

General Conditions of Contract - Services



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General Conditions of Contract

General Conditions of Contract (Services)

Part A - Definitions and interpretation

A.1 Definitions

In this Contract, the following terms will, if not inconsistent with the context, have the meanings indicated:

Access Requirements means the requirements for access to Council Premises to perform the Services specified in the Reference Table;

Benchmarking Exercise is the process to benchmark the Services described in Clause D.6.4;

Business Day means any day other than a Saturday, Sunday, or public holiday that is observed by the Council;

Commencement Date means the date the Service Provider is required to commence the Services pursuant to Clause E.2;

Confidential Information means:

- (a) all information provided to the Service Provider by or on behalf of the Council in relation to this Contract;
- (b) all information produced by the Service Provider in the performance of the Services; and
- (c) information pertaining to the Council's business plans, strategies, sales, costs, profits and fixture and equipment details;

but does not include:

- (d) information already in the public domain other than due to a breach of this Contract; or
- (e) any information, disclosure of which is required by law;

Consultant means the person lodging the quotation forming part of the Contract Documents.

Contract means this Contract, including all of the Contract Documents;

Contract Documents means those documents described in the Reference Table;

Contract Manager means the person described in the Reference Table or any other person subsequently appointed by the Council and Notified to the Service Provider from time to time;

Contract Price means the amount described in the Reference Table;

Contract Risks means all risks associated with the performance of the Services (whether ascertainable or not) including risks associated with or arising in relation to:

- (a) all Industrial Requirements;
- (b) all delays, cost increases, re-execution of work or modification of the methodology for the performance of the Services caused by:
 - (i). adverse site or weather conditions;
 - (ii). the physical conditions and characteristics of the site (including sub-surface, latent conditions or hidden Under Performances and asbestos or contamination of any kind) and its surroundings;



- (iii). the Services progressing at a rate different than may have been anticipated by the Service Provider; or
- (iv). the availability and occupation of part of the Services as described in this Contract; and
- (v). the availability of labour or materials necessary for the performance of the Services;

Council or City of Melbourne means the **Melbourne City Council**;

Council's Equal Opportunity and Discrimination and Harassment Policies means any policies, guidelines and procedures of the Council relating to Equal Opportunity Laws, discrimination or harassment as amended from time to time;

Council Equipment includes equipment, tools or materials owned, hired or leased by the Council;

Council Information and Material includes any information or material (whether in writing, oral or electronic form) that is the property of or in the possession of the Council, including any information or material that may be used by the Service Provider in the performance of the Services including documents, equipment and data;

Council Policies and Procedures include any policy, procedure, publication or guideline of the Council (as amended from time to time) that is:

- (a) specifically identified as such in the Reference Table;
- (b) the subject of a Direction; or
- (c) publicly available and relevant to the Services or the Contract;

Council Premises includes any site, location, property, office, work-space, storage facility or building for which the Council is responsible;

Deed of Release means a deed in the form as contained in this document;

Defective Performance Period means the period commencing in accordance with this Contract, and ending at the expiration of the period described in the Reference Table;

Direct or Direction means any instruction, decision, demand or determination given by the Contract Manager or the Council to the Service Provider;

Equal Opportunity Laws means *Equal Opportunity Act 2010 (Vic)*, *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)*, and *Disability Discrimination Act 1992 (Cth)* and any other statute of similar nature;

Equipment and Materials includes any equipment and materials used in the course of performing the Services;

Extended Term means the aggregate of any periods of time by which the Council elects to extend the Term, starting immediately after the expiration of the Initial Term;

Industrial Requirements means any requirement (whether Legislative Requirement or merely reflective of good industrial practice) including any requirement, obligation or prohibition arising under:

- (a) the *Accident Compensation Act (Vic)*;
- (b) any code of conduct which is included in or referred to in this Contract or which is a Contract Document;
- (c) any code of practice issued from time to time pursuant to the *Occupational Health and Safety Act 2004 (Vic)*;



- (d) any site agreement relevant to or applicable to the site upon which the Services are being carried out; and
- (e) any enterprise bargaining agreement executed between the Service Provider and any relevant union;

Initial Term means the period of time stated in the Reference Table, starting on the Commencement Date;

Input Tax Credit has the same meaning as in the A New Tax System (Goods and Services Act) 1999 (Cth);

Insolvency Event means:

- (a) if the Service Provider is an individual - where the Service Provider:
 - (i). becomes bankrupt;
 - (ii). files or is served with a petition in bankruptcy or bankruptcy notice;
 - (iii). makes an assignment for the benefit of creditors;
 - (iv). becomes bound as a debtor by any scheme of arrangement;
 - (v). executes as a debtor any deed of assignment or deed of arrangement; or
 - (vi). has a mortgagee or other creditor take possession of any asset;
- (b) if the Service Provider is a company - where the Service Provider:
 - (i). becomes insolvent;
 - (ii). enters into official management or a scheme of arrangement with creditors or any class or group of creditors;
 - (iii). has a receiver or manager appointed to it or any asset or undertaking;
 - (iv). has an administrator, provisional liquidator or liquidator appointed; or
 - (v). has any secured or other creditors take possession, or appoint an agent to take possession, of any asset;

Intellectual Property means all copyright, patents, and all other rights throughout the world in relation to inventions, registered and unregistered trademarks (including service marks) and registered designs, whether or not in existence on the Commencement Date;

Invoicing E Mail Address means the electronic mail (email) address described as such in the Reference Table, or such other e mail address, nominated in writing by Council from time to time.

KPIs means the key performance indicators referred to in Clauses D.2 and includes new KPIs as agreed by the Council and the Service Provider from time to time in accordance with Clause D.4;

Legislative Requirements includes each of the following as enacted, amended or repealed from time to time:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards, proclamations, of:
 - (i). The Commonwealth of Australia;
 - (ii). The State or Territory in which the Services or any part of the Services is being carried out; or
 - (iii). Any local government authorities;
- (b) The Building Code of Australia;
- (c) Certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of the Services;



- (d) Federal or State awards, or enterprise agreements;
- (e) Council Policies and Procedures; and
- (f) Any fees and charges payable in connection with the foregoing;

Moral Rights means the rights conferred on authors of works by the *Copyright Act 1968* (Cth);

Normal Business Hours means the hours specified in the Reference Table;

Notice or Notified means a notice given in accordance with Clause J.4;

Notice of Dispute means a notice served pursuant to Clause L.2;

Part means a part of this Contract;

Performance Security means an unconditional undertaking payable to the Council for the amount specified in the Reference Table;

Reference Table means the Reference Table to this Contract;

Rise and Fall means an increase or decrease (as the case may be) in the Contract Price arising pursuant to this Contract;

Rise and Fall Clause means Clause G.3;

Senior Representative means a representative of the Council or a representative of the Service Provider as the case may be who has actual authority to resolve a dispute or difference arising under this Contract;

Services means the Services to be provided by the Contractor as described in the Schedule (refer **consultant** definition when applicable to scope).

Services include:

- (a) the services described in the Reference Table; and
- (b) the performance of work; and
- (c) the supply of materials; and
- (d) all other things required to be done under this Contract by the Service Provider as described in the Contract Documents; and
- (e) any matter reasonably implied from the Contract Documents or trade usage;

Service Provider means the party described in the Reference Table;

Service Provider's Premises includes any site, location, property, office, work-space, storage facility or building required or used by the Service Provider in connection with the Services;

Service Provider's Representative means the person described in the Reference Table, or such other person appointed by the Service Provider under this Contract;

Specification means the Specification referred to in the Reference Table and any modification of the Specification as Directed;

Specified Personnel means the personnel listed in the Reference Table;

Substituted Services means that part of the Services performed by a party other than the Service Provider where there has been Under Performance;

Tax Invoice has the same meaning as in the *A New Tax System (Goods and Services Act) 1999* (Cth);

Taxable Supply has the same meaning as in the *A New Tax System (Goods and Services Act) 1999* (Cth);

Tender Closing Date means the return date for Tenders referred to in the Tender Form;



Term means the period starting on the Commencement Date and ending on the earlier of:

- (a) the expiration of a period equal to the length of the Initial Term if the Council has not given Notice to the Service Provider to extend the Term; or
- (b) the expiration of a period equal to the length of the Initial Term plus the Extended Term if the Council has given Notice to the Service Provider to extend the Term; or
- (c) the date on which the Contract is terminated by either the Service Provider or the Council in accordance with this Contract or otherwise at law;

Under Performance includes:

- (a) any service that is not in accordance with this Contract;
- (b) any service which is required to be performed or provided as part of the Services that has not been performed or supplied; or
- (c) any loss of or damage to Council Equipment, Council Information and Material, Council Premises, or other property or material of the Council for which the Service Provider is responsible for or has access to under this Contract;

Valid Tax Invoice means a Tax Invoice submitted in accordance with Clauses G.1.3 (k) and (l);

Valuation Clause means Clause G.6 of this Contract;

Variation means any increase, decrease or omission from any part of, or all of the Services.

A.2 Interpretation

Headings are for ease of reference only and do not affect the interpretation of this Contract.

Unless the context clearly requires otherwise, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) one gender includes all other genders;
- (c) a person includes any type of entity or body of persons, partnership, body corporate, association, government, governmental or local authority, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (d) a party includes its executors, administrators, successors and permitted assigns;
- (e) a document or agreement, including this Contract, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a paragraph, part or schedule means a paragraph or part of, or schedule or to, this Contract;
- (g) any legislation or statutory instrument or regulation is to be construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- (h) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them occurring at any time before or after the date of this contract.
- (i) '\$' is a reference to Australian currency;
- (j) a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed;
- (k) a unit of measurement of any physical quantity is a reference to the Australian legal unit of measurement within the meaning of the *National Measurement Act 1960* (Cth);
- (l) a term of inclusion shall not be interpreted to be a term of limitation.



No rule of construction is to be applied to the disadvantage of the Council on the basis that the Council has put forward, or was responsible for the preparation of, the Contract or any part of the Contract.

The Council's rights under this Contract are in addition to, and do not limit, the Council's rights at law.

Part B - Parties' Primary Obligations

B.1 Service Provider's primary obligations

The Service Provider must perform the Services:

- (a) in accordance with this Contract; and
- (b) in a manner that complies with the Legislative Requirements.

B.2 Council's primary obligations

The Council must pay to the Service Provider any moneys that become due and payable pursuant to this Contract.

Part C - The Services and Scope

C.1 Services by others

The Council may engage others to perform the Services.

C.2 Reporting on scope

Within the period of five (5) Business Days following the end of each month during the Term, the Service Provider must submit to the Contract Manager a written report containing information required by, and in a form approved by, the Contract Manager.

Unless notified otherwise, the report must contain at least the following information:

- (a) status of all the Services performed to date;
- (b) Services performed in the previous month, including personnel, Equipment and Materials used;
- (c) the Service Provider's program, including use of personnel, Equipment and Materials, for the upcoming month;
- (d) failures by the Service Provider to comply with its obligations under this Contract;
- (e) directions received during the previous month and the Service Provider's action in response to those Directions;
- (f) complaints made against the Service Provider in the performance of the Services.

C.3 Personnel

C.3.1 Specified Personnel

The Service Provider must ensure the Specified Personnel perform the Services.

C.3.2 Replacement of Specified Personnel

The Service Provider must not replace any Specified Personnel unless:

- (a) the Contract Manager first approves the replacement personnel;



- (b) a Direction has been given directing the replacement of such Specified Personnel;
- (c) the Specified Personnel dies, retires or resigns or otherwise suffers from ill health; or
- (d) the Specified Personnel's part of the work under this Contract is completed.

The Service Provider shall promptly fill any vacancy of Specified Personnel with a person approved by the Contract Manager.

C.4 Changes of scope

C.4.1 Variations

The Service Provider may be directed to perform a Variation. No Variation, either alone or in combination with other Variations, shall invalidate this Contract.

Subject to this Clause, the entitlement to direct a Variation is unlimited, and is not subject to any restriction under any principle of law including any restriction as to the nature, extent, value or timing of the Variation which may be directed.

C.4.2 Service Provider must perform Variations

The Service Provider must:

- (a) if directed, perform a Variation;
- (b) not vary the Services except as Directed.

C.4.3 Variation Information

The Service Provider may be directed to provide any information on a proposed Variation ('**Variation Information**').

The Service Provider must provide the Variation Information within five (5) Business Days of such a Direction, or such longer period agreed by the Contract Manager.

If the Contract Manager wishes to proceed with the proposed Variation, the value of the proposed Variation shall be determined in accordance with the Valuation Clause.

C.5 Subcontracting

C.5.1 Required approval

The Service Provider must, by Notice, request the Contract Manager's approval before subcontracting the Services. The Contract Manager is under no obligation to provide reasons for any decision under this Clause.

The Service Provider may be directed to provide information in support of its request to subcontract, including evidence that the proposed subcontractor is capable of performing the Services.

C.5.2 Service Provider's responsibility

The Service Provider is not relieved from any liability or obligation under this Contract because of the Contract Manager's approval to subcontract. Approval to subcontract does not create any obligation or liability on the Council.

C.6 Assignment

The Service Provider shall not, without the prior written approval of the Council, assign the Contract or any payment or any other right or benefit or interest there under.

The Council may, without the consent of the Service Provider, assign the Contract or any payment or any other right, benefit or interest under the Contract.



C.7 Performance of Services by others

The Council may perform, or engage others to perform, services which are deleted from the Services pursuant to a Direction or which are of a similar or identical nature to the Services. The Service Provider is not entitled to any compensation as a result of the Council exercising this right.

C.8 Other contracts

The Service Provider is at liberty to accept contracts to provide services to parties other than the Council during the term of this Contract provided that the acceptance of any such contract does not interfere with the Service Provider's obligations under this Contract.

C.9 Transition

C.9.1 Transition in plan

In the lead up to the Commencement Date and after, the Service Provider must implement the Transition in plan as contained in the Invitation to Tender and any subsequent negotiations.

C.9.2 Transition out plan

In the six months (or such lesser period as agreed by the Council acting reasonably) prior to the expiration of the Term, the Service Provider must implement the transition out plan as contained in the Invitation to Tender and any subsequent negotiations.

Part D - Quality and KPIs

D.1 Standard of performance

The Service Provider must perform the Services in accordance with the standards required under this Contract and KPIs.

D.2 KPIs

The Reference Table contained within the ITT document will indicate whether Alternative 1 or Alternative 2 applies to this Contract. The alternative that does not apply is deemed deleted.

Alternative 1 – KPIs

The Service Provider is required to perform the Services in accordance with the KPIs identified in the Invitation to Tender and any subsequent negotiations.

Alternative 2 – KPIs to be established

Within three months of the Commencement Date, the Council and the Service Provider will agree KPIs to measure the Service Providers delivery of the Services covering areas such as customer service and quality, timeliness and responsiveness, innovation and ongoing cost reduction measures.

D.3 Performance against KPIs

Performance of the Services against the KPIs will be measured periodically at the intervals identified in the Reference Table. The Service Provider will work with the Council in measuring the performance against the KPIs.

D.4 New and amended KPIs

The Service Provider will work with the Council to agree on new KPIs.

D.5 Under Performance



D.5.1 Notification of Under Performance

If the Service Provider becomes aware of any Under Performance, the Service Provider must advise the Contract Manager as soon as practicable.

D.5.2 In the event of Under Performance

In the event of any Under Performance the Contract Manager may:

- (a) direct the Service Provider to re-perform the relevant part of the Services;
- (b) direct the Service Provider to take steps to negate the prejudice suffered by the Council by reason of the Under Performance;
- (c) notify the Service Provider that the Council accepts the Services as performed and reduces the Contract Price by the greater of:
 - (i) fair compensation to the Council for the existence of the Under Performance; or
 - (ii) the saving enjoyed by the Service Provider by reason of the Council accepting the Services as performed;
- (d) after non-compliance by the Service Provider with a Direction under paragraph (a), or after the expiration of the Defective Performance Period, engage others to perform the Substituted Services; or
- (e) do any combination of the above.

The Service Provider is not entitled to any remuneration or compensation in respect of any Notice or Direction under this Clause.

D.6 VALUE FOR MONEY AND BENCHMARKING

D.6.1 Value for Money

The parties agree that it is their mutual intention that the Services will be performed in a manner and at a cost to the Council which represents, and continues to represent, value for money to the Council.

D.6.2 Council's Right to Benchmark

The Council may:

- (a) if it reasonably comes to the view that the provision of the Services on the basis provided for in this Contract might not represent value for money to the Council; or
- (b) at any time later than 18 months prior to the expiration of the Term, undertake the Benchmarking Exercise.

The Contract Manager must advise the Service Provider of the Council's intention to undertake the Benchmarking Exercise.

D.6.3 Service Provider's Obligations

The Service Provider must, at its cost:

- (a) upon request, make available to the Contract Manager, and representatives of the Council, all information available to the Service Provider in relation to:
 - (i) the costs the Service Provider incurs in providing the Services;
 - (ii) the overhead and other costs that the Service Provider allocates in respect of the provision of the Services;



- (iii) the standard of performance of the Services by the Service Provider; and
- (b) cooperate with the Contract Manager, and representatives of the Council, in relation to the undertaking of the Benchmarking Exercise.

D.6.4 The Benchmarking Exercise

The benchmarking exercise shall be undertaken as follows:

- (a) the Contract Manager will appoint an advisor to undertake the benchmarking exercise;
- (b) the advisor may be an employee of the Council;
- (c) the Contract Manager will advise the Service Provider of the appointment of and the identity of the advisor;
- (d) the advisor will procure and review the information required to be provided by the Service Provider under Clause D.6.3;
- (e) the advisor will procure and review other information relevant to the issue of whether the provision of the Services on the basis provided for in this Contract represent value for money to the Council;
- (f) the advisor may seek advice from third parties in relation to the interpretation of the information procured by it and the issue of whether the provision of the Services on the basis provided for in this Contract represent value for money to the Council;
- (g) the advisor will report to the Contract Manager on the issue of whether the provision of the Services on the basis provided for in this Contract represent value for money to the Council; and
- (h) the report of the advisor and all material produced by the advisor or by or on behalf or for the Council shall be confidential to the Council and shall not be made available to the Service Provider.

D.6.5 Council Proposal

If, following the Benchmarking Exercise, the Contract Manager comes to the view that the provision of the Services on the basis provided for in this Contract does not represent value for money to the Council, the Contract Manager may put to the Service Provider a proposal as to basis on which the Services should be provided (which may include a proposal as to the variation of the Services) in order for the provision of the Services to represent value for money to the Council ('Proposal').

D.6.6 Response to Proposal

Within 28 days of the putting of a Proposal, the Service Provider must:

- (a) advise the Contract Manager that it accepts the Proposal; or
- (b) put an alternative proposal to the Contract Manager which the Service Provider believes represents value for money to the Council.

If the Service Provider advises that it accepts the proposal (or if the Contract Manager chooses to accept an alternative proposal put by the Service Provider) then, subject to the proposal being endorsed by the Contract Manager, this Contract is amended to give effect to the proposal. The Contract Manager may prepare a Deed of amendment to record the amendment of this Contract. If the Contract Manager does prepare a Deed of amendment the Service Provider must, within 10 days of receiving the Deed of amendment, execute and return the Deed of amendment to the Contract Manager.



D.7 Defective Performance Period

D.7.1 Commencement of the Defective Performance Period

The Defective Performance Period commences upon completion of the Services in accordance with this Contract at which time 50% of the Performance Security shall be released to the Service Provider.

D.7.2 Service Provider's obligations during the Defective Performance Period

At any time prior to the expiry of the Defective Performance Period the Service Provider must re-perform Services at its own expense where the need to re-perform the Services arises by reason of Under Performance which:

- (a) existed at the commencement of, or is discovered during, the Defective Performance Period; or
- (b) the Contract Manager notifies prior to, or within fourteen (14) days, after the expiration of the Defective Performance Period.

The Service Provider must re-perform the Services:

- (a) within the time stated in the Direction and if no time is stated in the Direction, within fourteen (14) days of the giving of the Direction; or
- (b) within such longer time as may be agreed by the Contract Manager.
- (c) if the Services are not re-performed within the stated time, the Council may engage others to perform the Substituted Services.

D.8 Failure to re-perform or rectify Under Performance

D.8.1 Costs incurred by Council

If the Council engages others to perform the Substituted Services, the reasonable cost incurred by the Council for the Substituted Services, together with any loss or damage suffered by the Council as a result of the Under Performance, shall be a debt due and payable from the Service Provider to the Council.

Part E - Time

E.1 Prior to commencement

E.1.1 The Service Provider's acknowledgment

The Service Provider acknowledges that before entering this Contract, the Service Provider had sufficient opportunity to:

- (a) examine all information;
- (b) examine any Council Equipment, Council Information and Material and Council Premises; and
- (c) make all enquiries;

relevant to its obligations under the Contract.

E.1.2 The Council's liability

The Council is not liable for any cost or expenses incurred by the Service Provider in performing its obligations under this Contract, except as provided for under this Contract.

E.2 Commencement

The Service Provider must commence the Services at the earlier of:



- (a) the date stipulated in the Council's letter of acceptance of the Service Provider's offer for the Services;
- (b) the date agreed between the Council and the Service Provider; or
- (c) the date Directed.

If the Service Provider has commenced the Services or acted in any other way consistent with being bound by the terms of this Contract but has not executed this Contract, the Service Provider may be Directed to execute this Contract immediately or at any other time as specified in the Direction. If the Service Provider fails to comply with this Direction immediately or within the time frame specified in the Direction, the Council may terminate this Contract pursuant to Clause K.4.

E.3 Term

The Service Provider must continuously perform the Services throughout the Term, unless provided otherwise under this Contract.

E.4 Extended Term

E.4.1 Council may extend the Term

If the Reference Table indicates that this Clause applies, the Council may elect to extend the Term beyond the Initial Term by one or more periods of time, the aggregate of which shall not exceed the maximum extended period indicated in the Reference Table. The Council shall give the Service Provider Notice at least one (1) month prior to any extension.

The Notice must state:

- (a) that the Council intends to exercise its option to extend the Term; and
- (b) the period of the extension to the Term.

E.4.2 Contract Price for Extended Term

The Contract Price for the Extended Term shall be:

- (a) adjusted in accordance with the Rise and Fall Clause if the Reference Table indicates that the Rise and Fall Clause applies; or
- (b) determined in accordance with the Valuation Clause if the Rise and Fall Clause does not apply.

E.5 Suspension of Services

E.5.1 Service Provider may be directed to suspend the Services

The Service Provider may be directed to suspend the provision of the Services (either in whole or in part) for any reason. The Direction shall be given to the Service Provider at least five (5) days before the beginning of the suspension, except where there is an imminent threat of:

- (a) injury or death to persons; or
- (b) damage to property; or
- (c) serious disruption to the operations of the Council or the Service Provider's ability to carry out the Services.

E.5.2 Service Provider to suspend the Services

The Service Provider must suspend the Services if directed to do so.

E.5.3 Service Provider to remain on stand-by



If the Services are suspended, the Service Provider must remain on stand-by (including retaining all personnel and Equipment and Materials engaged at the time of the suspension) to perform the Services.

If, within ten (10) days from the date of the suspension of the Services, the Service Provider has not received a Direction as to whether the Service Provider is to remain on stand-by for a period longer than fourteen (14) days, the Service Provider must give Notice to the Contract Manager requesting instructions whether the stand-by period is to be extended.

E.5.4 Consent required to stand-down

The Service Provider must by Notice seek the Contract Manager's consent to standing down any of the personnel, Equipment and Material held on stand-by. Such consent will not be unreasonably withheld.

E.5.5 Recommencement of the Services

The Service Provider may be directed to recommence the provision of the Services on the whole or on the relevant part of the Services under this Contract.

E.5.6 Adjustment to Contract Price in event of suspension

The Service Provider must take all reasonable steps to minimise any costs incurred as a result of the suspension.

The Service Provider shall be liable for any costs it incurs as a result of a suspension that was caused by an act or omission of the Service Provider, or an employee, contractor, consultant or agent of the Service Provider.

Where a suspension of the Services is caused other than by an act or omission of the Service Provider, or an employee, contractor, consultant or agent of the Service Provider, and the suspension causes the Service Provider to incur more or less cost than otherwise would have been incurred by the Service Provider but for the suspension, the difference shall be determined under the Valuation Clause.

E.5.7 No other remuneration or compensation

The Service Provider is not entitled to any remuneration or compensation in respect of Services that are suspended, except as provided in this Clause.

Part F - Equipment and Premises

F.1 Council Equipment

F.1.1 Permission to use Council Equipment

The Council permits the Service Provider to use the Council Equipment detailed in the Reference Table and as Directed from time to time, for the performance of the Services.

F.1.2 Service Provider's use of Council Equipment

The Service Provider must:

- (a) not use Council Equipment unless the Council Equipment is detailed in the Reference Table or is Directed to be used;
- (b) not use Council Equipment for any purpose, or in any manner, other than as reasonably required to perform the Services;
- (c) maintain the Council Equipment used by the Service Provider in good working order;



- (d) take full responsibility for the Council Equipment provided to the Service Provider;
- (e) take all reasonable steps to prevent loss of or damage to Council Equipment;
- (f) immediately give Notice to the Contract Manager of any loss of or damage to Council Equipment that it becomes aware of;
- (g) comply with any Direction regarding Council Equipment; and
- (h) return the Council Equipment to the Council on the expiry of this Contract, the earlier termination of this Contract or as Directed in a condition that is at least equivalent to the condition of the Council Equipment on the date first provided to the Service Provider, save for fair wear and tear.

F.1.3 Where the Council Equipment is insufficient for the performance of the Services

Where the Service Provider believes the Council Equipment provided under this Contract is insufficient for the performance or the continued performance of the Services, the Service Provider must provide a Notice to the Contract Manager detailing:

- (a) the reasons why the Service Provider believes the provided Council Equipment is insufficient;
- (b) the additional Council Equipment that the Service Provider believes is necessary ('**Additional Council Equipment**'); and
- (c) the period of time the Additional Council Equipment will be needed.

The Service Provider shall be directed as to whether the Additional Council Equipment is available. The Contract Price will not be adjusted to take account of the unavailability of Additional Council Equipment.

F.2 Council Premises

F.2.1 Permission to use Council Premises

The Council:

- (a) permits the Service Provider to access the Council Premises as detailed in the Reference Table or as Directed for the performance of the Services; and
- (b) is only required to make the Council Premises available to the extent and for the time detailed in the Reference Table or as Directed.

F.2.2 Use of Council Premises by the Service Provider

The Service Provider must:

- (a) not use Council Premises unless the Council Premises are detailed in the Reference Table or as are Directed to be used;
- (b) not use Council Premises for any purpose, or in any manner, other than as reasonably required to perform the Services;
- (c) comply with any Direction regarding the use of Council Premises;
- (d) when using Council Premises, keep the Council Premises clean and tidy at all times;
 - (i) immediately give Notice to the Contract Manager of any damage to Council Premises resulting from or identified during the performance of the Services; and
 - (ii) vacate the Council Premises on the expiry of this Contract, the earlier termination of this Contract or as Directed, in a condition that is at least



equivalent to the condition of the Council Premises on the date first provided to the Service Provider, save for fair wear and tear.

F.2.3 Difficulties with access to Council Premises

If the Service Provider cannot access the Council Premises in accordance with the Access Requirements, the Service Provider must immediately give Notice to the Contract Manager setting out full particulars of the access difficulties.

The Contract Manager will, following receipt of such Notice, and where reasonably possible, make alternative arrangements for the Service Provider to access the Council Premises.

Any costs incurred by the Service Provider as a result of access difficulties, other than those difficulties caused by an act or omission of the Service Provider will be assessed in accordance with the Valuation Clause.

Subject to the preceding paragraph, the Contract Price will not be adjusted to take account of any difficulty, delay or expense incurred by the Service Provider in gaining access to the Council Premises caused by an act or omission of the Service Provider.

F.3 Service Provider's Premises

F.3.1 Service Provider's acknowledgment

The Service Provider acknowledges the Council may require access to the Service Provider's Premises for purposes including:

- (a) inspection of the Services;
- (b) inspection of the Service Provider's:
 - (i) occupational health and safety ('OH&S') systems;
 - (ii) procedures or practices which have OH&S implications; or
 - (iii) compliance with any OH&S obligations;
- (c) inspection and copying of any records and documentation, including those of any subcontractor, relevant to the Services; and
- (d) interviewing any officer, employee, subcontractor or agent of the Service Provider.

F.3.2 Service Provider must provide access

The Service Provider must, at any reasonable time, give access to:

- (a) the Council;
- (b) the Contract Manager; and
- (c) any persons authorised in writing by the Council or the Contract Manager, to the Service Provider's Premises for the purposes detailed in the previous Clause.

F.3.3 Compliance with the Service Provider's site, safety and security requirements

The Council, the Contract Manager, and any persons authorised in writing by the Council or the Contract Manager must, while at the Service Provider's Premises, comply with the Service Provider's site, safety and security requirements.

Part G - Financial Matters

G.1 Payments



G.1.1 Payment for Services

In consideration for the Service Provider performing the Services in accordance with this Contract, the Council must pay the Service Provider the Contract Price and any other sum that becomes due to the Service Provider under this Contract.

G.1.2 Deferring instalment payments

Where the Reference Table indicates that the Service Provider is to be paid by instalment payments, the Council is entitled, without limiting any other right the Council may have, to defer payment of any instalment until the Service Provider has completed all of the Services relating to that instalment to the Council's satisfaction, and in accordance with this Contract.

G.1.3 Payment claim details

A payment claim must comply with the Council's requirements as Directed from time to time, and must:

- (a) be dated the last day of the previous month or such other claim period as Directed from time to time (**'claim period'**);
- (b) generally describe the Services performed during the previous claim period;
- (c) set out, and provide calculations of, the amounts claimed by the Service Provider for the Services performed during the previous claim period;
- (d) be supported by evidence of the amount claimed by the Service Provider;
- (e) set out the value of the Services carried out by the Service Provider up to the date of the claim;
- (f) set out the amounts previously claimed under this Contract pursuant to this Contract;
- (g) set out the amounts previously paid under this Contract;
- (h) set out the amounts (if any) otherwise due from:
 - (i) the Council to the Service Provider; and
 - (ii) the Service Provider to the Council;
- (i) be in a form and a level of detail satisfactory to, and containing all the information reasonably required by, the Contract Manager;
- (j) subject to Clause G.1.7, be in the form of, or accompanied by, a Valid Tax Invoice;
- (k) a Tax Invoice will only be a Valid Tax Invoice if submitted by email to the Invoicing email address; and
- (l) that;
 - (i) the value of the Services so claimed have been completed in accordance with this Contract;
 - (ii) all amounts which have become due and payable by the Service Provider for any plant or equipment used by the Service Provider for the Services have been paid;
 - (iii) all wages and allowances that have become due and payable by the Service Provider to any employee of the Service Provider engaged for the Services have been paid; and



- (iv) all amounts which have become due and payable by the Service Provider to any subcontractor or consultant engaged for the Services have been paid.

G.1.4 Assessment of payment claim

Within twenty (20) Business Days of receipt by the Contract Manager of a claim for payment that complies with the Contract, the Contract Manager must:

- (a) assess the value of the work carried out by the Service Provider in accordance with this Contract as at the date of the claim;
- (b) otherwise determine the appropriate amounts in respect of those matters which are required to be set out in a claim for payment;
- (c) assess the amount which is payable by the Service Provider to the Council pursuant to any Clause of this Contract;
- (d) determine the amount payable by the Council to the Service Provider in respect of the claim for payment by:
 - (i) taking the amount determined pursuant to paragraph (a); and
 - (ii) deducting the amounts determined pursuant to paragraph (c); and
 - (iii) issue a certificate to the Council and the Service Provider setting out the amounts set out in paragraphs (a) to (d) of this Clause, and the calculations employed to arrive at those amounts.

The Contract Manager may issue a further certificate correcting any error discovered in any previous certificate issued by it.

G.1.5 Payment

Within ten (10) Business Days from the issue of a certificate by the Contract Manager under the preceding Clause, the Council must, subject to this Contract, pay to the Service Provider the amount determined by the Contract Manager as due to the Service Provider in respect of the Service Provider's claim for payment.

G.1.6 Consequences of payment

A payment made pursuant to this Contract:

- (a) shall not prejudice the right of either party to dispute whether the amount so paid is the amount properly due and payable; and
- (b) shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.

G.1.7 Recipient created Tax Invoices

During the Term, the Council reserves the right to issue and the Service Provider agrees to accept recipient created Tax Invoices.

G.1.8 No payment except in accordance with the Contract

The Council is not required to make any payment to the Service Provider in respect of any Services that are not performed in accordance with this Contract.

G.2 Costs and disbursements

G.2.1 Reimbursement of costs and disbursements

The Council:



- (a) will reimburse the Service Provider for those costs and disbursements identified in the Reference Table that are reasonably incurred by the Service Provider in performing the Services; and
- (b) will not reimburse the Service Provider for any additional costs and disbursements.

G.2.2 Service Provider to maintain records

The Service Provider must:

- (a) maintain accurate and complete records of all costs and disbursements incurred by the Service Provider in accordance with generally recognised accounting procedures; and
- (b) make such records available for inspection by the Council or the Contract Manager as Directed.

G.3 Rise and Fall Clause

G.3.1 Application of this Clause

This Clause only applies if:

- (a) it is stated in the Reference Table that the Rise and Fall Clause applies; and
- (b) the Service Provider's payment claim relates to Services performed later than twelve (12) months after the Commencement Date.

G.3.2 Adjustment to the Contract Price

Where the Rise and Fall Clause applies, the Contract Manager must assess whether payments due to the Service Provider under this Contract shall be adjusted for Rise and Fall in accordance with the formula appearing in Schedule 2. The Contract Manager shall only adjust a payment due to the Service Provider under this Contract for Rise and Fall if the payment due (or any portion of the payment due) does not relate to:

- (a) an adjustment to the Contract Price because of a Variation;
- (b) the return of the Performance Security; or
- (c) goods or services provided by the Service Provider at an agreed fixed price.

G.3.3 Adjustment to the annual lump sum for the Services

Where the Contract Price is an annual lump sum for the Services, the Contract Manager must, where the Rise and Fall Clause applies, adjust the annual lump sum for the Services (including any rates applicable to the Services) in accordance with the formula set out in Schedule 2.

G.4 Goods and Services Tax ('GST')

The parties acknowledge that all the consideration to be provided under this Contract is expressed on a GST exclusive basis.

If an amount payable under this Contract is calculated by reference to or otherwise relates to a cost, expense or other liability ('**Liability**') incurred by a party ('**Payee**'), then for the purpose of calculating the amount payable under this Contract, the amount of the Liability shall be reduced by the amount of any Input Tax Credit to which the Payee is entitled in respect of that Liability. The Payee will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made.

If GST is payable on a Taxable Supply made by one party ('**Supplier**') to another party ('**Recipient**') then the Supplier shall provide the Recipient with a Valid Tax Invoice before the



Recipient is required to pay any amount to the Supplier in respect of the Taxable Supply, and in any case, before the end of each month.

If any consideration provided under the Contract is calculated by reference to or relates to a price, value, sales, revenue or similar amount in respect of a supply, ('**Revenue**'), then the Revenue used to calculate the payment must be calculated on a GST exclusive basis.

G.5 Security

G.5.1 Performance Security

Where the Reference Table indicates that Performance Security is required, the Service Provider must deliver the Performance Security to the Contract Manager by the earlier of:

- (a) five (5) days after receipt of the Council's letter of acceptance of the Service Provider's offer for the Services;
- (b) the Commencement Date; or
- (c) such other date as Directed.

The Performance Security must, unless Directed otherwise, be in the form of a bank guarantee that is unlimited as to time, irrevocable, unconditional, given by a financial institution carrying on business in Australia and approved by the Council.

The Service Provider agrees that it will not take any action against the Council with a view to preventing the Council calling upon the Performance Security.

If the Council calls upon the Performance Security in circumstances where it was not entitled to do so, the Council will only be liable to return to the Service Provider the amount called together with interest on that amount from the date of receipt by the Council to the date of repayment to the Service Provider with such interest being at the rate set in the Reference Table.

If the Council calls upon any security, the Service Provider may be directed to provide further security in an amount up to the amount called by the Council.

If the Service Provider does not comply with this Clause the Council may withhold moneys otherwise due to the Service Provider until the Service Provider complies with this Clause.

Subject to the following paragraph, the Council must release the Performance Security held by the Council to the Service Provider by the later of:

- (a) the end of the Defective Performance Period; and
- (b) Receipt by the Contract Manager of a Deed of Release duly executed by the Service Provider.

The Council is not obliged to release to the Service Provider that part of the Performance Security that the Council has become entitled to call upon under this Contract.

G.6 Valuation Clause

G.6.1 Application of the Valuation Clause

Where:

- (a) an item is to be valued under the Valuation Clause; or
- (b) there is no specific mechanism specified for the valuation of an item;
- (c) the item shall be valued under this Clause.

G.6.2 Valuation



The item shall be valued by the Contract Manager by determining a fair and reasonable value for the item.

If the valuation relates to extra costs incurred by the Service Provider for delay, suspension or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit.

G.7 Security of Payment

If the *Building and Construction Industry Security of Payment Act 2002 (Vic)* ('**Security of Payment Act**') applies:

- (a) the Service Provider must ensure that, within twenty four (24) hours after any notice is given or received under the Security of Payment Act by the Service Provider or any subcontractors, a copy of that notice is given to the Council and the Contract Manager;
- (b) the amount (if any) set out in a payment schedule is the amount of the 'progress payment' (as defined in the Security of Payment Act) which the Service Provider is entitled to be paid;
- (c) the parties agree that for the purpose of the Security of Payment Act the authorised nominating authority is the Institute of Arbitrators & Mediators (Victorian Chapter); and
- (d) if an adjudicator determines that the Council shall provide security under the Security of Payment Act, the security shall be in the form described in section 25(3) of the Security of Payment Act (as amended from time to time).

G.8 Other financial matters

G.8.1 Right of the Council to recover money

The Council may deduct from moneys otherwise due to the Service Provider any money due from the Service Provider to the Council (including money due otherwise than under this Contract). If the moneys due to the Service Provider are insufficient to meet any entitlement which the Council has pursuant to this Clause, the Council may have recourse to the Performance Security.

Nothing in this Clause affects the right of the Council to otherwise recover from the Service Provider the whole of the debt or any balance owing in respect thereof.

G.8.2 Time for payment by the Service Provider

Where money is due from the Service Provider to the Council (including money due otherwise than under this Contract), the Service Provider must pay such money to the Council within the time provided by this Contract. If no time is provided, the Service Provider must pay such money within fifteen (15) Business Days of receipt of a written request for payment from the Council.

G.8.3 The Council's recourse for unpaid moneys

If the Service Provider fails to pay the Council an amount due and payable pursuant to this Contract:

- (a) the Council may have recourse to the Performance Security; and
- (b) any deficiency may be recovered by the Council from the Service Provider as a debt due and payable which may be deducted or recovered by the Council pursuant to this Contract.

Part H - Release, Indemnity and Insurance

H.1 Release and indemnity



H.1.1 Indemnity

The Service Provider agrees to indemnify and keep indemnified the Council its servants and agents and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, arising out of or in any way in connection with:

- (a) the Service Provider's performance or purported performance of its obligations under this Contract; or
- (b) a breach of this Contract by the Service Provider; or
- (c) a breach of the Service Provider's warranties detailed in Schedule 1 by the Service Provider; or
- (d) any loss or damage of property or injury or death of any person caused by the Service Provider, its officers and employees; or the Services, that is related to an act, error or omission of the Service Provider, whether negligent or otherwise.

The Service Provider's liability to indemnify the Council shall be reduced proportionally to the extent that any act or omission of the Council, its servants or agents, contributed to the loss or liability.

H.1.2 Release

The Service Provider agrees to hold harmless the Council, its servants and agents (**'the Principal'**) and each of them from all claims resulting from damage, loss, death or injury whatsoever which may otherwise be brought or made or claimed by the Service Provider against the Principal except to the extent that the Principal is negligent.

H.2 Insurance

H.2.1 Service Provider to hold insurance

The Service Provider must:

- (a) At all times during the Term, hold all usual types of insurance concerning the subject matter of this Contract for reasonable and prudent amounts of coverage; and
- (b) Effect the insurance required under the following Clause prior to commencing the Services.

H.2.2 Minimum levels of insurance

Without limiting the generality of the preceding Clause, the Service Provider must affect policies of insurance covering:

- (a) public liability insurance providing coverage for an amount at least equal to that specified in the Reference Table for any one event;
- (b) professional indemnity insurance with a total aggregate cover of not less than the amount specified in the Reference Table for each year of cover;
- (c) worker's compensation insurance providing coverage for any liability of the Service Provider under the *Accident Compensation Act 1985* (Vic) and at common law or otherwise in respect of all injuries to any person employed or engaged by the Service Provider;
- (d) any other type of insurance specified in the Reference Table providing coverage for an amount at least equal to that specified in relation to the type of insurance; and



- (e) any other insurance required by Legislative Requirements to be effected by the Service Provider in performing the Services.

H.2.3 Requirements of insurance

All insurance required pursuant to this Contract must be effected and maintained with an insurer satisfactory to the Council and to the Council's insurers, and who is authorised to carry on business under the *Insurance Act 1973* (Cth).

The public liability insurance policy must cover such risks and be subject only to such conditions and exclusions as are approved by the Council and must extend to cover the Council in respect of claims for personal injury or property damage arising out of the negligence of the Service Provider.

The professional indemnity policy must be maintained for the period specified in the Reference Table following the performance of the Services in accordance with this Contract and must extend to cover liability for breach of the *Competition and Consumer Act 2010* (Cth) and/or the Fair Trading Act in the relevant State or Territory, loss of documents and libel and slander, and provide for the automatic reinstatement of the limit of liability.

With regard to Work Cover Insurance, the Service Provider must:

- (a) prior to the commencement of the Services (or any part thereof) and on the fifteenth (15th) day of each month during the performance of the Services, provide to the Council a schedule identifying the persons or entities engaged in the Services; and
- (b) at all times promptly and diligently declare to the authorised insurer all remuneration paid or payable to each of the persons or entities so employed or engaged and pay premium for the Work Cover Insurance with respect thereto.

H.2.4 Evidence of insurance

If Directed, the Service Provider must immediately produce evidence to the Council's satisfaction of the insurance held by the Service Provider in accordance with the requirements of this Contract, including:

- (a) certificates of currency;
- (b) policy terms and conditions;
- (c) renewal certificates;
- (d) certificates of payment;
- (e) reconciliation statements provided to the Victorian Work Cover Authority or its authorised insurer for the purposes of Work Cover Insurance; and
- (f) other policy documents.

H.2.5 Increase in insurance

The Council reserves the right to review the amount of coverage under the public liability insurance, the professional indemnity insurance, and any other type of insurance specified in the Reference Table and may increase or decrease such coverage as it reasonably thinks fit.

H.2.6 Indemnity for failure to properly notify

If a party who has the benefit of an insurance policy required by this Contract wishes to make a claim under that insurance policy, that party must notify the relevant insurer of the extent to which it is entitled to claim Input Tax Credits before it makes the claim.



Where a party fails to comply with the preceding paragraph, that party indemnifies the other party against any shortfall in the insured sum suffered by the other party where the settlement of the claim by the insurer is treated as a Taxable Supply.

H.2.7 Notice of changes in insurance and potential claims

The Service Provider must:

- (a) give the Council Notice within seven (7) days of the Service Provider becoming aware or receiving notification of any variation, cancellation, non-renewal, or discontinuance of any insurance held or required to be held by the Service Provider in accordance with this Contract;
- (b) as soon as practicable, inform the Council in writing of any occurrence that may give rise to a claim under a policy of insurance required by this Clause;
- (c) keep the Council informed of subsequent developments concerning any claim under a policy of insurance required by this Clause; and
- (d) use reasonable endeavours to assist subcontractors to comply with (a), (b) and (c), in respect of their operations, and similarly inform the Council.

H.2.8 Continuing obligations

The effecting of insurance does not limit the liabilities or obligations of the Service Provider under other provisions of this Contract.

The Service Provider must continue to fully perform its obligations under this Contract notwithstanding the making of any claim which is or may be the subject of the policy of insurance required to be taken out pursuant to this Contract.

H.2.9 Failure to insure

If the Service Provider fails to comply with any obligation to hold or provide evidence of insurance under this Contract, the Council may terminate this Contract pursuant to Clause K.4.

H.3 Deed of Release

On the expiration of the Defective Performance Period, the Service Provider must deliver to the Contract Manager a duly executed Deed of Release.

Part I - Further Obligations on Service Provider

I.1 Service Provider Responsible For Services

The Service Provider shall remain fully responsible for all the Services provided by the Service Provider irrespective of any review or acceptance of the Services by the Council.

I.2 Legislative Requirements

The Service Provider must, and ensure that its employees, subcontractors and agents, satisfy and comply with all Legislative Requirements.

I.3 Occupational Health and Safety (OH&S)

I.3.1 Risk assessment and safety plan

Before commencing any works or physical services and at any other time directed by the Contract Manager, the Service Provider must provide to the Contract Manager for approval:



- (a) a completed risk assessment form in the form annexed to the Council's Health and Safety Risks (which forms part of the Council Policies and Procedures) or any other form as Directed; and
- (b) a health and safety plan that complies with the Council's Health and Safety Risks (which forms part of the Council Policies and Procedures) and any other requirements as Directed.

The Service Provider must perform the Services and comply with the OH&S obligations arising under this Clause even if the Contract Manager does not provide its approval under this Clause unless directed otherwise.

1.3.2 Safe workplace

The Service Provider acknowledges its obligations to ensure that the health and safety of any person is not put at risk as a result of the provision of the Services.

The Service Provider will inform itself of all OH&S issues, procedures or measures implemented or adopted by Council and/or any occupiers of any premises at or within which the Service Provider will carry out its obligations under this Contract. The Service Provider must comply with all such procedures and measures.

The Service Provider must at all times provide and maintain a safe working environment, and must ensure that the systems, procedures and practices necessary for the protection of the health and safety of all persons in or near the area where the Services are being carried out are implemented.

1.3.3 Establishment of a reporting system

The Service Provider must:

- (a) maintain a proper and adequate accident/incident, reporting, recording and investigation system;
- (b) comply with any Direction relating to the establishment and maintenance of such a system; and
- (c) comply with any Direction relating to any matter concerning an investigation into an accident/incident.

1.3.4 Notice of an accident/incident

The Service Provider must give a Notice to the Council and provide full particulars of any accident or other circumstance relevant to the Service Provider and/or the Services which:

- (a) requires notification to any external authority including an external authority concerned with OH&S;
- (b) might reasonably result in an investigation by any external authority including an OH&S authority; or
- (c) might give rise to a risk to the health and safety of the Service Provider or any other person, as soon as the Service Provider ought reasonably to have become aware of such accidents or other circumstances.

The Service Provider acknowledges that the Council may carry out its own investigation into any accident or circumstance which it becomes aware of. The Service Provider must fully co-operate with any such investigation.

1.3.5 Audit of the Service Provider



The Service Provider must conduct workplace inspections on a regular basis, and make available to Council copies of health and safety inspection reports, audits or assessments for review.

The Contract Manager may, at any time during the Term, undertake audits of the Service Provider's compliance with its obligations under this Part. The Service Provider must do everything reasonably necessary to comply and assist with the audits.

I.3.6 Suspension of Services

Without limiting any other provision of this Contract, the Service Provider may be directed to suspend the Services pursuant to Clause E.5 where the Service Provider has failed to comply with its OH&S obligations.

I.4 Intellectual Property

I.4.1 Intellectual Property ownership

The Reference Table contained within the ITT document will indicate whether Alternative 1 or Alternative 2 applies to this Contract. The alternative that does not apply is deemed deleted.

Alternative 1 – Council acquires Intellectual Property

Intellectual Property in the Service Provider's documents and methods of working for the Services hereby vest in the Council. The Service Provider shall do everything necessary to perfect such vesting. Such vesting shall not extend to components of the documents and methods of working which have been developed by the Service Provider for general use in the Service Provider's work and which have not been specially developed for the Services. The Council grants to the Service Provider an irrevocable licence to use intellectual property vested in the Council pursuant to this Clause for the purpose of the Services.

Alternative 2 – Intellectual Property retained by Service Provider

The Service Provider retains Intellectual Property in its documents and methods of working for the Services. The Service Provider grants to the Council an irrevocable, transferable and royalty free licence to use such Intellectual Property for any purpose connected with the Services.

I.4.2 Moral Rights

The Service Provider will at its own expense procure from each and every person (including its employees, contractors or agents) who is the author of any Contract Documents or any aspect of the Services in which Intellectual Property subsists under or by virtue of the *Copyright Act 1968* (Cth), (each such person being called an '**Author**') an unconditional consent to the Council, or persons authorised by the Council, doing, or omitting to do, with respect to any Contract Documents or Services (or a substantial part or adaptation of it), any act that the Council deems fit.

All consents must be in a form approved by the Contract Manager, such approval not to be unreasonably withheld.

If the Service Provider fails to procure a valid and effective written consent from any Author in accordance with this Clause I.4.2, then the Service Provider will indemnify and hold harmless the Council against all detriment, loss, costs, expenses, claims or liabilities that the Council incurs as a result of an infringement of any intellectual property rights, including an Author's Moral Rights.

I.5 Discrimination and Harassment

I.5.1 Acknowledgment



The Service Provider acknowledges:

- (a) its obligations under the Equal Opportunity Laws; and
- (b) that under the Equal Opportunity Laws, it is unlawful to sexually harass any person or discriminate against any person in the provision of Services on the grounds of age, breastfeeding, gender identity, impairment, industrial activity, employment activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation, or personal association with any person with any of these attributes.

No provision of Clause 1.5 that gives the Council the power or ability to do any act will be construed as requiring the Council to take that action.

1.5.2 The Service Provider's obligations

The Service Provider must, and must ensure that its employees, subcontractors and agents:

- (a) are familiar and comply at all times with the Equal Opportunity Laws;
- (b) are familiar and comply at all times with the Council's Equal Opportunity and Discrimination and Harassment Policies; and
- (c) take all steps as are necessary to ensure that no person is subjected to discrimination or sexual harassment due to the actions of the Service Provider, its employees, subcontractors or agents during the course of or in relation to this Contract.

If the Service Provider fails to comply with any obligation under this Clause 1.5.2, the Council may terminate this Contract.

1.5.3 Council's Equal Opportunity and Discrimination and Harassment Policies

The Council will make available on request copies of the Council's Equal Opportunity and Discrimination and Harassment Policies.

The Service Provider shall maintain and enforce its own policies in respect of the Equal Opportunity Laws.

1.5.4 Service Provider to notify Council

The Service Provider must immediately give Notice to the Council of any complaint or of any fact, matter or circumstance that the Service Provider is or becomes aware of that may:

- (a) constitute sexual harassment or discrimination; or
- (b) give rise to any complaint under or breach of Equal Opportunity Laws or the Council's Equal Opportunity and Discrimination and Harassment Policies,
- (c) in relation to the Contract or the Services.

1.5.5 Investigations and complaint handling

The Service Provider acknowledges that the Council or its authorised officer is entitled to carry out its own investigation into any complaint or circumstance that may constitute a breach of or be in any way contrary to the Equal Opportunity Laws or the Council's Equal Opportunity and Discrimination and Harassment Policies. The Service Provider must cooperate in any investigation and provide the Council with access to all persons, records, documents and other matters that in the Council's opinion would facilitate the investigation.



The Service Provider will, if required by the Council, submit to and be bound by the complaint handling procedures set out in the Council's Equal Opportunity and Discrimination and Harassment Policies in relation to any complaint or breach of the Equal Opportunity Laws or the Council's Equal Opportunity and Discrimination and Harassment relating to the Contract or the Services.

The Council reserves the right to deal with any complaint and negotiate a settlement of the complaint. If the complaint could lead to exposure for the Council to legal liability, the Council will be entitled to agree on or impose an outcome in respect of the complaint necessary to avoid or minimise such legal liability. The Service Provider will be kept informed by the Council of negotiations in relation to the complaint, and will be bound by any outcome negotiated or agreed by the Council in relation to the complaint.

Any loss or damage suffered by the Council as a result of the Council's exposure to legal liability shall be a debt due and payable from the Service Provider to the Council which may be deducted or recovered by the Council pursuant to this Contract.

1.6 Industrial relations

The Service Provider is responsible for all industrial relations matters concerning the Services, its employees, and all other persons for whom it is responsible.

1.7 Privacy

1.7.1 Information privacy principles

The Service Provider agrees to be bound by the Information Privacy Principles ('**IPPs**') in the *Privacy and Data Protection Act 2014* (Vic) ('**PDP Act**') and any code of practice made under the PDP Act that may apply to the Council ('**Code of Practice**') with respect to any act done, or practice engaged in, by the Service Provider for the purposes of this Contract in the same way and to the same extent as the Council would have been bound by them had it been directly done or engaged in by the Council.

1.7.2 Subcontractors to be bound

Any subcontract must include a Clause to the effect that the subcontractor is bound by the IPPs and any Code of Practice with respect to any act done, or practice engaged in, by the subcontractor in the same way and to the same extent as the Council would have been bound by them had it been directly done or engaged in by the Council.

1.7.3 Enforcement

The IPPs and any Code of Practice are enforceable against the Service Provider and any subcontractor in accordance with the procedures set out in the PDP Act or the Code of Practice.

1.8 Confidentiality

1.8.1 General

All Confidential Information must be treated as confidential by the Service Provider. All Confidential Information remains the property of the Council.

1.8.2 Subcontractors to be bound

The Service Provider must:

- (a) ensure that the Service Provider's employees, consultants, subcontractors and agents are aware of this Clause; and
- (b) insert an obligation in similar terms to the obligation set out in this Clause in any subcontract between the Service Provider and the Service Provider's employees, consultants, subcontractors and agents.



1.8.3 Survival on termination

The obligations of the Service Provider under this Clause survive the termination or expiration of this Contract.

1.8.4 Delivery up

Upon the completion of the Services or upon the expiration or termination of this Contract, the Service Provider must deliver up to the Council all Confidential Information in its possession or under its control and no copies whatsoever shall be retained by the Service Provider. The Service Provider is not required to return or deliver to the Contract Manager Confidential Information that includes the Service Provider's proprietary information but must keep such information confidential.

1.9 Reports and records

1.9.1 Service Provider to keep records

The Service Provider must, for the duration of this Contract, keep and maintain full records of the Services including:

- (a) the dates and locations at which work is carried out;
- (b) the time work was commenced and completed;
- (c) the nature of work performed;
- (d) the names and addresses of all persons employed or engaged in the provision of the Services, as well as details of their roles; and
- (e) any other records notified by the Contract Manager to the Service Provider.

The Service Provider is responsible for the costs of collecting, maintaining or copying any records or reports, or of otherwise complying with the requirements of this Clause 1.9.

1.9.2 Records to be made available to Council

The Service Provider must on request:

- (a) forward to the Council a copy of any of its records relating to the Services or this Contract; and
- (b) permit the Contract Manager or any other person authorised by the Council to inspect the Service Provider's records relating to the Services or this Contract at all reasonable times on twenty four (24) hours' notice.

1.9.3 Service Provider to provide reports

The Service Provider must, if directed, provide the Contract Manager with written reports on any aspect of the Services.

1.9.4 Service Provider to retain records

The Service Provider must retain all records and reports relating to the Services or this Contract for at least ten (10) years after the expiry of the Term.

1.10 Police records

If the Reference Table indicates that this Clause applies, the Service Provider:

- (a) authorises the Council to obtain from the Victorian Police, or any other Australian law enforcement body, records of traffic and criminal violations relating to the Service Provider pending before a Court and details of convictions or findings of guilt which have been recorded against it;



- (b) consents to the Victorian Police or any other Australian law enforcement body, extracting from their records and copying any documents relating to the Service Provider and authorises the provision of such records or documents to the Council at the expense of the Council;
- (c) agrees to sign any further documentation or consent authorisation that may be necessary to obtain the information referred to in this Clause;
- (d) agrees that, if requested by the Council, it shall provide to the Council from each of the Service Provider's directors, office-holders, employees, servants or agents involved in the subject matter of this Contract, signed consents authorising the Council to obtain from the Victorian Police, or any other Australian law enforcement body, records of traffic and criminal violations relating to the relevant director, office-holder, employee, servant or agent pending before a Court and details of convictions or findings of guilt which have been recorded against them; and
- (e) releases and forever discharges the Council, its officers, employees and agents from all present and future claims (including claims in contract, tort or under statute) which the Service Provider has or may have against the Council arising out of or relating to the use of information obtained pursuant to this Clause.

1.11 Working with children checks

Victorian organisations that provide services to children (0-18) are required under the *Child Wellbeing and Safety Act 2005* (Act) to comply with child safe standards (Standards).

An entity to which the Standards apply under the Act must comply with the following:

- (a) Standard 1: Strategies to embed an organisational culture of child safety, including through effective leadership arrangements
- (b) Standard 2: A child safe policy or statement of commitment to child safety
- (c) Standard 3: A code of conduct that establishes clear expectations for appropriate behaviour with children
- (d) Standard 4: Screening, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel
- (e) Standard 5: Processes for responding to and reporting suspected child abuse
- (f) Standard 6: Strategies to identify and reduce or remove risks of child abuse
- (g) Standard 7: Strategies to promote the participation and empowerment of children

Council is committed to being a child safe organisation and has zero tolerance for child abuse. The focus of our work is on children under the age of 18. CoM recognises it's legal and moral responsibilities in keeping children safe from harm and promoting their best interests. The organisation has specific policies, procedures and training in place to support employees and volunteers to achieve these commitments. CoM expects its employees, volunteers, contractors and subcontractors to comply with the Standards.

Working with children checks

If the Reference Table indicates that this clause applies, the Service Provider:

- a) Must ensure that all of the relevant Service Provider's directors, office-holders, employees, volunteers, servants and agents including subcontractors involved in the subject matter of this Contract hold a valid working with children check as defined in the *Working with Children Act 2005*.



- b) Must immediately notify Council if one of the relevant Service Provider's directors, office-holders, employees, volunteers, servants and agents including subcontractors returns a negative notice or is reported under the reportable conduct scheme.

1.12 Conflict of interest

If at any time a conflict of interest, or a potential conflict of interest, arises the Service Provider must:

- (a) immediately give Notice to the Council;
- (b) provide recommendations to the Council for the resolution of the conflict;
- (c) take all reasonable steps to resolve the conflict; and
- (d) keep the Council advised of the conflict and all steps taken to resolve the conflict.

If the Council is not satisfied that the Service Provider has taken all reasonable steps to resolve the conflict or does not reasonably believe the conflict will be resolved, the Council may terminate this Contract pursuant to Clause K.4.

1.13 Time for Notification of Claims

1.13.1 Service Provider's prescribed notice

The Service Provider must, within sixty (60) Business Days after the first day upon which an experienced and competent Service Provider could reasonably have been aware of a breach of any obligation, including, negligence, breach of contract and breach of trust ('**Breach of Obligation**') or an entitlement to make a claim (whichever is the earlier), give to the Contract Manager the prescribed notice (as described in the following Clause). The Council is not liable upon any claim by the Service Provider in respect of or arising out of a Breach of Obligation unless the Service Provider has strictly complied with this Clause.

1.13.2 The prescribed notice

The prescribed notice is a Notice which includes particulars of all of the following:

- (a) the breach, act, omission, Direction, approval or circumstances on which the claim is or will be based;
- (b) the provision of this Contract or other basis for the claim or proposed claim; and
- (c) the quantum or likely quantum of the claim.

1.13.3 Nature of particulars to be provided by the Service Provider

In providing the particulars described in the preceding Clause the Service Provider:

- (a) must provide estimates of the amounts referred to; and
- (b) must use due care in providing those particulars.

1.13.4 Failure of the Service Provider to provide advice

If the Service Provider does not notify a quantum or likely quantum in the prescribed notice required under this Clause, the Service Provider will not be entitled to any amount, whether pursuant to this Contract or by way of damages for Breach of Obligation, in respect of the claim.

1.13.5 Release

The Service Provider releases the Council from any claim where the Service Provider has not strictly complied with the provisions of this Clause in respect of that claim or the subject matter of that claim.



Part J - Administration of Contract

J.1 Contract Manager

J.1.1 General

The Council:

- (a) must nominate a Contract Manager to act on its behalf for the purposes of this Contract;
- (b) must ensure that there is always a Contract Manager;
- (c) must ensure that the Contract Manager performs any function which is to be performed by the Contract Manager, any Direction which is required to be given by the Contract Manager and any certificate which is required to be issued by the Contract Manager (**'Functions'**) diligently and in accordance with this Contract; and
- (d) may substitute an alternative representative for the person then performing the role of Contract Manager.

J.1.2 Receipt of Notices or Directions

The Contract Manager is authorised to receive any Notice or Direction which may be given by the Service Provider or the Service Provider's Representative pursuant to this Contract.

J.1.3 The Council's role

The Council may:

- (a) perform any Function; and
- (b) direct the Contract Manager as to the performance of any Function.

J.1.4 Preservation of validity of performance

The performance of a Function shall not be undermined merely by reason of the fact that the Council has performed the Function or Directed the Contract Manager as to the performance of the Function.

J.2 Service Provider's Representative

J.2.1 Obligations of the Service Provider

The Service Provider:

- (a) must nominate a representative to act on its behalf for the purposes of this contract;
- (b) must ensure that there is always a Service Provider's Representative;
- (c) must ensure that the Service Provider's Representative performs its functions diligently and in accordance with this contract; and
- (d) may substitute an alternative representative for the person then performing the role of Service Provider's Representative.

J.2.2 Obligations of the Service Provider's Representative

The Service Provider's Representative:

- (a) is responsible for discharging the responsibilities of the Service Provider on the site where the Services are carried out;



- (b) is authorised to receive any notice or Direction which may be given by the Council or the Contract Manager pursuant to this Contract; and
- (c) on request from the Contract Manager, must attend meetings with the Contract Manager and others nominated by the Contract Manager.

J.3 Directions

J.3.1 General

The Service Provider must comply with any Direction. Unless otherwise stated in this Contract, no Direction shall give rise to any adjustment to the Contract Price or a claim at law or under contract.

J.3.2 Time for compliance with Directions

The Contract Manager may, as part of any Direction or subsequent to the Direction, prescribe a reasonable time within which the Direction must be complied with. The Service Provider must comply with the Direction within the prescribed time.

J.3.3 Non-compliance with Directions

If the Service Provider fails to comply with any Direction:

- (a) the Contract Manager may engage others to effect compliance with the Direction;
- (b) the Council may defer payment of all or part of any money otherwise due to the Service Provider until the Direction has been complied with or until the Council has been compensated pursuant to this Clause;
- (c) any cost, loss or damage suffered or incurred by the Council in relation to this failure shall be a debt due and payable from the Service Provider to the Council which may be deducted or recovered by the Council pursuant to this Contract.

J.3.4 Response by the Service Provider

If the Service Provider believes that compliance with a Direction will result in:

- (a) the Service Provider making a claim for additional money; or
- (b) prejudice to the prospect of the Services being successfully completed in accordance with this Contract; or
- (c) there being a failure to comply with a Legislative Requirement,

then the Service Provider must, prior to complying with the Direction, and in any event within a reasonable time prescribed by the Contract Manager (and if no time is prescribed, then within a reasonable time of the giving of the Direction) advise the Contract Manager of this belief and the reasons for this belief. In determining what constitutes a reasonable time for the purpose of this Clause, regard shall be had to the need for the Service Provider to provide this advice to the Contract Manager as soon as practicable so as to ensure that the progress of the Services is not delayed.

J.3.5 The Service Provider's advice

In the advice referred to in the preceding Clause, the Service Provider must:

- (a) include any claim for additional money (or an estimate of the additional money) the Service Provider may make as a result of the Direction;
- (b) include the basis of such a claim for additional money;
- (c) include the way in which there may be a failure to comply with a Legislative Requirement;



- (d) include the nature and extent of the prejudice to the prospects of the Services being successfully completed in accordance with this Contract;
- (e) include any other matter as Directed; and
- (f) use due care in providing that advice.

J.3.6 Failure of the Service Provider to provide advice

If the Service Provider does not provide the advice required by Clause J.3.4 within the time prescribed and the Council suffers prejudice as a result of this, then the Service Provider will not be entitled to any additional payment from the Council by reason of the Direction or compliance with the Direction.

J.3.7 Revocation or confirmation of Direction

Upon receipt of advice from the Service Provider pursuant to Clause J.3.4, the Contract Manager may confirm or revoke the Direction.

The Service Provider must comply with the Direction if it is confirmed.

J.3.8 Variation of Notice obligations

Where, under this Contract the Service Provider must give Notice to the Council or the Contract Manager, the Contract Manager may, from time to time, issue a Direction which varies the requirements of or time within which, the Service Provider is required to give the Notice.

J.3.9 Deemed knowledge

Any Direction given to, any Notice or other communication made by or given to, and any matter within the knowledge of the Service Provider's Representative, are deemed to have been made by or given to, or are within the knowledge of the Service Provider.

J.4 Notices

J.4.1 Giving Notice

Any Notice required to be given or made under this Contract must be in writing. A Notice will be sufficiently given if it is either:

- (a) delivered by hand or by pre-paid post; or
- (b) sent by facsimile;

to the address or facsimile number last notified to the party giving the Notice.

J.4.2 Receipt of Notice

The time at which a Notice is taken to have been given or made will be:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by pre-paid post, two (2) Business Days after the date of posting;
- (c) in the case of facsimile, on receipt by the sender of a printed transmission report from the dispatching facsimile machine stating that the transmission has been made without error, showing the number of pages transmitted and the destination facsimile machine number or the name of the recipient.

Part K - Termination

K.1 Termination generally



The Council may terminate this Contract:

- (a) at any time, in accordance with Clause K.2;
- (b) in the event of the Service Provider being affected by an Insolvency Event, in accordance with Clause K.3;
- (c) in the event of any act, default or omission (other than an act, default or omission which is explicitly authorised by this Contract) of, or any breach of any obligation, including negligence, breach of contract, breach of trust or any other obligation by the Service Provider, in accordance with Clause K.4; or
- (d) in the event that:
 - (i). control of more than 50% of the voting power of the Service Provider's board of directors; or
 - (ii). control of the composition of the Service Provider's board of directors; or
 - (iii). beneficial control of more than 50% of the voting power of the Service Provider's issued share capital; or
 - (iv). changes during the Term.

K.2 Termination at will

K.2.1 General obligations

Subject to the obligations of the Council to make payment to the Service Provider in accordance with the following Clause, the Council may, without cause and at any time, by giving Notice to the Service Provider, terminate this Contract.

The Service Provider must, on receipt of such Notice, immediately cease all work under this Contract and take all reasonably appropriate action to mitigate any loss or prevent further costs being incurred with respect to the provision of the Services.

K.2.2 Payment to the Service Provider

If this Contract is terminated pursuant to this Clause:

- (a) The Council must, subject to paragraph (b) of this Clause, pay to the Service Provider:
 - (i) the reasonable fees and expenses of the Service Provider for all work satisfactorily performed by the Service Provider in accordance with this Contract;
 - (ii) an amount to compensate the Service Provider for any liabilities of the Service Provider to third parties where those liabilities were exclusively and reasonably incurred by the Service Provider in anticipation of the Service Provider performing this Contract; and
 - (iii) an amount to compensate the Service Provider for any costs associated with the termination of this Contract where those costs were reasonably incurred by the Service Provider in consequence of the termination of this Contract.
- (b) The Council will not be liable to make any payment to the Service Provider:
 - (i) in respect of loss of prospective profits; or
 - (ii) in excess of the amount that would have been paid had the Services been completed.
- (c) The Council may relet all or some of the work that constituted the Services.



K.3 Termination where the Service Provider is insolvent

The Council may, without giving Notice to show cause, terminate this Contract by Notice to the Service Provider if the Service Provider is affected by an Insolvency Event.

K.4 Termination for cause**K.4.1 Show cause Notice**

If the Service Provider:

- (a) without reasonable cause, wholly suspends the carrying out of the Services prior to completion of the Services in accordance with this Contract;
- (b) fails to proceed with the Services regularly and diligently;
- (c) fails to consistently meet the KPIs;
- (d) fails to proceed with the Services in a competent manner;
- (e) fails to comply with a Direction;
- (f) fails to comply with a Direction to execute this Contract pursuant to Clause E.2;
- (g) fails to provide proof that the policies of insurance required pursuant to Clause H.2 have been effected and maintained;
- (h) fails to satisfy the Council that a conflict will be resolved, or that it has taken all reasonable steps to resolve a conflict pursuant to Clause L.1; or
- (i) is otherwise in substantial breach of its obligations under this Contract,

The Council may give the Service Provider a Notice requiring it to show cause why this Contract should not be terminated.

K.4.2 Contents of the show cause Notice

A Notice given under this Clause must:

- (a) state that it is a notice given under this Clause;
- (b) specify the alleged breach;
- (c) require the Service Provider to show cause by Notice to the Council why the Council should not exercise its rights under this Clause; and
- (d) specify the time and date, not less than seven (7) Business Days after the Notice is given to the Service Provider, by which the Service Provider must show cause.

K.4.3 Termination following the show cause Notice

If, by the time specified in the Notice given under this Clause the Service Provider fails, in the reasonable opinion of the Council, to show cause why the Council should not exercise its rights under this Clause, the Council may terminate this Contract by Notice to the Service Provider.

K.5 Rights and liabilities following termination by the Council

If the Council terminates this Contract in accordance with Clauses K.3 or K.4, the respective rights and liabilities of the Council and the Service Provider will be as follows:

- (a) the Council will not be obliged to make any further payment in respect of the Services taken out of the hands of the Service Provider;
- (b) the Council will not be obliged to make any further payment to the Service Provider in relation to the Services completed by the Service Provider until such payment becomes due under this Part; and



(c) the Council may complete the Services.

K.6 Completion of the Services

If the Council completes the Services, the Contract Manager will ascertain the cost incurred in doing so resulting from the Service Provider not completing the Services.

If the cost incurred by the Council is greater than the amount which would have been paid to the Service Provider if the Services had been completed by the Service Provider, the difference shall be a debt due and payable from the Service Provider to the Council which may be deducted or recovered by the Council pursuant to this Contract.

If the cost incurred by the Council is less than the amount that would have been paid to the Service Provider if the work had been completed by the Service Provider, the difference shall be a debt due and payable to the Service Provider from the Council.

K.7 Termination by the Service Provider

The Service Provider may terminate this Contract by Notice to the Council in either of the following events:

- (a) if the Council without reasonable cause fails to pay a progress claim in accordance with Clause G.1, and fails to make such payment within thirty (30) Business Days after Notice thereof from the Service Provider requiring it to do so; or
- (b) If the Council commits, permits or suffers any substantial breach of any of the provisions of the Contract and fails to rectify the said breach within a reasonable time after written notice thereof from the Service Provider requiring it to do so.

Part L - Dispute Resolution

L.1 Resolution of disputes

If any dispute or difference arises in relation to or in connection with this Contract or the Services, then that dispute or difference must be resolved in accordance with this Clause.

Notwithstanding the existence of a dispute or difference, the Service Provider shall continue to perform the Contract, and subject to Part K, the Council and the Service Provider shall continue to comply with the Contract.

L.2 Notice of dispute

L.2.1 Service of Notice of Dispute

The party desiring to bring a dispute or difference forward for resolution must serve upon the other party a Notice of Dispute pursuant to this Clause.

L.2.2 Content of a Notice of Dispute

The Notice of Dispute must:

- (a) specify that it is a Notice of Dispute under this Clause;
- (b) give sufficient details of the dispute or difference as to enable the party receiving the Notice to ascertain the nature of the dispute or difference alleged;
- (c) if the person serving the Notice of Dispute claims an amount to be payable:
 - (i) identify the amount; and
 - (ii) give details as to how the amount is calculated;



- (d) identify the Clause of this Contract which is relied upon in support of the claim being made or identify the principle of law which is relied upon to support the claim being made; and
- (e) Describe the facts relied upon by that party in support of the claim.

L.2.3 Response to a Notice of Dispute

Within five (5) Business Days of receipt of the Notice of Dispute, the party on which the Notice of Dispute is served must deliver a written reply to the Notice of Dispute.

L.3 Senior Consultation

L.3.1 Referral of the dispute to Senior Representatives

If the dispute or difference is not resolved within the earlier of five (5) Business Days of the receipt of the reply to the Notice of Dispute or ten (10) Business Days of the receipt of the Notice of Dispute, then the dispute or difference shall be referred to the Senior Representatives of the Council and the Service Provider or such other officers as the parties may nominate in writing from time to time.

L.3.2 Meeting of Senior Representatives

Senior Representatives of the Service Provider and the Council must meet at least once within fifteen (15) Business Days of the receipt of the Notice of Dispute (or such longer period as is agreed to by the parties) and use reasonable endeavours to try and reach a resolution of the dispute or difference.

L.4 Arbitration

If the Senior Representatives are unable to resolve the dispute or difference within twenty (20) Business Days of the receipt of the Notice of Dispute (or such longer period as is agreed to by the parties) then any party to the dispute or difference who desires to bring the dispute or difference forward for resolution, must, by Notice, refer the dispute or difference to arbitration by a single arbitrator (to be agreed between the parties) in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations. If the parties fail to agree to the appointment of an arbitrator within twenty eight (28) Business Days of the receipt of the Notice of Dispute, the appointment of the arbitrator shall be referred to the Chairman of the Victorian Chapter of The Institute of Arbitrators & Mediators Australia.

Except where inconsistent with this Contract, any arbitration under this Clause must be conducted in accordance with the *Commercial Arbitration Act 2011 (Vic)*.

L.5 Release

The Service Provider releases the Council from any claim where the Service Provider has not strictly complied with the provisions of this Part in respect of the dispute or difference or the subject matter of the dispute or difference.

Part M - Other Matters

M.1 Governing law

This Contract is governed by the law applicable in Victoria. The Council and the Service Provider irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Victoria (including the Federal Court and High Court in so far as they are vested with jurisdiction over laws in force in Victoria).

M.2 Waiver



The failure of the Council at any time to require compliance with any condition or the performance of any obligation under this Contract will not be a waiver of the Council's right to:

- (a) Insist on compliance or performance at any time of that or any other obligation or condition under this Contract; or
- (b) Claim damages for breach of or failure to comply with that obligation or condition.

The Service Provider will not be relieved of any obligation to comply or perform pursuant to this Contract unless the Council waives the obligation to comply or perform in writing.

M.3 Approvals, consents and decisions

The Council may, in its absolute discretion, give any approval or consent under this Contract conditionally or unconditionally, or withhold that approval or consent. Unless otherwise expressly required by this Contract, the Council shall not be obliged to give reasons for any decision.

If the Service Provider fails to comply with a condition imposed by the Council on the grant of its approval or consent, that approval or consent is deemed never to have been given by the Council.

M.4 Fettering of powers and relationship between parties

The Service Provider acknowledges and agrees that nothing in this Contract is intended to or will be taken to fetter or restrict the power or discretion of the Council in relation to any powers or obligations it has under any legislative power or discretion that may apply to the subject matter of this Contract.

The parties agree that this Contract creates a relationship of principal and independent contractor between the Council and the Service Provider. Nothing in this Contract gives rise to any relationship of employment, partnership, joint venture or agency between the parties.

The Service Provider must take all reasonable measures to ensure that its employees, agents and the employees of its subcontractors do not represent themselves as being employees, partners, joint venturers or agents of the Council.

M.5 Entire contract

This Contract constitutes the entire contractual relationship between the parties as to its subject matter.

The Contract supersedes any prior understanding, communication or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party in relation to the subject matter. Unless such exclusion is prohibited by law, no condition, term or warranty is to be implied into this Contract.

M.6 Severability

If any provision of this Contract is held invalid, unenforceable or illegal for any reason, the remainder of this Contract has full force apart from such provision, which shall be deemed, deleted.

M.7 Order of priority

In the event and to the extent of any inconsistency between the Contract Documents, the Contract Documents shall be interpreted in the order of priority indicated in the Reference Table contained within the ITT document.



Schedule of General Conditions of Contract

Schedule 1 - Service Provider's warranties

The Service Provider acknowledges that it is responsible for, and warrants that it:

- (a) has examined and considered all information made available by the Council to the Service Provider for the purpose of tendering for the Services;
- (b) has examined and considered all reasonably obtainable information relevant to the risks, contingencies, costs, difficulties and other circumstances having an effect on the Service Provider's tender for the Services;
- (c) has, in its offer, in any interview or discussion leading up to the entering of this Contract or in response to any request from the Council, provided accurate and complete information and has not provided any false, inaccurate or misleading information or failed to provide any material information relevant to the Service Provider's ability to perform the Services;
- (d) has examined and considered all information relevant to the risks, contingencies, costs, difficulties and other circumstances in any way connected with the performance of the Service Provider obligations under this Contract, and otherwise taken into account the Contract Risks and the cost of bearing them;
- (e) has, at the date of this Contract, taken all reasonable measures to ensure that no conflict of interest presently exists or is likely to arise in the performance of its obligations under the Contract;
- (f) has carefully examined the Contract Documents and that there are no ambiguities or discrepancies in the Contract Documents;
- (g) shall not provide or produce any documents or methods of working in the performance of the Services that infringe any Intellectual Property rights;
- (h) has informed itself as to all matters which might impact on the Contract Risks;
- (i) shall comply with the Council Policies and Procedures;
- (j) shall at all times be suitably qualified and experienced;
- (k) shall exercise due skill, care and diligence in the performance of the Services;
- (l) shall at all times employ sufficient appropriately qualified and experienced personnel to satisfactorily provide the Services;
- (m) shall make fully aware, educate and train its employees, subcontractors and agents in relation to the Service Provider's policies;
- (n) has made proper allowance in the Contract Price for all matters contained in or capable of inference from this Contract, and all matters which might impact upon the Service Provider's ability to perform the Services or to perform the Services within any particular time, cost or quality constraints, and the Contract Risks;
- (o) shall be registered for GST;
- (p) shall pay all taxes including payroll tax, levies, duties and assessments due in connection with the Services under this Contract;
- (q) has, or will be able to, obtain all the necessary consents, permits or authorities necessary in order for the Service Provider to perform the Services;
- (r) shall not, if the Service Provider does not provide the advice required by Clause J.3.4 within the time prescribed, prejudice the prospects of the Services being successfully completed in accordance with this Contract, and that compliance with a Direction will not result in there being any failure to comply with a Legislative Requirement;
- (s) must put in place and give Notice to the Contract Manager of a procedure for dealing with Emergencies outside Normal Business Hours;



- (t) is not insolvent at law or otherwise and there is no unfulfilled or unsatisfied judgment or Court order outstanding against the Service Provider; and
- (u) will comply fully with all of its obligations under this Contract.

Schedule 2 - Rise and Fall Formula

$$PX = PXO \times FX$$

Where:

PX = New adjusted price for Year X of the Contract

PXO = Portion of Contract Price for Year X of the Contract (including approved variations) not previously adjusted for Rise and Fall.

FX = Rise and Fall Factor for Year X.

And

$$FX = \left\{ a \left(\frac{LCX}{LCB} \right) + b \left(\frac{MCX}{MCB} \right) + c \left(\frac{TCX}{TCB} \right) \right\} + w$$

Where:

Labour Costs

LCX = Current Labour Index - Australian Bureau of Statistics (ABS) 6345.0 Wage Cost index (Hourly rates of pay excluding bonuses, private and public, Victoria) for the quarter ending immediately prior to the commencement of year X of the Contract.

LCB = Base Labour Index - ABS 6345.0 Wage Cost index (Hourly rates of pay excluding bonuses, private and public, Victoria) which applies for the quarter of the Contract commencement date.

Material Costs

MCX = Current Materials Index - ABS 6401.0 Consumer Price Index All Groups for Melbourne as published by the ABS (CPI) for the quarter ending immediately prior to the commencement of year X of the Contract.

MCB = Base Materials Index - ABS 6401.0 CPI which applies for the quarter of the Contract commencement date.

Transport Costs

TCX = Current Transport Index - ABS 6401.0 CPI (Groups, Transport – Melbourne) for the quarter ending immediately prior to the commencement of year X of the Contract.

TCB = Base Transport Index - ABS 6401.0 CPI (Groups, Transport – Melbourne) which applies for the quarter of the Contract commencement date.

Proportional Factors

a = proportion of price PXO attributable to Labour costs

b = proportion of price PXO attributable to Material costs

c = proportion of price PXO attributable to Transport costs

w = proportion of price PXO to which no Rise and Fall applies

The value of these proportional factors are stated in the Reference Table and note that $(a+b+c+w) = 1$.

If an index is discontinued, or the basis on which an index is calculated is altered, the nearest index as determined by the Contract Manager, will be substituted to give effect to this Clause.



Notwithstanding any provisions in the Contract as to Rise and Fall, where because of the impact of the GST or similar tax, the Service Provider has had a review of the Contract pricing structure within the relevant review period, the parties will not take into account that factor of the price indices relating to the effect of GST in determining the Rise and Fall calculation.



Schedule 3 - Deed of Release

*Completed by the Contractor at contract close out and to be submitted with claim for final payment.

Date of this Deed		
Given to: The Council	MELBOURNE CITY COUNCIL ('Council') of Town Hall, Swanston Street MELBOURNE VIC 3000	
By: The Service Provider	('The Service Provider')	
	Of:	ACN:
Contract in respect of which the Deed is given ('The Contract')	Date:	
	Contract Number:	
Amount Claimed (Full Details must be provided)	\$	

1. Definitions

1.1 In this Deed, unless otherwise defined or the context otherwise requires, the following terms have the meanings indicated.

- (a) **'Amount Claimed'** means the amount referred to as such on the face of this Deed;
- (b) **'Service Provider'** means the party named as such in the title to this Deed;
- (c) **'Contract'** means the agreement between the Council and the Service Provider identified in the heading to this Deed.

1.2 Unless otherwise defined in this Deed, terms referred to in this Deed and defined in the Contract have the same meaning as they do in the Contract.

2. Warranty

2.1 The Service Provider warrants to the Council that:

- (a) the Service Provider has fully complied with all of its obligations under the Contract;
- (b) the Services performed by the Service Provider under the Contract have been completed:
 - (i) in accordance with the Contract;
 - (ii) in accordance with the all Legislative Requirements;



- (iii) in a good and workmanlike manner;
 - (iv) where applicable, using materials of merchantable quality and which are fit for their purpose; and
 - (v) so that any works performed as part of the said Services are fit for the purpose for which they are required.
 - (c) the Service Provider has given notice to the Council of all claims which it has against the Council which are connected with or arise out of the carrying out of the Services by the Service Provider under the Contract; and
 - (d) the Service Provider is not aware of any claim by any person which is connected with or arises out of the carrying out of the Services by the Service Provider under the Contract of which it has not given notice to the Council.
- 2.2 The Service Provider agrees to indemnify and hold harmless the Council and its respective officers, employees, agents and representatives from and against all costs and expenses (including all consequential or subsequent loss, expense or damage sustained by the Council) arising out of or in any way connected with a breach of the warranties contained in this Deed.
- 2.3 The Service Provider agrees that the warranties and indemnities set out in this Deed extend to the acts, defaults and neglects of any contractor, supplier, employee or agent of the Service Provider as fully as if they were the acts defaults or neglects of the Service Provider or the employees or agents of the Service Provider.
- 3. Reduction of Indemnity**
- 3.1 If any loss, damage or expense is caused partly by an act, default or omission of the Council or the Council's agents or employees, then any entitlement of the Council pursuant to any indemnity provided for in this Deed shall be reduced proportionally having regard to the impact of the act, default or omission.
- 4. Release**
- 4.1 The total money due under or in any way connected with or arising out of the Contract or the Service Provider carrying out of the Services performed by the Service Provider under the Contract (including any moneys which might be due to the Service Provider from the Council by way of damages for negligence, breach of contract or other obligation) is, in the opinion of the Service Provider:
- (a) the Amount Claimed; and
 - (b) does not exceed the Amount Claimed.
- 4.2 The Service Provider hereby releases and indemnifies the Council, or any employee, agent, servant or other service provider to the Council from and against all claims which the Service Provider, but for the execution of this Deed, may have had and which exceed the Amount Claimed.
- 4.3 The release and indemnity provided for in the preceding paragraph applies:
- (a) irrespective of how or why a claim might have arisen including any claim in respect of negligence, breach of contract or other obligation;



- (b) irrespective of whether the Service Provider is aware of the claim or the circumstances which would, but for the execution of this Deed, give rise to the claim; and
- (c) in respect of all types of loss or damage including, without limiting the generality of this provision, direct, indirect or consequential loss or damage.

