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QUEENSLAND RAIL LIMITED  
SERVICES CONTRACT

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THIS CONTRACT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**BETWEEN:**

Queensland Rail Limited (ACN 132 181 090) a Company registered in Australia carrying on business in accordance with the Corporations Act 2001, having its Registered Office at Floor 15, 295 Ann Street, Brisbane, in the State of Queensland (“Queensland Rail”)

**AND:**

\_\_\_\_\_ (“Contractor”)

**RECITALS**

- A. Queensland Rail requires the provision of the Services stated in the Specification.
- B. The Contractor offered to perform the Services.
- C. The Parties agree the Contractor will provide the Services in accordance with these terms and conditions.

The Parties agree as follows:-

**1. INTERPRETATION**

In these Conditions:

“Claim(s)” means any action, proceeding, claim, demand, damage, loss (including personal injury), cost, liability or expense including the cost and expense of defending or settling any action, proceeding, claim or demand.

“Contract” means this agreement under which the Services are to be provided to Queensland Rail.

“Contractor” means the entity providing the Services and includes the officers, employees, agents and sub-contractors (and their employees and agents) of the Contractor.

“Contract Sum” means the Sum stated in the schedule of products or the rates stated in the Schedule of Quantities and Rates accepted by Queensland Rail.

“Personal Information” has the same meaning as defined under the *Privacy Act 1988 (Cwth)*.

“Queensland Rail” means Queensland Rail Limited (ACN 132 181 090) a Company registered in Australia carrying on business in accordance with the Corporations Act 2001, having its Registered Office at Floor 15, 295 Ann Street, Brisbane, in the State of Queensland and includes its employees, servants and agents.

“Representative” means the officer of Queensland Rail nominated in the schedule appointed as such under this Contract.

“Services” means the Services described in the Specification.

“Specification” means that document particularising the Services required by Queensland Rail.

“Tax Saving” means the amount of any savings obtained by the Contractor during the New Tax System transition period as a result of the New Tax System changes in respect of any supplies under the Contract.

Words importing a gender include any other gender. Words in the singular number include the plural and words in the plural number include the singular.

Any expression used in this Contract which is defined in the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* or in the *Competition and Consumer Act 2010 (Cth)* has the same meaning in this Contract as so defined.

## **2. TERM**

The Contractor shall carry out the Services in a conscientious, responsible, expeditious and professional manner for the term stated in the schedule.

## **3. WARRANTY**

The Contractor warrants that it, its officers, employees, sub-contractors and agents are competent and possess the necessary skills to carry out the Services.

## **4. ASSIGNMENT**

Unless a party has obtained the prior written consent of the other, it may not (nor may it attempt to do so):

- 1) assign all or any part of its right, title or interest in this Contract; or
- 2) novate this Contract.

## **5. PAYMENT**

- 1) The Contractor's claims in respect of the Contract Sum or any part thereof shall be made at monthly intervals in the month during which the Services were undertaken.
- 2) Provided the Services are undertaken satisfactorily Queensland Rail shall pay to the Contractor the Contract Sum, part thereof or such fees or rates due and owing to the Contractor within 30 days of the date of the Contractors claim.
- 3) Should the Contractor incur expenses (other than those included in the Contract Sum) and provided those expenses are authorised by Queensland Rail and incurred pursuant to the Contract, the Contractor shall in its claims include those expenses.
- 4) The Contract Sum or any rates which total the Contract Sum shall include any applicable government taxes, levies (including Superannuation Guarantee payments), fees or charges (and any increase thereto) applicable to undertaking the Services.

**5.1. GST**

- 1) In this clause “GST” and “Tax Invoice” have the same meaning as in the *A New Tax System (Goods & Services Tax) Act 1999 (Cwth)*.
- 2) If GST is payable on any supply made under this Contract then:
  - a) The consideration to be paid or provided under this Contract will increase to include GST;
  - b) The Contractor will provide a GST Tax Invoice stating the amount of GST payable by the Contractor for that supply and evidence it is a registered supplier for the purposes of GST.
  - c) Queensland Rail must pay the GST to the Contractor for the supply together with and at the same time as the consideration payable for the supply is paid;
  - d) The Contractor shall ensure any tax savings, at the time of rendering the GST Tax Invoice, are passed on to Queensland Rail;
  - e) The Contractor shall do all things necessary to enable Queensland Rail to claim an input tax credit under GST law for any cost or outgoing under the Contract.

**6. VARIATION OF CONTRACT**

- 1) This Contract constitutes the entire agreement between the parties, supersedes all prior representations or understandings between the parties as to the subject matter of the Contract and the terms of same shall not be varied unless the consent of both parties shall first be obtained in writing.
- 2) Should Queensland Rail direct the Contractor to increase, decrease, omit, discontinue or change the scope of the Services (Variations) the Contractor shall immediately perform the Variation.
- 3) The value of the Variation shall be agreed in writing between the parties and if no agreement can be reached a reasonable rate shall be determined by the Representative.

**7. TOOLS**

The Contractor shall at its own cost where necessary provide to its employees, agents or servants all tools, equipment, consumables, personal protective equipment, safety helmets and boots necessary to undertake the Services.

**8. INSURANCE**

- 1) Before commencing the Services the Contractor shall take out a policy or policies of public liability insurance to cover against personal injury, loss or damage arising from any cause whatsoever until the Contractor ceases to be responsible for undertaking the Services. The policy or policies of insurance shall be for an amount not less than the amount stated in the schedule for each event.
- 2) Where required by the Representative all policies of insurance shall note the interests of Queensland Rail as an insured and include a cross waiver of liability clause insofar as any such personal injury, loss or damage arises out of the indemnity provisions in this Contract. Where required by the Representative the Contractor shall allow the Representative to inspect the said policies of insurance and provide to the Representative copies of the said insurances and any renewal certificates in respect of those insurances.

**9. INDEMNITY**

- 1) The Contractor shall at its own risk undertake the Services pursuant to the terms of this contract and in compliance with all relevant statutes, regulations, ordinances and by-laws relevant to the provision of the Services.
- 2) The Contractor releases and indemnifies Queensland Rail, its servants and agents from all Claims whatsoever which may be made or brought against them or any of them by any person in respect of or arising out of any negligence or other wrongful act or omission of the Contractor, its servants, employees, sub-contractors or agents or any other persons and Claims of or to the Contractor, its sub-contractor or their respective servants, employees, agents or visitors.
- 3) The Contractor agrees that if it makes any claim against Queensland Rail for loss as a result of breach of this Contract and that loss is contributed to by the Contractor's own actions, then liability for the Contractor's loss will be apportioned as is appropriate having regard to the respective responsibility for the loss and the amount the Contractor may recover from Queensland Rail will be reduced to the extent of the Contractor's contribution to that loss.

**10. INDUSTRIAL RELATIONS**

The Contractor shall be responsible as part of the Contract Sum to ensure all persons employed or engaged by it in undertaking the Services are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be entitled to as a result of any appropriate statute, ordinance, subordinate legislation, award, industry agreement, contract of employment, determination, judgment, order of any competent court, board, commission or other industrial tribunal in force in relation to the Services.

**11. CONFIDENTIALITY**

- 1) The Contractor shall keep confidential and not without Queensland Rail's consent disclose to any person any information acquired or produced in connection with the Services.
- 2) In order to comply with Queensland government legislation and policy requirements, Queensland Rail may disclose details of this Contract:

- a) on the Queensland Government QGCPO e-Tender website; or
- b) if required by the Right to Information Act 2009; or
- c) to its shareholding ministers; or
- d) as otherwise required by law or Queensland Government policy.

**12. AGENCY**

Neither the Contractor nor its employees, servants, agents or sub-contractors shall without the consent of Queensland Rail represent themselves as being an employee or agent of Queensland Rail.

**13. TERMINATION/REDUCTION OF CONTRACT SERVICES**

- 1) If the Contractor receives a notice from Queensland Rail that the scope of the Services has been reduced or this Contract has been terminated or discontinued, the Contractor shall reduce or discontinue the Services in accordance with the notice, immediately take all steps necessary to minimise any loss suffered by it and be entitled to claim reasonable compensation from Queensland Rail.
- 2) The Contractor's compensation shall not exceed the sum of all moneys payable to the Contractor up to the date of Termination which includes a pro-rata amount payable to the Contractor for Services satisfactorily performed up to the date of Termination in full and final satisfaction of all its claims pursuant to this Contract.
- 3) Queensland Rail may, by giving 14 days notice in writing to the Contractor, terminate this Contract without compensating the Contractor where the Contractor fails to undertake the Services in a satisfactory manner or the Contractor, commits an act of bankruptcy, is declared bankrupt, enters into any scheme of arrangement, composition or proceedings for the purpose of administration, is placed under official management, is placed in receivership, liquidation or administration.
- 4) Should the Contractor or any sub-contractor, employee, servant or agent of the Contractor who is undertaking the Services be unable to undertake the Services for any reason including, but not limited to sickness then the Contractor shall ensure that any replacement sub-contractor, employee, servant or agent is able to immediately replace the sub-contractor, employee, servant or agent and undertake identical services at no extra cost to Queensland Rail as that presently being supplied to Queensland Rail pursuant to this Contract.
- 5) Queensland Rail may at any time during the term of this Contract terminate this Contract without any reason being given, by giving 30 days notice in writing to the Contractor. Upon this Contract being terminated pursuant to this subclause, the limit of compensation payable by Queensland Rail to the Contractor shall be the sum of any amounts payable to the Contractor pursuant to Clause 13.2 hereof for services undertaken prior to the said notice of termination.

**14. DISPUTE RESOLUTION**

Where the parties hereto are in dispute regarding any manner concerning the provision of the Services, either party may by notice in writing to the other require such dispute be referred for resolution to an independent expert acceptable to both parties. If the parties cannot agree upon an independent expert within 7 days of receipt of a notice from the other then the expert shall be nominated by the president of the time being of the Law Society of Queensland. The independent expert shall act as an expert and not as an arbitrator. Any costs incurred by either party shall be borne by either party as the independent expert may direct.

**15. APPLICABLE LAW**

This Contract shall be governed by and construed in accordance of the laws of the State of Queensland.

**16. SEVERABILITY**

In the event any one or more of the provisions herein contained is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**17. WAIVER**

Failure by Queensland Rail to enforce a provision of this Contract shall not be construed as a waiver by Queensland Rail of any right in respect to that provision or any other provision of the Contract.

**18. TIME**

Time is and always shall be of the essence of the Contract.

**19. SECURITY**

- 1) The Contractor shall within seven days of the date of this Contract or before commencing the Services lodge with Queensland Rail security by way of an unconditional bank guarantee in the sum stated in the schedule for the purpose of ensuring the Contractors due and proper performance of the Contract
- 2) Provided the Contractor has undertaken the Services in accordance with this Contract Queensland Rail shall at the completion of this Contract release the Contractor's Security.

**20. QUALITY ASSURANCE**

The Contractor shall maintain a quality management system in respect to the services which complies with the quality assurance standard stated in the schedule.

**21. OPTION – CONTRACT EXTENSION**

Queensland Rail may, in its absolute discretion, extend the term of this Contract for an additional twelve (12) months (“Additional Term”) by giving thirty (30) days notice to the Contractor before the expiry of the term. If Queensland Rail extends the term of this Contract for an Additional Term Queensland Rail may extend for a further period of twelve (12) months (“Further Additional Term”) by giving thirty (30) days notice to the Contractor before the completion of the Additional Term.

**22. STAMP DUTY**

The Contractor shall be responsible for and shall pay any stamp duty payable in respect of this Contract.

**23. NOTICES**

A notice is required to be given under this Contract shall be in writing, addressed to the party to be notified and delivered to that parties address, sent by pre paid mail to that parties address or transmitted by facsimile to that parties address.

**24. DELAYS**

- 1) If for any reason the Contractor is unable to promptly perform the Services at such times and at such rates as may be reasonable in the opinion of the Representative, Queensland Rail shall be entitled to engage substitute providers to perform those Services during such time as the Contractor is unable to do so.
- 2) The Contractor shall reimburse Queensland Rail the amount (if any) by which the sum paid to such substitute Service providers by Queensland Rail exceeds the sum that will be payable to the Contractor in accordance with the rates or Contract sum referred to in this Contract.

**25. WORKPLACE HEALTH & SAFETY**

- 1) On and from the term of this Contract the Contractor shall be responsible for and assume liability for its obligations pursuant to the *Workplace Health & Safety Act 1995* as amended (WHS Act).
- 2) The Contractor shall indemnify and keep indemnified Queensland Rail against all liabilities which may be imposed under or which may arise out of enforcement of any section of the WHS Act or its regulations.
- 3) The Contractor acknowledges that its employees, agents or subcontractors must not be affected by alcohol or drugs when they:
  - a) sign on for work, or
  - b) are on duty, or
  - c) are on call or are required to provide professional safety related advice and give safety related instructions when not on duty, or

- d) are acting on behalf of Queensland Rail but executing functions or duties at the request of a principal contractor or third party operator.
- 4) The Contractor agrees and acknowledges that Queensland Rail may:
  - a) by either breath or saliva sample, at any time, conduct random tests for alcohol and/or drugs on its personnel, agents or subcontractors who enter Queensland Rail land or sites; and
  - b) exclude from any Queensland Rail land or sites any Contractor's personnel, agents or subcontractors who test positive to drugs or whose alcohol reading exceeds 0.00%.
- 5) The Contractor shall have appropriate risk management systems and safety management systems in place and shall comply with the provisions of the Transport (Rail Safety) Act 2010.

**26. PRIVACY**

- 1) The Contractor must not without Queensland Rail's prior written consent divulge or communicate to any person any Personal Information regarding Queensland Rail or its employees, officers or agents, which may come to its knowledge in the course of carrying out the Contract.
- 2) The Contractor must ensure that the provisions of this clause are extended to its officers, employees, agents or subcontractors.
- 3) The Contractor acknowledges that a breach of these obligations would be harmful to the interests of Queensland Rail and the Contractor agrees to indemnify Queensland Rail for any loss or damage suffered as a result of the unauthorised use or disclosure of Personal Information divulged under this Contract.
- 4) The Contractor warrants that they have adequate processes in place and will comply with the National Privacy Principles prescribed under the *Privacy Act 1988 (Cwth)*.

**27. COMPLIANCE WITH QUEENSLAND RAIL POLICIES**

The Contractor its employees and agents shall whilst undertaking Services for Queensland Rail comply with the requirements of all Queensland Rail policies standards and specifications including but not limited to the Queensland Rail Code of Conduct in force, introduced or amended during the term or any extended term of the Contract.

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SERVICES CONTRACT – CONDITIONS

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The parties hereto have executed this Contract on the date first above written.

Signed for and on behalf of )

Queensland Rail Limited (ACN 132 181 090) )

by a duly authorised officer in the )

presence of: )

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(Witness)

Signed for and on behalf of )

)

by a duly authorised officer in the )

presence of: )

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(Witness)

## SCHEDULE

Clause 1	Contract Sum	
Clause 1	Representative	
Clause 2	Term	
Clause 8 1)	Amount of Insurance	
Clause 19 1)	Security	
Clause 20	Quality Assurance Standard	
Clause 21	Contract Extension Period	