and damage that MBI will suffer as a result of a delay.

20.3 Time liquidated damages are payable for

Subject to clause 20.4, liquidated damages are payable by the Consultant from:

- (a) the Completion Date until the date of completion of the Services in accordance with this document;
- (b) the date in which the Deliverable was to be provided until the date the Deliverable is provided; and
- (c) the Milestone Date until the date that the relevant milestone is achieved,

as the case may be.

20.4 No liquidated damages for period of extension

Where MBI has granted an extension of time pursuant to clause 19, no liquidated damages are payable for the period of that extension.

20.5 Without prejudice to other rights

The exercise by MBI of its rights pursuant to clause 20 is without prejudice to any other right of action or remedy which has accrued or may accrue to MBI.

21 Suspension

21.1 Suspension of Services

MBI may at any time, and for any reason, direct the Consultant to suspend the performance of all or any part of the Services and the Consultant must promptly comply with such direction.



21.2 No Claim

For the avoidance of doubt, where the Services are suspended in accordance with clause 21.1, the Consultant has no Claim except where:

- (a) the rights have otherwise accrued under this document prior to the date of the suspension;
- (b) the suspension is not directed as a consequence of any act or omission by the Consultant; and
- (c) the Consultant is able to seek an extension of time pursuant to clause 19.

21.3 Resumptions of Services

MBI may at any time direct the Consultant to resume the performance of the Services or the relevant part of the Services and the Consultant must promptly comply with such a direction at its cost.

22 Insurance

22.1 Insurance required

- (a) The Consultant must take out and keep current at its own expense insurance policies as follows:
 - (i) professional indemnity insurance during the Term and for a period of seven years after the completion of the Services or the Completion Date, whichever is the later. The policy must contain the following provisions:
 - (A) a minimum indemnity limit as described in Schedule 1; and
 - (B) one automatic reinstatement provision;
 - (ii) workers' compensation insurance until the Completion Date and then for a further period of six months, covering liability for loss, damage, claim and all direct or associated costs and expenses arising at common law or under workers' compensation insurance in respect of persons employed by the Consultant;
 - (iii) public liability insurance until the Completion Date and then for a further period of six months, an amount not less than that stated in Schedule 1 in respect of any single occurrence; and
 - (iv) motor vehicle insurance until the Completion Date and then for a further period of six months, covering all liabilities in respect of injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of motor vehicles,

and such insurances must also be in compliance with such further requirements for insurances as described in Schedule 1;



22.2 Consultant to provide documents

Without limiting clauses 1A or 8:

- (a) the Consultant must supply MBI with copies of all schedules or certificates of currency and insurance and policy documents and wording for the insurance policies referred to in clause 22.1 at any time and within five Business Days of a request by MBI; and
- (b) MBI may inspect the schedules of currency, certificates of currency and the Consultant's insurance policy documents and wording, at any time on reasonable notice to the Consultant.

22.3 Cancellation or lapse of Policy

The Consultant must promptly notify MBI of any cancellation or lapse of any policy of insurance required by clause 22.1. If any policy of insurance is cancelled or lapses, MBI may take out equivalent insurance in lieu of the cancelled or lapsed policy and the cost to MBI of so doing will be a debt due and payable by the Consultant to MBI and can be set off against any payments otherwise due to the Consultant under this document..

22.4 Notification of Claims

The Consultant will within five Business Days of any claim arising, notify MBI and keep MBI informed of any claims arising from or relevant to the Services which fall for consideration under any policy of insurance required by clause 22.1.

22.5 Effect of Insurance

Nothing in this clause 21 limits the obligations, liabilities and responsibilities of the Consultant under this document.

23 Indemnity

23.1 Consultant's indemnities

- (a) Without limiting any other part of this document, the Consultant indemnifies and must keep indemnified MBI from and against all Claims of any nature whatsoever which MBI may suffer or incur in connection with loss of life, personal injury, illness or damage to property or nuisance to any third party (including any servant or agent or employee of MBI or the Consultant) arising directly or indirectly from, caused or contributed to or in connection with any act or omission of the Consultant or by any of the Consultant's servants, agents or employees or for any breach of this document.
- (b) The Consultant's liability to indemnify MBI shall be reduced to the extent that an act or omission of MBI contributed to the loss or damage.

23.2 Payment on demand

The Consultant agrees to pay amounts due under this indemnity and under any other indemnity in this document on written demand from MBI.



23.3 Failure to comply

If the Consultant fails to comply with its obligations under clause 23, MBI may make good the damage and if the cost of so doing would, if the Consultant had performed it, have been borne by the Consultant under clause 23, then the cost to MBI of performing such Services or carrying out such repairs or of the carrying out of other things, will be a debt due and owing from the Consultant to MBI.

23.4 Survival of indemnity

Clause 23 survives termination or expiration of this document.

23A Consequential Loss and limits to liability

- (a) Despite anything else contained in this document:
 - (i) the Consultant's liability to MBI under this document in contract or in tort (including negligence) arising from acts or omissions by the Consultant, shall not exceed \$[Insert]; and
 - (ii) the Consultant is not liable for any Consequential Loss.
- (b) The limitation of liability in clause 22A(a) does not apply to limit the Consultant's liability to MBI in relation to:
 - (i) any liability to the extent to which the Consultant receives payment or is entitled to be indemnified pursuant to an insurance policy in respect of that liability;
 - (ii) any liability for which, but for a failure by the Consultant to comply with its obligations under this document, the Consultant would have received payment or been entitled to have been indemnified under an insurance policy effected in accordance with this document;
 - (iii) any liability which arises from any fraud, wilful misconduct, wilful negligence or criminal conduct by the Consultant or any of its subconsultants, subcontractors, suppliers, employees, servants or agents;
 - (iv) the indemnities given in clause 23.1(a) and elsewhere in this document; and
 - (v) any breach of its obligations in respect to Confidential Information under clause 16 or Intellectual Property Rights under clause 17.
- (c) MBI will not be liable to the Consultant or any other person for any Consequential Loss

24 Termination

24.1 Termination by notice

MBI may terminate this document for any reason and without cause by giving a notice in writing to the Consultant of not less than the period of notice specified in Schedule 1 (or if no period is described in Schedule 1, then 10 Business Days) of its intention to terminate under this clause.



In such circumstances and except to the extent that clause 24.5 otherwise provides, no Claim arises. Despite any other part of this document, this clause is exercisable at any time by and solely for the benefit of MBI.

24.2 Termination for default

Despite and without limiting any other provisions of this document, MBI may terminate this document immediately and by written notice if:

- (a) the Consultant is subject to an Insolvency Event;
- (b) the Consultant breaches any Legislative Requirements that, in the reasonable opinion of MBI, may detrimentally affect or place MBI's Activities, funding for the Services the subject of the Project or MBI's reputation at risk;
- (c) the Consultant breaches a Material Term of this document, or fails to remedy a breach of any other term of this document within five Business Days of being directed in writing by MBI to do so ; or
- (d) in the opinion of MBI, the conduct of the Consultant or any Personnel, subconsultant or subcontractor or other agent of the Consultant, damages or is likely to hinder or affect MBI's:
 - (i) ability to efficiently, effectively or properly carry out MBI's Activities; or
 - (ii) relationship with any authority, department, organisation or elected representative managing or administering or implementing any Legislative Requirements.

24.3 Termination by Consultant

If MBI:

- (a) becomes insolvent or enters into a scheme of arrangement with its creditors; or
- (b) fails to pay the Consultant in accordance with this document;

the Consultant may:

- (c) in the case of the default specified in clause 24.3(a), terminate this document by 10 Business Days written notice; and
- (d) in the case of the default specified in clause 24.3(b), terminate this document by written notice if MBI fails to remedy the default within 20 Business Days from the date of delivery of a written notice by the Consultant to MBI specifying the default.

24.4 Return of Confidential Information

Promptly upon the termination of this document, or upon request at any time by MBI, the Consultant will provide MBI with:

- (a) any Confidential Information (including copies);



- (b) any item in respect of which Intellectual Property Rights are held by MBI;
- (c) any property, including records or information belonging to MBI or relating to the Services or the Project;

in the Consultant's possession, power or control, in the form requested by and to the satisfaction of MBI.

24.5 Payment on termination

Subject to MBI's rights under this document on termination in accordance with clause 24.1, MBI will pay to the Consultant the amount of any outstanding Tax Invoices issued in accordance with this document for the Services or part of the Services performed up to the date of termination of this document.

24.6 No representation

Immediately upon and after termination of this document, the Consultant must not represent itself as being an agent or contractor of MBI .

24.7 Effect of termination

- (a) Upon termination of this document:
 - (i) the Consultant is not released from liability in respect of any breach of, or non-performance of, any obligation under this document; and
 - (ii) the Consultant agrees that MBI may immediately appoint such other persons in its sole discretion to complete the Services and this clause does not affect MBI's common law rights.
- (b) Termination of this document by either party is without prejudice to any accrued rights or remedies of each party.

25 Restraint of trade

25.1 Agreed restraint

In consideration of MBI entering into this document with the Consultant, and in order to protect MBI's goodwill and Confidential Information, the Consultant agrees that it will not, in any capacity, directly or indirectly:

- (a) for the Term and for a period of 12 months after the termination or expiration of this document, induce any Personnel, including employees, of MBI to resign for the purpose of engagement in any capacity, directly or indirectly, with the Consultant or another person; or
- (b) induce any of MBI's other contractors, consultants, service providers or suppliers to terminate or restrict their relationship with MBI.



25.2 Validity not effected

The validity of each separate restraint is not affected by the invalidity, if any, of any other restraint.

25.3 Release from restraint

The Consultant may seek MBI's consent in writing to be released from any restraint.

26 Privacy and Personal Information

26.1 Personal Information

If the Consultant collects or has access to Personal information as a result of this Agreement the Consultant must:

- (a) If the Principal is an "agency" within the meaning of the *Information Privacy Act 2009*, comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Agreement as if the Consultant was the Principal;
- (b) Not use Personal Information other than for the purposes of performing the services requested under this Agreement, unless required or authorised by law.
- (c) Not disclose Personal Information without the consent of the Principal or Customer, unless required or authorised by law;
- (d) Not transfer Personal Information outside of Australia without the consent of the Principal;
- (e) Ensure access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;
- (f) Ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on this Agreement under this clause;
- (g) Fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individuals Personal Information and to privacy complaints; and
- (h) Comply with such other privacy and security measures as the Principal advises the Consultant from time to time.

26.2 Executed Deed of Privacy

On request by the Principal the Consultant will obtain from its employees, officers and sub-contractors engaged for the provision of the services under this Agreement, an executed deed of privacy in a form acceptable to the Principal.

26.3 Breach

- (a) The Consultant must immediately notify the Principal on becoming aware of any breach of clause 25.1.



27 Representations and warranties

In addition to the representations and warranties and other promises made in this document, including in clauses 3 and 5, the Consultant further represents and warrants to MBI that:

- (a) it and the Personnel engaged in completing the Services, possess the necessary skills, qualifications, training and experience to perform the Consultant's obligations pursuant to this document and complete the Services in a diligent and professional manner;
- (b) it will not infringe the Intellectual Property Rights of any third party or otherwise breach any law or obligation to any third party in the performance of its obligations pursuant to this document or in completing the Services; and
- (c) at the date of this document no Conflict of Interest exists or is likely to arise in the performance of its obligations pursuant to this document. If during the Term of this document a Conflict of Interest or risk of conflict of interest arises, the Consultant must notify MBI in writing of that conflict or risk,

and acknowledges that MBI has relied on those representations and warranties and other representations and warranties and promises made in this document, in entering into this document. The representations and warranties given in this clause and elsewhere in this document are regarded as repeated during the Term with respect to the facts and circumstances then subsisting.

28 Dispute resolution

28.1 Mediation

Any dispute or difference whatsoever arising out of or in connection with this document must be:

- (a) notified in writing by one party to the other; and
- (b) submitted to mediation for resolution in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

28.2 Termination of mediation

If:

- (a) within 60 days of the written notice referred to in clause 28.1(a), the dispute or difference has not been resolved in mediation; or
- (b) at any time either MBI or the Consultant reasonably considers that the other party is not acting reasonably in respect to the mediation process,

then the mediation may be terminated by written notice given by one party to the other.

28.3 Rights unaffected

Any dispute or difference not resolved in accordance with clause 28.1 may be the subject of litigation.



28.4 Continued performance

Despite the existence of a dispute or difference or mediation or litigation in respect to the dispute or difference, MBI and the Consultant agree to continue to perform their obligations under this document.

29 Conflict of Interest

29.1 Acknowledgement

MBI and the Consultant acknowledge and agree that for reasons including:

- (a) the Confidential Information in the Consultant's knowledge and possession; and
- (b) the Consultant's potential involvement in or knowledge of **[Insert]**,

a Conflict of Interest may arise.

29.2 If a Conflict of Interest arises

Without limiting clause 29.1 or any other part of this document, in the event that a Conflict of Interest arises, or there is in the minds of either party a real, perceived, anticipated or identified risk of a Conflict of Interest arising, then:

- (a) the Consultant must advise MBI in writing within 24 hours of such a Conflict of Interest or risk of Conflict of Interest arising or MBI must advise the Consultant as the case may be; and
- (b) if a discussion in Good Faith between MBI and the Consultant cannot satisfactorily resolve the Conflict of Interest, then without limiting the document, the Consultant will act as directed by writing by MBI and MBI may terminate this document effective immediately by notice in writing given by MBI to the Consultant in that respect.

27A Novation of Consultant

There is no intention held by the parties that the Consultant may be novated (or assigned or transferred) to perform a role as a professional services provider to any other person for or in connection with the Project. Without limiting this document, the Consultant agrees not to consult or provide professional services or advice to any other person in connection with the Project without first obtaining the prior written consent of MBI, which consent (if given) may be on terms satisfactory in all respects to MBI.

30 Notices

30.1 Method of giving notice

A notice, consent or communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;



- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
 - (i) delivered by hand to that person's address;
 - (ii) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address; or
 - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.

30.2 When is notice given

A notice, consent or communication delivered under clause 30.1 is given and received:

- (a) if it is hand delivered or sent by fax:
 - (i) by 5.00pm (local time in the place of receipt) on a Business Day on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day on the next Business Day; and
- (b) if it is sent by post, three Business Days after posting.

30.3 Address for notices

A party's address and fax number are those set out in Schedule 1, or as one party may notify the other of a change of such address or fax number in writing.

31 General

31.1 Amendments

This document may only be amended by written agreement between all parties.

31.2 Counterparts

This document may be executed in any number of counterparts. All counterparts together make one instrument.

31.3 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

31.4 Entire agreement

- (a) This document supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.



- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this document.

31.5 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

31.6 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

31.7 Governing law and jurisdiction

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

31.8 Severability

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.



Schedule 1

Details

Commencement Date:	
Representatives of the parties:	<p>MBI:</p> <p>Consultant:</p>
Address for Notices:	
Term:	From the Commencement Date until the Completion Date or if for a set period of time [Insert] .
Milestones Dates:	[Insert – cross refer to Schedule 2 and 4]
Completion Date (or if Services to be provided in stages and by Milestone Dates, the separate Completion Date for each stage and Milestone Dates – refer Program):	[Insert]
Key Personnel:	[Insert Consultant details]
Fee:	The Fee is [Insert details either as hourly rate or lump sum, including for any expenses] and is calculated in the manner as may be further described in Schedule 5.
Intervals for Invoices	[Insert e.g. monthly]
Liquidated Damages:	<p>For each day of delay in completing the Services by the Completion Date [Insert - \$]</p> <p>For each day of delay in providing a Deliverable by the date for that Deliverable described in this document and the Schedules [Insert - \$]</p> <p>For each day of delay in achieving a Milestone Date by the Milestone Date described in this document and the Schedules [Insert - \$]</p>
Notice of Termination (23.1):	10 Business Days.
Insurance:	<p>Public liability insurance with a limit of liability of not less than \$20 million.</p> <p>Professional indemnity insurance with a limit of liability of not less than \$10 million.</p> <p>Insurance in compliance with applicable workers' compensation legislation in respect of the Personnel. MBI is not responsible for and is not obliged to maintain such a policy in respect of the Consultant or its Personnel.</p>



Schedule 2

Services

[Insert description – including of 'Deliverables' and cross refer to 'Program' in Schedule 4]



Schedule 3

Confidentiality undertaking

Confidentiality undertaking

Dated:

By

Recipient **[Insert Key Personnel name]**

C/o of **[Consultant name]** ABN **[Insert]** of **[Insert address]**

BACKGROUND

- A. Under an agreement **[Insert description, date, number etc.]** (**Agreement**) made between Mackay Basketball Incorporated (**MBI**) and **[Consultant name]** (**Consultant**) the Consultant agreed to cause the Recipient to enter into this Undertaking.
- B. In consideration of MBI entering into the Agreement with the Consultant, the Recipient agrees to the terms of this Confidentiality Undertaking for the benefit of MBI and its successors and assigns.

NOW THIS DEED WITNESSES

- 1 The expressions used in this Undertaking have the same meaning as those used in the Agreement referred to in the Background.
- 2 The Recipient covenants and agrees to take all action necessary to maintain the confidential nature of the Confidential Information.
- 3 The Recipient covenants and agrees not to:
 - (a) disclose any of the Confidential Information to any person without MBI's prior written consent;
 - (b) use or reproduce any of the Confidential Information for any purpose other than for the performance of Services to MBI under the Agreement;
 - (c) use any of the Confidential Information:
 - (i) in a manner which might prejudice the businesses of MBI or otherwise cause loss or damage to MBI; or
 - (ii) for the purpose of providing a competitive advantage to the Consultant or a third party.
- 4 The Recipient acknowledges that damages are not a sufficient remedy for any breach of this Undertaking and that MBI is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Recipient in addition to any other



remedies available to MBI at law, in equity or pursuant to statute concerning the Consultant under the Agreement.

- 5 The Recipient covenants and agrees to deliver to MBI all documents and other materials (including copy documents) in any medium in the Recipient's possession, power or control which contain or refer to any of the Confidential Information (whether or not those documents and other materials were created by the parties) on the earlier of:
- (a) demand by MBI; and
 - (b) the time the documents and other materials are no longer required for the performance of Services to MBI under the Agreement.

Signed by the Recipient as a deed

▲ _____
Signature of Recipient

▲ _____
Signature of witness

▲ _____
Name of witness (print)



Schedule 4

Program

[Insert including for 'Deliverables' and any 'Milestone Dates']



Schedule 5

Fee (calculation)

[Insert]



Execution

EXECUTED as an agreement in Queensland

Signed by
Mackay Basketball Incorporated **ABN INSERT** by
its duly authorised officer on ____ / ____ / ____ in the
presence of:

_____ Signature of witness	_____ Signature of Authorised Officer
_____ Name of witness (print)	_____ Full Name of Authorised Officer
_____ Name of witness (print)	_____ Office Held

Signed by
[Consultant name] ABN **[Insert]** by its duly
authorised officer on ____ / ____ / ____ in the presence
of:

_____ Signature of witness	_____ Signature of Authorised Officer
_____ Name of witness (print)	_____ Full Name of Authorised Officer
_____ Name of witness (print)	_____ Office Held