



AGREEMENT

BETWEEN

**SHOALHAVEN BUSINESS CHAMBER INC
ABN 61 060 567 686**

AND

**NAME
ABN**

CONSULTANCY AGREEMENT

THIS AGREEMENT is made _____ 2019

BETWEEN

Shoalhaven Business Chamber (SBC) of 5/21 Kinghorne Street, Nowra NSW 2541

AND

NAME of ADDRESS
("the Consultant")

WHEREAS

- A. SBC requires an Awards Manager to organise the Annual SBC Business Awards ("the Awards").
- B. SBC wishes to engage the Consultant as the Awards Manager for the SBC and the Consultant has agreed to be engaged pursuant to the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

- 1.1 "**Agreement**" means this document including all Schedule(s) and Annexure(s);
- 1.2 "**Confidential Information**" means any information or data, whether or not in a material form, which is confidential to SBC, including confidential information acquired, collected or developed for the purpose of the Services or obtained under this Agreement, whether disclosed before or after the commencement date, except that which is already in the public domain otherwise than as a result of a breach of this Agreement;
- 1.3 "**Contract Material**" means all material brought into existence pursuant to this Agreement, or for the purpose of performing the Services under this Agreement, including but not limited to documents, equipment, information and data stored by any means including Intellectual Property rights therein;
- 1.4 "**Awards Manager**" means the persons or bodies party to this Agreement engaged to perform the Services of the Awards Manager as outlined in Schedule 1 and includes officers, employees, agents and authorised sub-contractors (and their employees and agents) utilised by the Awards Manager;
- 1.5 "**Awards Manager Fee**" means the fee referred to in Clause 4.2 and Item 3 of Schedule 1;
- 1.6 "**Intellectual Property**" includes all industrial and intellectual property rights including but not limited to copyright, future copyright, patents, trade/business or company names, registered and unregistered trademarks, registered designs, trade secrets, know-how, rights in relation to circuit layouts and all other rights of intellectual property as recognised by the law in force in New South Wales;

- 1.7 “**Representative**” of a Party includes an employee, agent, officer, director, auditor, advisor, partner, or subcontractor of that Party;
- 1.8 “**Services**” means the services described in Item 2 of Schedule 1 and Schedule 2;
- 1.9 “**SBC Materials**” means any documentation, information, data or material including electronic information or data given by SBC to the Consultant by whatever means; and
- 1.10 “**Term**” means the term for the provision of Services as outlined in Item 1 of Schedule 1 and 2.

2. ENGAGEMENT AND TERM

- 2.1 SBC will engage the Consultant to provide the Services in accordance with this Agreement and as detailed in the Schedules.
- 2.2 Where the commencement date is earlier than the date upon which the last party signs this Agreement, the parties agree to be governed by the terms of this Agreement from the commencement date, notwithstanding the date of execution of this Agreement.

3 AWARDS MANAGER’S OBLIGATIONS

3.1 Due Diligence

The Consultant must perform the Services:

- (a) in a diligent manner and with all necessary skill and care expected in accordance with the provisions of such Services; and
- (b) in accordance with all representations and warranties as to the Consultant’s experience and ability expressly or impliedly made by this Agreement, or by law.

3.2 Timely Provision of Services

- 3.2.1 The Consultant must perform the Services expeditiously and in accordance with any time limits specified in the Schedule(s).

3.3 Warranties

The Consultant warrants that it:

- (a) is a legal business entity;
- (b) provides to the public, services similar to the Services provided to SBC; and
- (c) will notify the Australian Taxation Office of all income derived from this Agreement.

3.4 SBC Materials

- 3.4.1 The Consultant accepts all responsibility for the secure guardianship of SBC Materials provided by SBC to the Consultant.
- 3.4.2 Upon completion of this Agreement or in the event of termination, the Consultant must as soon as practicable return to SBC, SBC Materials and the Contract Material.

3.5 Confidentiality

- 3.5.1 No Party shall disclose Confidential Information of another Party except as otherwise permitted by this clause.
- 3.5.2 The Consultant must not without the prior written consent of SBC disclose any Confidential Information to any person not a party to this Agreement other than as necessary for the purposes of performing its obligations under this Agreement.
- 3.5.3 The Consultant shall use the same degree of care as it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain the Confidential Information.
- 3.5.4 The Consultant agrees to disclose Confidential Information to its Representatives on a need to know basis only and agrees to procure an undertaking from those Representatives that is similar to the obligations of the Consultant as contained in this clause.
- 3.5.5 Notwithstanding the foregoing, the Consultant may disclose Confidential Information, and SBC authorises the Consultant to make such disclosures as required by:
 - (a) operation of law or court order, subject to the Consultant or parties giving SBC reasonable notice of any proposed disclosure to enable SBC to seek a protective order or other remedy to prevent the disclosure; or
 - (b) the rules of any stock exchange with which the Consultant is bound to comply; or to:
 - (i) directors of the Consultant's company; and/or
 - (ii) the Consultant's auditors, legal or other advisors.
- 3.5.6 Within 30 days of:
 - (a) completion of the Services;
 - (b) termination of this Agreement; or
 - (c) receipt of written notice from SBC,

the Consultant will return or destroy, as directed by SBC, all forms of the Confidential Information in its custody or control, including all materials containing Confidential Information.

3.6 Privacy

The Consultant must comply with SBC's Privacy Policy and the Information Protection Principles contained in the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Privacy Act (Cth)* to the extent that those principles apply to the types of activities the Consultant is undertaking under this Agreement.

3.7 Conflict of Interest

- (a) The Consultant warrants that it has no conflict of interest in the performance of the Services as at the date of this Agreement.
- (b) Immediately upon becoming aware of the existence, or possibility of a conflict of interest affecting the Consultant, the Consultant must advise SBC in writing, in which event SBC reserves its rights to terminate this Agreement.
- (c) If the Consultant is also a member of the SBC Executive Committee or a sub-committee of the SBC, the Consultant must stand down from any such position for the term of this Agreement.

3.8 Access

3.8.1 The Consultant must upon reasonable notice from SBC provide access to SBC or SBC's Representative in order for SBC to inspect, discuss or assess the provision of the Services.

3.8.2 The Consultant must, within seven days of receiving a written request by SBC, provide SBC with immediate access to the following information contained in records held by the Consultant:

- (a) information that relates directly to the performance of the services provided to SBC by the Consultant pursuant to this Agreement;
- (b) information collected by the Consultant from members of the public or members of the SBC to whom it provides, or offers to provide, the services pursuant to this Agreement; and
- (c) information received by the Consultant from SBC to enable it to provide the services pursuant to this Agreement.

3.8.3 For the purposes of clause 3.8.2, information does not include:

- (a) information that discloses or would tend to disclose the Consultant's financing arrangements, financial modelling, cost structure or profit margin;
- (b) information that the Consultant is prohibited from disclosing to SBC by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- (c) information that, if disclosed to SBC, could reasonably be expected to place the Consultant at a substantial commercial disadvantage in relation to SBC, whether at present or in the future.

3.8.4 The Consultant will provide copies of any of the information in clause 3.8.2, as requested by SBC, at the Consultant's own expense.

- 3.8.5 Any failure by the Consultant to comply with any request pursuant to clause 3.8.2 or clause 3.8.4 will be considered a breach of an essential term and will allow SBC to terminate this Agreement by providing notice in writing of its intention to do so, with the termination to take effect seven days after receipt of the notice. Once the Consultant receives the notice, if it fails to remedy the breach within the seven day period to the satisfaction of SBC, then the termination will take effect seven days after receipt of the notice.

3.9 Use of SBC Logos

The Consultant must ensure that all correspondence, contacts and activities undertaken for the Awards will be made on the SBC Business Award stationery or SBC stationery and will carry both logos.

4 SBC OBLIGATIONS

4.1 Provide Information

SBC will as soon as practicable or as required by this Agreement, make available to the Consultant all relevant instructions, information, documentation or data or any other material as required for the performance of the Services.

4.2 Fees

- 4.2.1 The SBC will pay to the Consultant the agreed Awards Manager Fee as outlined in Item 3 of Schedule 1 for the management and staging of the 2019 Shoalhaven Business Awards which will be paid in monthly instalments commencing February 2019 upon the receipt of a correctly rendered tax invoice.

- 4.2.2 The SBC will reimburse the Consultant for expenses incurred on behalf of SBC in providing the Services. For the purpose of making a claim for reimbursement, the Consultant must submit a fully itemised list of expenses, including any GST paid, to SBC on a monthly basis. All reimbursements must be approved by SBC and be incurred by the Consultant in accordance with the agreed budget.

- 4.2.3 For the avoidance of doubt, the SBC will collect all revenue raised by the Consultant in providing the Services and will be responsible for rendering the invoices to third parties for income received on behalf of the SBC. The Consultant must request all invoices to be rendered by the administrative staff employed by the SBC. This includes all income received for sponsorship of the Awards.

5 VARIATIONS

SBC may request in writing the Consultant to vary the Services provided the variation is within the general scope of the Services. The variation, including fees for the variation, must be agreed in writing between the parties prior to the variation being implemented.

6 INTELLECTUAL PROPERTY

- 6.1 Subject to Clause 6.2 ownership of Intellectual Property in or in relation to SBC Material or Contract Material vests upon its creation in SBC.

- 6.2 The Consultant must, upon request of SBC, do all things necessary to vest ownership and title of Intellectual Property in SBC. If ownership of or title in Intellectual Property in relation to Contract Material is not capable of being vested in SBC under Clause 6.1 because the Consultant itself does not own that Intellectual Property, the Consultant must at its cost ensure that SBC is suitably and irrevocably licensed to use that Contract Material or Intellectual Property.
- 6.3 The Consultant must ensure all licence fees and/or consents required under law are paid and/or obtained in connection with any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services.
- 6.4 The Consultant agrees to indemnify SBC for any demand, cost and expense made, sustained, brought or prosecuted as a result of any breaches by the Consultant of the Intellectual Property rights of third parties whilst performing the Services under this Agreement.

7 INDEMNITY

- 7.1 Subject to clause 7.2 the Consultant agrees to indemnify SBC against any claim or demand, made or prosecuted in any manner, arising from an injury to a person (including death) or any damage to any property, where such injury or damage was caused by any wilful or negligent act or omission of the Consultant, its employees or agents, in connection with this Agreement.
- 7.2 The Consultant's liability to indemnify SBC under clause 7.1 shall be reduced proportionately to the extent that any lawful or negligent act or omission on the part of SBC contributed to the injury or damage.

8 INSURANCE

- 8.1 The Consultant will, for so long as any obligations remain in connection with this Agreement, effect and maintain:
- (a) public liability for an amount of not less than \$10,000,000;
 - (b) professional indemnity insurance for an amount not less than \$1,000,000; and
 - (c) workers' compensation insurance if required by law.
- 8.2 Wherever requested the Consultant will provide SBC with a copy of any insurance policy affected in accordance with the preceding subclause and/or a certificate of currency.

9 NEGATION OF EMPLOYMENT AND AGENCY

- 9.1 The Consultant shall not represent itself, and shall ensure that its employees and agents do not represent themselves, as being employees or agents of SBC.
- 9.2 The Consultant shall not by virtue of the Agreement be, or for any purpose be deemed to be, an employee or agent of SBC.

10 TERMINATION

- 10.1 Either party may forthwith terminate this Agreement if:
- (a) the other party commits a breach of this Agreement or is in default of any warranty hereunder; and

(b) unless otherwise specified, the defaulting party fails to correct such breach or default within 14 days of receiving notice specifying such breach or default.

10.2 SBC may terminate this Agreement for convenience by providing 30 days written notice.

10.3 Where this Agreement has been terminated by SBC in accordance with clause 10.2, SBC will pay the Fee for work done to the date of termination.

11 TERM

11.1 This Agreement will commence on the date of last signature of this Agreement and will continue until the date of completion specified in the Schedules.

12 GENERAL

12.1 *Notices.* All notices and consents required or permitted to be given under this Agreement shall be in writing and given by personal service, pre-paid postage, facsimile transmission or telex transmission at the addresses of the parties set out in Item 5 of the Schedules or to such other address as either party may designate to the other by written notice.

12.2 *Assignment.* Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written permission of the other.

12.3 *Governing Law.* This Agreement shall be governed by the laws of the State of New South Wales and the parties submit to the jurisdiction of the courts of that state.

12.4 *Modification.* This Agreement may be modified only in writing signed by duly authorised persons for both parties.

12.5 *Severability.* If any provision of the Agreement should be held to be invalid in any way or unenforceable, the remaining provisions shall not in any way be effected or impaired thereby, and this Agreement shall be construed so as to most nearly give effect to the intent of the parties as it was originally executed.

12.6 *Survival.* Clauses 3.5 (Confidentiality), 3.8 (Access), 6 (Intellectual Property), 7 (Indemnity), 8 (Insurance) and this clause 12 (General) shall survive expiry or earlier termination of this Agreement.

12.7 *Subcontracting.* The Consultant agrees that it will not subcontract any part of the Services without the written consent of SBC's authorised delegate. The Consultant remains fully responsible for the performance of the Services and for ensuring compliance with this Agreement, and will not be relieved of that responsibility because of any approved subcontracting of the Services.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

EXECUTED for and on behalf of
SBC (ABN 61 060 567 686) by its authorised representative, who warrants by his or her signing that he or she has authority to sign this Agreement

.....
Signature of authorised delegate Name and Position of signatory

.....
Date of Signature

.....
Signature of Witness Print Name of Witness

EXECUTED for and on behalf of
NAME (ABN)
by its authorised representative, who warrants by his or her signing that he or she has authority to sign this Agreement

.....
Signature of Awards Manager Name and Position of signatory

.....
Date of Signature

.....
Signature of Witness Print Name of Witness

SCHEDULE 1 - AWARDS MANAGER

Item 1 Term of Agreement

Commencement date: Date of Signing

Completion date: 1 October 2019

Item 2 Services

The Awards are the major event on the SBC event calendar and provide SBC with an opportunity to celebrate local business growth and success. They also provide a platform to showcase SBC. The Awards place SBC in the media spotlight from the launch to post gala Award night event, providing an opportunity for membership growth and highlighting the chamber's success in providing support for local businesses.

Oversight of the Awards process and gala dinner are the responsibility of the SBC Awards Committee of the SBC. It is the responsibility of the Events Manager to manage the organisation of the Awards in its entirety and to report regularly to the SBC Awards Committee on matters including: -

1. progress reports, milestones and engagements;
2. management of the 2019 Business Awards budget;
3. submit requests for expenditures in line with the approved budget ;
4. engagement of sponsors and secure sponsorship for the event; and
5. entertainment, inclusions and theming.

The tasks and responsibilities of the Events Manager include without limitation:

1. Work with the SBC Awards Committee to establish an approved budget and manage expenditure in line with the approved budget or as amended from time to time. For the purpose of organising the budget, based on historical data, the SBC expects 100 award entries spread over all categories and a minimum of 400 attendees to the gala Awards night.
2. Management and delivery of the Awards within budget including promotion of the Awards, the co-ordination of Award entries and organising and producing the Awards night.
3. Organise, provide secretariat support to and attend regular meetings with the SBC Awards Committee
4. Provide regular financial reports and progress reports to the SBC Awards Committee, including a post event report.
5. In collaboration with the Awards Committee, identification and finalisation of Award categories.
6. Develop and implement a marketing and promotions plan to generate Award applications in all categories AND meet ticketing sales targets for the Awards dinner including
 - a. Preparation of information for web site and social media;
 - b. Preparation of promotional material including flyers, advertising, social media posts and gala Awards night program to a standard acceptable by the Awards Committee;
 - c. Engagement with members and local businesses for the purpose of garnering Award entries and ticket sales via email, mail, phone, face-to-face visits, Facebook and newsletters;
 - d. Work with the media organisations, Power/2st & WIN TV to design radio and television promotions of a standard acceptable by the Awards Committee; and
 - e. Organise media releases for approval by the SBC Awards Committee.

7. Identification of sponsors and the presentation and execution of sponsorship proposals.
 8. Liaise with Award entrants, judges and sponsors and maintain confidentiality at all times.
 9. Co-ordinate the delivery of sponsorship benefits to the Awards sponsors and write sponsor reports at the conclusion of the process.
 10. Under the direction of the Chairperson of the SBC Awards Judging Panel (as appointed by the SBC Awards Committee), to organise, provide secretarial support to and attend meetings for the SBC Awards Judging Panel process including:
 - a. Identification of judges;
 - b. Organise judges meetings and judging conflict and confidentiality forms; and
 - c. Update and distribute Judging information packs.
 11. Obtain quotes for identified activities associated with the gala Awards night and secure bookings of those services upon approval from the Awards Committee.
 12. Organise the launch of the Awards which will include without limitation a small morning tea and media coverage. For the avoidance of doubt, all media coverage must be approved by the Awards Committee.
 13. Organise the entertainment, host and speakers for the gala Awards night.
 14. Organise the after party for the Awards night.
 15. Organise a finalists and sponsors evening two weeks prior to the gala Awards night.
- Other activities as identified in consultation between the Awards Manager and the Awards Committee from time to time.

Item 3 Fee

**Fee to be entered after tender process finalised.
To be paid in monthly instalments**

Item 4: Services provided SBC

1. It is agreed that the SBC Office Staff will provide basic administrative assistance for the event organiser including but not limited to:
 - Ticketing sales support
 - Judging process documentation preparation and assistance
 - Emailing and correspondence requirements
 - Invoicing & payment/cash receipting
 - Other duties as agreed by all parties including the SBC Awards Committee

Item 5 Key Dates/indicative timeline

Award Launch/entries open	Monday 13 May 2019
Entries close	Monday 8 July 2019
Judging Commences	Monday 15 July 2019
Judging completed	Tuesday 13 August 2019
Final judges meeting	Wednesday 14 August 2019
Finalists and sponsors evening	16 August 2019
Business Awards Gala Dinner	30 August 2019 (cannot be changed)