Issues Resolution Advisor (IRA) Agreement – C7835.TIC.IRA

Transport Infrastructure Contract

July 2023

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Three party agreement

Dated: <*Insert Date*>

Parties

1. The State of Queensland represented by the Department of Transport and Main Roads **(the Principal)**
2. <Insert name of Contractor> <Insert ABN / ACN> <Insert Address> in the State of Queensland **(the Contractor)**
3. **Issues Resolution Advisor (IRA)**, namely:

<Insert name of IRA company> <Insert ABN> <Insert Address>

Services to be performed by <insert name of the IRA> <insert mobile number>

Background

1. The Principal and the Contractor have entered into a Contract for <insert Contract name, number, description> **(the Contract)**.
2. Both the Principal and the Contractor have agreed to the appointment of <Insert name of IRA company> as the IRA with the work to be performed by <insert name of the IRA>.
3. Clause 47 of the General Condition of Contract of <insert Contract number> provides for a Dispute resolution process through the establishment and the operation of an IRA to assist in resolving Disputes under the Contract.
4. This Agreement sets out the rights, obligations and duties of the IRA, the Principal and the Contractor in relation to the IRA and any Dispute(s).

# Definitions and interpretation

## Definitions

In this Agreement:

|  |  |
| --- | --- |
| Term | Definition |
| Agreement | this Agreement |
| Contract | the specific Contract identified in this Agreement |
| Direction | a written statement marked ‘Direction’ made by the IRA to all Parties |
| Dispute | has the same meaning as under Clause 47 of the General Conditions of Contract |
| Parties | the Principal, Contractor and the IRA |
| Works | has the same meaning as under Clause 2 of the General Conditions of Contract |

## Interpretation

In this Agreement, headings and underlining are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

1. words importing the singular include the plural and vice versa
2. words importing a gender include any gender
3. an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency
4. a reference to a part, Clause or Party, is a reference to a part and Clause of, and Party to, this Agreement
5. the Parties agree that if there is any inconsistency between the terms of this Agreement and the Contract, the terms of this Agreement shall prevail.

This Agreement is effective as at the date all Parties sign this document and shall continue for the duration of the process described in Clause 15 of this Agreement unless terminated earlier in accordance with clauses 10 or 11 of this Agreement.

# IRA formation

The Parties acknowledge that the IRA:

1. has been formed, and
2. shall perform its obligations.

# IRA obligations

## Impartiality

The IRA agrees to consider fairly and impartially the Disputes referred to the IRA.

## Independence

The IRA agrees to act independently in the consideration of facts and conditions relating to a Dispute.

## IRA duty

The IRA agrees to act honestly when performing the duties and functions required by this Agreement.

## General duties

The IRA agrees to carry out its obligations as the IRA:

1. with due care and diligence
2. in compliance with the Contract and in accordance with this Agreement, and
3. in compliance with all applicable laws, regulations and other statutory requirements.

## Dispute avoidance and prevention

Each IRA Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the Principal and the Contractor in avoiding or preventing Disputes from arising under the Contract and if a Dispute cannot be avoided or prevented, to decide it in accordance with Clause 47 of the Contract and this Agreement.

# Principal’s commitment and responsibilities

Except for its participation in the IRA's activities as provided in the Contract and this Agreement, the Principal shall:

1. not solicit advice or consultation from the IRA on matters dealing with the resolution of issues which may compromise the IRA's integrity
2. act in good faith towards the IRA, and
3. comply with the reasonable requests and Directions of the IRA.

# Contractor’s commitment and responsibilities

Except for its participation in the IRA's activities as provided in the Contract and this Agreement, the Contractor shall:

1. not solicit advice or consultation from the IRA on matters dealing with the resolution of Disputes which may compromise the IRA's integrity
2. act in good faith towards to the IRA, and
3. comply with the reasonable requests and any Directions from the IRA.

# Confidentiality

In relation to all confidential information disclosed between the Parties during resolution of a Dispute, the IRA agrees:

1. to keep that information confidential
2. not to disclose that information, except to a Party or representative of that Party participating in the Dispute resolution if it is compelled by law to do so
3. not to use that information for a purpose other than the resolution of the Dispute, and
4. to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

Confidential information includes, but is not limited to, the documents and information as defined in Clause 8.9 of the General Conditions of Contract.

# Conflict of Interest

The IRA shall be neutral, act impartially and be free of any conflict of interest.

For the purpose of this Clause, the term ‘Issues Resolution Advisor’ also includes the IRA’s current primary or full‑time employer and ‘involved’ means having a contractual relationship with either Party to the Contract or any other entity, such as a subcontractor, design professional or consultant having a role in the Works.

Prohibitions and disqualifying relationships for the IRA include:

1. an ownership interest in any entity involved in the Contract or a financial interest in the project, except for payment for services under this Agreement
2. previous employment by, or financial ties to, any Party involved in the Works within a period of two years prior to award of the Contract, except for fee‑based consulting services on other projects
3. a close professional or personal relationship with any key member of any entity involved in the Works which, in the judgement of either Party, could suggest partiality
4. prior involvement in the Project of a nature which could compromise the IRA's ability to participate impartially in the IRA's activities
5. employment, including fee‑based consulting services, by any entity involved in the Works, except with the express approval of both the Principal and Contractor, and
6. discussion concerning, or the making of an agreement with, any entity involved in the Works regarding employment after the Works are completed.

If an IRA Member, during the term of appointment as an IRA Member, becomes aware of any circumstance that might reasonably be considered to affect the IRA Member's capacity to act independently, impartially and without bias, the IRA Member must inform the Principal and the Contractor and the other IRA Members.

# Liability

## Liability

The IRA is not liable to either the Principal or the Contractor for any act or omission done in good faith and with due care and diligence.

## Due care and diligence

For the purpose of Clause 8.1 of this Agreement, the Parties agree that the IRA's act shall have been done in good faith and with due care and diligence unless a reasonable person in the position of the IRA would not have so acted or would not have made such an omission.

# Indemnity

## Indemnity

In signing this Agreement, the Principal and the Contractor each release the IRA from all claims including without limitation claims by third parties, the Principal and the Contractor may otherwise have for any act or omission done in good faith and with due care and diligence.

## Due care and diligence

For the purpose of Clause 9.1 of this Agreement, the Parties agree that the IRA's act shall have been done in good faith and with due care and diligence unless a reasonable person in the position of the IRA would not have so acted or would not have made such an omission.

# Termination of Agreement

This Agreement may be terminated by mutual written agreement of the Principal and the Contractor. Should an agreement be reached between the Principal and the Contractor to terminate this Agreement, the IRA has no right of objection to the termination of this Agreement.

# IRA resignation

## IRA resignation

The IRA may resign from the IRA position by providing four weeks’ written notice to all of the other Parties to this Agreement.

## IRA re‑appointment

A replacement IRA shall be appointed in accordance with the Contract, subsequent to a previous IRA resigning or being terminated from this Agreement. The Parties and IRA acknowledge that they and the new IRA shall enter into a replacement Agreement similar to this document as a condition of a valid re‑appointment under the terms of the Contract and the Agreement.

# Governing law

This Agreement must be governed by, and construed in accordance with, the laws of the State of Queensland and all Parties hereby submit to the jurisdiction of the Courts of Queensland.

# Relationship of the Parties

This Agreement is not intended to create any partnership, agency or joint venture with respect to any one or more of the Parties.

# Notices

All notices must be in writing and sent to the addresses on Page 1 of this Agreement unless the Party has notified to another Party a change of address.

# The process

All Parties to this Agreement must comply with the document Broad Outline of Process for settlement of Dispute, which is attached to this Agreement.

Following the issue of a Notice of Dispute under Clause 47 of the Contract, and the matter has been referred to the IRA in accordance with the Contract, all Parties to this Agreement shall endeavour to meet or better the timetable of:

1. <Within X business days>, the Principal and the Contractor shall submit all of their respective documentation (including, but not limited to, their respective written submissions, expert reports (if any), relevant contractual correspondence exchanged between the Principal and the Contractor over the course of the Project, source documentation and data) to the IRA.
2. <Within Y business days>, the IRA shall have considered all documentation submitted to it by the Principal and the Contractor, including any documentation submitted to it in response to a Direction issued by the IRA.
3. <Within Z business days>, the Parties shall attend a further meeting to provide verbal responses to any questions asked by the IRA and to receive the IRA’s opinion with respect to the Contractor’s entitlement to the claims including time. <Time assessment from IRA to be advised by the IRA upon initial review>
   1. If the IRA’s opinion is that there exists an entitlement of claim, the IRA shall determine a fair and reasonable framework for calculating quantities and costs.
   2. If not previously agreed between the Contractor and the Principal, the IRA shall determine a fair and reasonable entitlement for extension of time for each Separable Portion as defined under the Contract.
   3. The intention is that the IRA works with the Principal and the Contractor so that the IRA’s determination for quantum of costs and time (where applicable) is accepted by both parties.
4. <Within X weeks>, the IRA shall provide its final opinion (in writing) regarding the Dispute for both quantum of costs and time (where applicable).

The dates contained within this Clause 15 of this Agreement may be changed by mutual agreement between the Principal and the Contractor and subject to advice from IRA.

# Payment

As per Clause 49 of the General Conditions of Contract.

Executed as a Deed

|  |  |
| --- | --- |
| Signed, sealed and delivered by a duly authorised delegate of the Director‑General, Department of Transport and Main Roads in the presence of: | Signature of officer |
|  |
| Signature of witness | Name of officer |
|  |  |
| Name of witness | Office held |
|  |  |

|  |  |
| --- | --- |
| Executed by [Contracto*r*] in accordance with Section 127 of the Corporations Act2001 (Cth): | |
| Signature of Director | Signature of Director / company secretary (Please delete as applicable) |
|  |  |
| Name of Director | Name of Director / company secretary |
|  |  |

|  |  |
| --- | --- |
| Signed by the IRA in the presence of: | |
| Signature of witness | Issues Resolutions Advisor (IRA) |
|  |  |
| Name of witness | Name of the IRA |
|  |  |

Broad outline of process for settlement of dispute

1. Overarching objective
   1. Resolve Dispute(s) in a timely and cost effective manner.
   2. To achieve this, it is incumbent on each Party to approach the negotiations
      1. with good will
      2. in good faith, and
      3. in an honest, open and frank manner

that ensures that all issues to be considered are on the table in a respectful and transparent manner.

1. Initial meeting <Principal to advise time, date and location of the first meeting>

The purpose of this meeting is: <Amend if necessary>

* 1. for the IRA to declare any associations or interests and for the Parties to decide on the relevance of these in regard to the role of the IRA
  2. for the Parties to sign the three Party Agreement
  3. to allow the Parties to discuss and amend the draft process proposed by the IRA, with guidance from the IRA
  4. to allow the Contractor and the Principal to present their views on the issues of Dispute
  5. to discuss the handover of relevant documentation by each Party to the IRA
  6. to establish the frequency of meetings, including monthly Site meetings, and
  7. to establish a timetable for resolution.

1. Reading and assessment of information provided

The Principal and Contractor shall keep the IRA informed of relevant issues from time to time. The IRA may require clarification on some issues. When this occurs, the IRA shall email the request to the provider of the initial information and copy the other Party in on the email. Either Party may provide a response to the request. The other Party may also comment on the response. The IRA expects that this response and comment process on any request, generally, shall not take more than two business days.

1. Additional meeting (time, date and location to be determined)

The IRA may request additional meetings if there is any Dispute.

At this meeting, the IRA shall determine the existence of a basis of claim(s) or otherwise and provide reasons for such determination. If in the IRA’s view, there is no basis for claim(s) under the Contract, then the Parties are free to continue action under the Disputes resolution procedure contained within the Contract. If in the IRA’s view, a basis of claim(s) exists, then this meeting shall explore methodologies for valuation of such claim(s).

1. Valuation process

If required, the IRA shall facilitate a process whereby the Parties, with the IRA’s guidance, work together to arrive at an agreed valuation. Where no agreement on valuation exists, then the IRA shall provide a valuation with reasons. In doing this, the IRA may request written submissions from both Parties. If required, the IRA may seek valuation and/or time advice from an experienced and competent civil estimator and/or scheduler familiar with estimating the cost of like or similar work and who has no close association with either Party.

1. Final reporting

The IRA shall submit a final report to all Parties before the end of its service or subject to mutual agreement of the Principal and Contractor.