

# Purchase Order Terms and Conditions

## Services (one off)

### COVERING PAGE

| Item |   |  |
|------|---|--|
| 1.   | <b>Principal:</b>   | <b>Greater Bendigo City Council</b> ABN 74 149 638 164   |
| 2.   | <b>Principal's address and contact details:</b>             | Address: 15 Hopetoun Street, Bendigo Victoria 3550<br>Email: <a href="mailto:procurement@bendigo.vic.gov.au">procurement@bendigo.vic.gov.au</a>  |
| 3.   | <b>Principal Representative (Clause 1.1):</b>               | Contact Person nominated in RFQ Document Part 1 Key Information section of the RFQ Document  |
| 4.   | <b>Service Provider:</b>                                    | As per purchase order issued to the Successful Service Provider  |
| 5.   | <b>Service Provider's address and contact details:</b>      | As per purchase order issued to the Successful Service Provider  |
| 6.   | <b>Project (Clause 1.1):</b>                                | As specifically set out in RFQ Document Part 3 Specification Item A5   |
| 7.   | <b>Site (Clause 1.1):</b>                                   | As specifically set out in RFQ document Part 3 Specification Item A4   |
| 8.   | <b>Services (Clause 1.1):</b>                               | As specifically set out in RFQ Document Part 3 Specification Item A3   |
| 9.   | <b>Date for Completion (Clause 1.1):</b>                    | As specifically set out in RFQ Document Part 3 Specification Item A9   |
| 10.  | <b>Fee (Clause 1.1):</b>                                    | Amount as quoted in the purchase order to the Successful Service Provider  |
| 11.  | <b>Reimbursable Expenses (Clause 1.1):</b>                  | Nil  |
| 12.  | <b>Service Provider's Key Personnel (Clause 11):</b>        | As notified by the Successful Service Provider in RFQ Document Part 4 Response Schedule  |
| 13.  | <b>Contract Documents (Clause 1.1):</b>                     | The following documents comprise the Contract between the parties:<br>(a) this Covering Page;<br>(b) the General Conditions;<br>(c) the specification and associated documentation identified in RFQ Document Part 3 Specification; and<br>(d) the Successful Service Provider's response to rates and prices set out in the Schedule of Prices in RFQ Document Part 4 Response Schedules;<br>(e) Purchase Order issued to Successful Service Provider |
| 14.  | <b>Time for submission of Payment Claims (Clause 16.1):</b> | The last Business Day of each month.   |
| 15.  | <b>Period for payment (Clause 16.316.4):</b>                | 30 Calendar days after the receipt of a satisfactory tax invoice from the Service Provider.  |
| 16.  | <b>Public liability insurance (Clause 18.1(a)):</b>         | The amount of public liability insurance cover in respect of any one occurrence must not be less than \$20 million.  |
| 17.  | <b>Professional indemnity insurance (Clause 18.1(b)):</b>   | If within RFQ Document Part 3 Specification Item A3 the Services are identified as: <ul style="list-style-type: none"> <li>general services, Professional Indemnity insurance is not applicable;</li> <li>consultancy services, the following applies:</li> </ul> The amount of professional indemnity insurance cover in respect of any one occurrence must not be less than \$10 million.  |

## GENERAL CONDITIONS

### 1. Definitions and interpretation

#### 1.1 In the Contract:

- '**Associate**' means an officer, employee, agent, contractor, subcontractor, licensee, consultant, subconsultant, invitee, client or adviser of the Principal or the Service Provider (as the case may be) but does not include the Principal or the Service Provider;
- '**Australian Privacy Principles**' has the meaning given in the *Privacy Act 1988* (Cth);
- '**Author**' means any director, employee, contractor, subcontractor, subconsultant or agent of the Service Provider who may have or acquire Moral Rights in a work or works created as part of the performance of the Services;
- '**Business Days**' means a day other than a Saturday, Sunday or public holiday in the State;
- '**Calendar Days**' means every consecutive calendar day including any public holidays, Saturdays and Sundays, unless Business Days are expressly specified. If the performance of any action or obligation falls on a Calendar Day which is not a Business Day, time is extended until the next Business Day.
- '**Claim**' includes any action, claim, demand or proceeding, including for the payment of money or any other relief or remedy, extension of time, adjustment to the Fee or Loss and whether arising in contract, tort (including negligence), restitution, under statute or otherwise at law or in equity;
- '**Commencement Date**' means the date as set out in RFQ Document Item A8;
- '**Completion**' means that stage when the Services have been performed or completed in accordance with the Contract;
- '**Competent Service Provider**' means a qualified, competent, professional service provider experienced in performing services of a similar nature and complexity to the Services;
- '**Confidential Information**' means all information and materials, in any form concerning the Principal, the Project, the Contract or which the Principal indicates to be confidential, but does not include information in the public domain (other than due to a breach of confidentiality by any person);
- '**Contract**' means the agreement between the parties constituted by the Contract Documents;
- '**Contract Documents**' means the documents stated in Item 13;
- '**Copyright Act**' means the *Copyright Act 1968* (Cth);
- '**Covering Page**' means the page to which these General Conditions are attached;
- '**Date for Completion**' means the calendar date or the expiry of the period specified in Item 9;
- '**Deliverables**' means (to the extent applicable) any materials, reports, drawings, sketches, designs, advices, plans, specifications, data, models, samples, patterns, calculations, computations, reports, photographs, statements, diagrams, software or information and the like which:
- (a) the Service Provider is required to prepare or provide under the Contract; or
  - (b) are necessary for the Service Provider to prepare in order to perform the Services in accordance with the Contract;
- '**Discrepancy**' includes any error, omission, ambiguity, inconsistency or discrepancy;
- '**Fee**' means the amount to be paid by the Principal to the Service Provider as specified in Item 10 including all disbursements and expenses (other than the Reimbursable Expenses) but excluding any additions or deductions which may be required to be made by the Contract;
- '**General Conditions**' means this document and any documents referred thereto;
- '**IP Rights**' means all intellectual property rights (whether registered or unregistered, including all applications and the right to apply for registration) including any processes, technology, systems, reports, specifications, blueprints, patents, trademarks, service marks, trade names, domain names, designs, design rights, brands and company names, trade secrets, copyright works (including future copyrights), URLs, drawings, discoveries, inventions, improvements, technical data, research data, formulae, computer programs, software, know-how, logos, symbols, confidential information and similar industrial or intellectual property rights;
- '**IPPs**' means the 'Information Privacy Principles' set out in Schedule 1 to the PDP Act together with any 'applicable code of practice' as defined in that Act;
- '**Item**' means an item in the Covering Page;
- '**Key Personnel**' means those persons set out in Item 12 (if any) or replaced in accordance with Clause 11;
- '**Legal Requirements**' means:
- (a) all laws (including statutes, regulations, the common law, codes and standards) relevant to the Services; and
  - (b) the requirements of all authorities or persons having jurisdiction over or in respect of any part of the Site or the Services;
- '**Loss**' includes any cost, loss, liability, action, damage or expense, howsoever arising;
- '**Moral Rights**' has the meaning given in the *Copyright Act 1968* (Cth);
- '**OH&S Laws**' means all relevant Legal Requirements concerning the health, safety and welfare of people;
- '**Payment Claim**' means a claim for payment by the Service Provider which includes a tax invoice and sets out:
- (a) details of the part of the Services performed to which the claim relates;
  - (b) the amount claimed by the Service Provider and the basis for calculation (and if calculated on a time charge basis, includes certified copies of the timesheets on which the Service Provider relies); and
  - (c) details of any Reimbursable Expenses claimed, together with certified copies of supporting invoices and receipts.
- '**Payment Schedule**' means a statement of the Principal's opinion of the money due from the Principal to the Service Provider or from the Service Provider to the Principal (as the case may be) including the reasons for any difference;
- '**PDP Act**' means the *Privacy and Data Protection Act 2014* (Vic);
- '**Personal Information**' has the meaning given in the *Privacy Act 1988* (Cth);
- '**PPS Act**' means the *Personal Property Securities Act 2009* (Cth);
- '**Pre-existing IP Rights**' has the meaning given in Clause 8.4(a);
- '**Principal**' means the Greater Bendigo City Council.
- '**Principal Representative**' means the position as stated in Item 3 or any replacement notified in accordance with Clause 2.3;
- '**Principal's Policies and Procedures**' includes all policies, plans, manuals, guidelines, instructions and other requirements of the Principal as published on the Principal's website or otherwise provided to the Service Provider from time to time which are, or may become applicable to the Site or the Services;
- '**Privacy Laws**' means any Legal Requirement which relates to the privacy of information about individuals and with which the Service Provider must comply, including the *Privacy Act 1988* (Cth), the Australian Privacy Principles and any applicable code of practice;
- '**Project**' means the project stated in Item 6 (if any);
- '**Purchase Order**' means the Purchase Order to which these conditions apply;
- '**Reimbursable Expenses**' means those disbursements and expenses detailed in Item 11 (if any);
- '**RFQ Document**' means the Request for Quotation document issued by the Principal to Service Providers during the quotation phase;
- '**Service Provider Breach**' means any circumstance or event where the Service Provider:
- (a) does not commence performing or fails to continue to perform the Services with due expedition and without delay or within the times required by the Contract;
  - (b) fails to exercise the standard of skill, care and diligence required by the Contract; or
  - (c) is otherwise in material breach of the Contract;
- '**Services**' means the services described or referred to in Item 8, as may be more fully set out in or reasonably ascertainable from the Contract Documents, together with all tasks and activities incidental to and necessary for the performance of the Services;
- '**Site**' means the site described in Item 7 (if any);
- '**State**' means the State or Territory of Australia in which the Site is situated;
- '**subcontractor**' in the context of the Service Provider, includes any consultant appointed by the Service Provider in accordance with Clause 12; and
- '**Successful Service Provider**' means the Service Provider who is issued with the purchase order by the Principal, to confirm accept of quotation to proceed with the Services;

'Variation' means a variation to the Services including an increase, addition, decrease, omission or change to the scope of the Services;

- 1.2 The Contract comprises the entire understanding between the parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in the Service Provider's tender (if any) or other correspondence are deemed to have been withdrawn in favour of the terms stated in the Contract.
  - 1.3 The Contract comes into effect and operates from the Commencement Date or the date the Successful Service Provider is notified whichever is later.
  - 1.4 The obligations, warranties and representations of the Service Provider under the Contract apply to any part of the Services carried out by the Service Provider prior to the date the Successful Service Provider is notified.
  - 1.5 In the interpretation of the Contract, no rule of construction applies to the disadvantage of the Principal on the basis that the Principal prepared or put forward the Contract or any part of it.
  - 1.6 The Contract is governed by and is to be construed in accordance with the laws of the State. The parties submit to the non-exclusive jurisdiction of the courts of the State.
  - 1.7 Any provision of this Contract that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
  - 1.8 If it is not possible to read down a provision as required by Clause 1.7, the part or all of the provision that is unlawful or unenforceable will be severed from this Contract and the remaining provisions continue in force.
  - 1.9 Without limiting any other way in which documents or notices may be given by a party to the other party under this Contract, a notice or document may be given by electronic delivery to the email address stated in Item 5 or to a substitute email address advised by one party to the other from time to time as an address at which notices may be given.
  - 1.10 All obligations to indemnify under the Contract survive termination or expiration and completion of the Contract.
  - 1.11 Nothing contained or implied in this Contract is intended to create a partnership between the parties, or except as otherwise provided in this Contract, establish any party as an agent, employee or representative of the other party.
  - 1.12 Unless otherwise expressly stated, the Principal or the Principal's Representative may exercise a right or power under or arising out of this Contract in its absolute discretion.
  - 1.13 This Contract may be executed in counterparts, all of which taken together constitute one document.
  - 1.14 If the Service Provider consists of two or more parties, this Agreement and any Services Contract binds each of them severally and jointly.
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## **2. Principal Representative**

- 2.1 The Principal has appointed the Principal Representative.
  - 2.2 The Principal Representative may give directions and carry out all of the Principal's powers or functions under the Contract as agent of the Principal.
  - 2.3 The Principal may replace the Principal Representative at any time and notify the Service Provider in writing of that appointment.
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## **3. Service Provider's primary obligations**

- 3.1 The Service Provider must:
    - (a) perform the Services in accordance with:
      - (i) the Contract Documents; and
      - (ii) all Legal Requirements; and
      - (iii) the Principal's Policies and Procedures;
    - (b) in the performance of the Services, exercise the standard of professional skill, care and diligence to be expected of a Competent Service Provider;
    - (c) perform the Services honestly and in good faith in the interests of the Principal;
    - (d) comply with all directions given by the Principal;
    - (e) promptly:
      - (i) commence and thereafter perform the Services in a proactive, diligent and expeditious manner;
      - (ii) bring the Services to Completion by the Date for Completion; and
      - (iii) notify the Principal of any likely delay to the performance of the Services;
    - (f) obtain all licences and approvals required under any Legal Requirement for the performance of the Services; and
    - (g) coordinate and liaise with other service providers or consultants (if any) and do such things as are reasonably necessary to coordinate and integrate the Services with any other services being provided with respect to the Project (if any).
  - 3.2 If the Service Provider requires access to the Site (if any) in order to perform the Services, it must provide prior written notice to the Principal. As soon as reasonably practicable after the Service Provider's request, the Principal will provide or arrange suitable Site access for the Service Provider, which will at all times be subject to the Service Provider's compliance with the Principal's directions (including as to security and safety).
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## **4. Principal's primary obligation**

- 4.1 Subject to the Contract, the Principal must pay the Service Provider the Fee, as adjusted by any additions or deductions made under the Contract.
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## **5. Service Provider's acknowledgements and agreements**

- 5.1 The Service Provider acknowledges and agrees that:
    - (a) it has, and by entering into the Contract is deemed to have:
      - (i) fully informed itself of the scope and requirements of the Services and the Principal's Policies and Procedures; and
      - (ii) satisfied itself that the Fee makes due allowance for the performance by the Service Provider of its obligations arising out of or in connection with the Contract; and
    - (b) its obligations and liabilities remain unaffected despite any review, comment on or acceptance of the Services by the Principal or the Principal's Associates.
    - (c) the Principal is relying on the Service Provider's skill, knowledge and judgement and each of the warranties, agreements and representations given by the Service Provider in the Contract and would not have entered into this Contract but for those warranties, agreements and representations.
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## **6. Deliverables**

- 6.1 The Service Provider must:
    - (a) prepare and progressively submit the Deliverables to the Principal by the dates or within the times:
      - (i) specified in any program issued by the Principal to the Service Provider prior to the Commencement Date; or
      - (ii) where there is no program or no relevant dates or times specified in a program, then within the reasonable times directed by the Principal; and
    - (b) perform the Services so that the Deliverables:
      - (i) comply with Specification as set out in the RFQ Document and all Legal Requirements;
      - (ii) are coordinated, consistent and interfaced with each other;
      - (iii) do not infringe any IP Rights or the Moral Rights of any Author; and
      - (iv) are prepared by persons with appropriate professional qualifications and experience.
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## **7. Discrepancies**

- 7.1 If either party identifies any Discrepancy in or between any one or more of the Contract Documents and/or the Deliverables, then that party must notify the other party. On becoming aware of a Discrepancy, the Principal may direct the Service Provider:

- (a) to amend and resubmit a Deliverable (or amended Deliverable); or
  - (b) as to how the Discrepancy is to be resolved.
- 7.2 The Service Provider is not entitled to make any Claim arising out of or in connection with any directions under this Clause 7 or the resolution of any Discrepancy.
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## **8. IP Rights and Moral Rights**

- 8.1 The Service Provider:
- (a) warrants to the Principal that:
    - (i) no IP Rights or Moral Rights will be infringed or breached in the performance of the Services or by the use or enjoyment of the Deliverables by the Principal, the Principal's Associates or any person nominated or authorised by the Principal; and
    - (ii) it owns, or has the authority to grant the rights granted in accordance with Clause 8.4; and
  - (b) must indemnify the Principal on demand from and against any Claim or Loss suffered or incurred by the Principal in connection with any:
    - (i) infringement, violation, alleged infringement or alleged violation of any IP Rights or Moral Rights in connection with the performance of the Services, or the use or enjoyment of the Deliverables (or the use or exercise of the IP Rights in the Deliverables) by the Principal, the Principal's Associates or any person nominated or authorised by the Principal; or
    - (ii) breach of the warranty in Clause 8.1(a).
- 8.2 Subject to Clause 8.4, the IP Rights in all Deliverables vest in the Principal upon creation. The Service Provider must do everything necessary to perfect such vesting.
- 8.3 The Principal grants to the Service Provider a royalty free, non-transferable, revocable, non-exclusive licence to use the IP Rights vested in the Principal under Clause 8.2 only to the extent necessary for the performance of the Services.
- 8.4 To the extent that:
- (a) methodologies or other proprietary information of the Service Provider used in the performance of the Services existed prior to the Commencement Date and were not created in connection with the Contract (**Pre-existing IP Rights**); or
  - (b) IP Rights in or relating to the Deliverables are not capable of being vested in the Principal because the Service Provider does not own those IP Rights,
- the Service Provider must grant or ensure the Principal is granted an irrevocable, perpetual, transferable, royalty free licence (with a right to sub-licence) to use those Pre-existing IP Rights or IP Rights.
- 8.5 All materials and documents provided by or on behalf of the Principal remain the property of the Principal and must not be used by the Service Provider (and the Service Provider must procure that they are not so used by its Associates) for any purpose other than the performance of the Service Provider's obligations under the Contract. Upon termination under Clause 20 or Completion, whichever is earlier, the Service Provider must return all materials and documents provided by or on behalf of the Principal.
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## **9. Confidentiality and privacy**

- 9.1 Except as required by law, the Service Provider must, and must procure that its Associates, keep confidential and not disclose to any third party the Confidential Information without the prior written consent of the Principal.
- 9.2 Upon the earlier of Completion or termination of the Contract under Clause 20, the Service Provider must deliver to the Principal all materials in its possession comprising the Confidential Information.
- 9.3 The Service Provider:
- (a) is bound by, and must procure its Associates are bound by, the IPPs with respect to any act done or practice engaged in by it or its Associates for the purposes of the Contract in the same way and to the same extent as the Principal would have been bound by the IPPs in respect of that act or practice had it been directly done or engaged in by the Principal;
  - (b) must not, and must procure its Associates do not, cause the Principal to be in breach of its obligations under the PDP Act; and
  - (c) must comply with all procedures for the enforcement of the IPPs set out in the PDP Act (including complying with any compliance or other notices given by, or requirements of, the Commissioner for Privacy and Data Protection appointed under the PDP Act and producing documents).
- 9.4 The Service Provider must:
- (a) in respect of Personal Information held in connection with the Contract and whether received from the Principal or otherwise:
    - (i) comply, and procure that its Associates comply, with the Privacy Laws; and
    - (ii) immediately notify the Principal if it becomes aware of a breach of Clause 9.4(a)(i) or of any investigation by the Office of the Australian Information Commissioner; and
  - (b) if the Principal gives notice to the Service Provider that it proposes to audit, either directly or through its auditors, the Service Provider's information handling practices, provide all reasonable assistance to the person conducting that audit.
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## **10. PPS Act**

- 10.1 In this Clause 10, words and expressions that are defined in the PPS Act have, unless the context otherwise indicates, the same meaning as in the PPS Act.
- 10.2 The Service Provider:
- (a) must do everything the Principal considers reasonably necessary to ensure that any security interest arising under the Contract in favour of the Principal is able to be registered, is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Act;
  - (b) agrees that ss 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of any such security interest;
  - (c) agrees not to register a financing change statement without the prior written consent of the Principal and agrees not to disclose information of the kind referred to s 275(1) of the PPS Act; and
  - (d) waives any rights it may have had but for this Clause 10.2 under ss 157(1) and 275(7)(c) of the PPS Act.
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## **11. Key Personnel**

- 11.1 The Service Provider must:
- (a) employ the Key Personnel to perform those roles and duties specified in Item 12 (if any);
  - (b) subject to Clause 11.1(c), not replace the Key Personnel without the Principal's prior written approval; and
  - (c) if any of the Key Personnel dies, becomes seriously ill or resigns, replace them with persons approved by the Principal who are at least of equivalent experience, ability and expertise.
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## **12. Subcontracting and dealings with Contract**

- 12.1 The Service Provider:
- (a) must not assign or transfer the Contract or any payment or other right or interest under the Contract, without the prior written approval of the Principal;
  - (b) may only subcontract a part of the Services with the prior written approval of the Principal (which approval may be conditional);
  - (c) remains fully responsible, and will not be relieved from any liability, for the Services notwithstanding that the Service Provider has subcontracted the performance of any part of the Services; and
- 12.2 To the full extent permitted by law the Service Provider:
- (a) is entirely responsible for any failure to take reasonable care on the part of any of its Associates; and

- (b) without limiting the general nature of Clauses 12.1 and 12.2(a), must indemnify the Principal on demand from and against any Loss suffered or incurred by the Principal arising out of or in connection with the operation of Part IVAA of the *Wrongs Act 1958* (Vic) including any Loss arising out of an apportionment in accordance with Part IVAA of the *Wrongs Act 1958* (Vic) of any Claim by the Principal against the Service Provider.
- 12.3 The Principal may direct the Service Provider to remove from any activity in connection with the Services any person who, in the reasonable opinion of the Principal, is incompetent, negligent, guilty of misconduct or is otherwise unduly interfering with the Project.
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### 13. Variations

- 13.1 The Principal may at any time before Completion direct the Service Provider to perform a Variation by written notice (**Variation Notice**). The Service Provider must not perform a Variation other than pursuant to a Variation Notice. Variations will be valued in accordance with Clause 13.4.
- 13.2 No Variation or Variations, including an omission of any part of the Services, will invalidate or constitute a repudiation of the Contract. may perform or procure another person to perform any part of the Services deleted or omitted by a Variation Notice.
- 13.3 The Service Provider is not entitled to make any Claim arising out of or in connection with a new, or a change in any, Legal Requirement.
- 13.4 Where the Contract provides that a valuation is to be made under this Clause 13.4, the Fee will be increased or decreased (as the case may be) by the amount determined by the Principal using the following order of precedence:  
(a) prior agreement; and  
(b) fees or prices in the Contract Documents (if any) to the extent the Principal considers that it is reasonable to use them.
- 13.5 For the purposes of a valuation under Clause 13.4, if requested by the Principal to do so, the Service Provider must within 5 Business Days of such request, provide the Principal with documentation evidencing the costs or expenses incurred by the Service Provider in performing the Variation.
- 13.6 The Principal may direct the Service Provider to execute a deed varying the terms of this Contract to reflect a Variation.
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### 14. Suspension

- 14.1 The Principal may suspend the performance of the Services or part of the Services by issuing a written notice to the Service Provider. The Service Provider must immediately comply with such notice and suspend the progress of the whole or part of the Services for the period of time stated in the notice, or if no time is stated, for the period of time directed by.
- 14.2 The Service Provider must recommence the Services in accordance with any further written notice issued by the Principal to the Service Provider.
- 14.3 The Service Provider is not entitled to make any Claim arising out of or in connection with a suspension under this Clause 14.
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### 15. Fee

- 15.1 Except for adjustments expressly provided for by the Contract, the Service Provider agrees that the Fee and its entitlement to Reimbursable Expenses constitutes the total amount payable by the Principal to the Service Provider for the performance of the Services and is inclusive of all costs and expenses incurred or likely to be incurred by the Service Provider in performing the Services and complying with its obligations arising out of or in connection with the Contract.
- 15.2 The Principal will reimburse the Service Provider the Reimbursable Expenses in accordance with Clause 16 provided that:  
(a) they have, both in nature and quantum, been properly and reasonably incurred by the Service Provider for the purpose of carrying out the Services; and  
(b) the Service Provider submits proof of expenditure in accordance with Clause 16.1.
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### 16. Payment

- 16.1 The Service Provider may only submit Payment Claims at the times for submission of Payment Claims stated in Item 14.
- 16.2 The Principal may, within 10 Business Days after receiving a Payment Claim, issue to the Service Provider a Payment Schedule.
- 16.3 Subject to Clause 16.4, the Principal must pay the Service Provider or the Service Provider must pay the Principal (as the case may be) the amount set out in the Payment Schedule (or if the Principal does not issue a Payment Schedule within time, the amount set out in the Payment Claim) within the time stated in Item 15. Neither the issue of a Payment Schedule nor a payment by the Principal will be evidence that the Services have been performed in accordance with the Contract or an admission of liability and payment is on account only.
- 16.4 Without limiting its rights at law or in equity, the Principal may deduct, withhold or set off from money due to the Service Provider any money owing from the Service Provider to the Principal whether arising out of or in connection with the Contract or otherwise.
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### 17. Goods and Services Tax

- 17.1 In this Clause 17 words that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as given in that Act.
- 17.2 Except as otherwise provided by this Clause 17, all consideration payable under the Contract in relation to any supply is exclusive of GST.
- 17.3 If GST is payable in respect of any supply made by a supplier under the Contract, subject to Clause 17.5, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under the Contract.
- 17.4 If this Contract requires a party to pay, reimburse or contribute to an expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:  
(a) the amount of the payment, reimbursement or contribution less any input tax credits in respect of the payment, reimbursement or contribution to which the other party is entitled; and  
(b) if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.
- 17.5 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under Clause 17.3.
- 17.6 If an adjustment event occurs in relation to a taxable supply under this Contract:  
(a) the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and  
(b) any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.
- 17.7 The Service Provider warrants to the Principal that it is registered for GST. The Service Provider shall notify the Principal if it ceases to be registered for GST.
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### 18. Insurance

- 18.1 Before commencing the Services, the Service Provider must effect all insurances required to be effected under any Legal Requirement together with the following insurance policies:  
(a) a public liability insurance policy which:  
(i) covers the liability of the Service Provider, its subcontractors (if any) and the Principal to third parties for loss of or damage to property and the death of or injury to any person;  
(ii) covers the Service Provider's liability to the Principal and the Principal's liability to the Service Provider for loss of or damage to property and the death of or injury to any person;  
(iii) is for an amount not less than the respective sum stated in Item 16;  
(iv) indemnifies the Principal as an insured;  
(v) includes a cross liability condition; and  
(vi) must be maintained for the duration of the Services;  
(b) a professional indemnity insurance policy for the Services for an amount not less than the sum stated in Item 17 which must be maintained until 10 years after the date of Completion of the Services. If within the RFQ Document Part 3 Specification Item 3 identifies as general services, professional indemnity is not applicable; and

- (c) a workers compensation insurance to cover liability arising out of death of or injury to persons employed by the Service Provider, including liability at statute and at common law and which must be maintained for the duration of the Services.
- 18.2 The Service Provider must ensure that each of its subcontractors are similarly insured.
- 18.3 Each policy must be taken out with an insurer and in terms both approved by the Principal. Before commencing the Services and whenever requested by the Principal, the Service Provider must produce evidence to the satisfaction and approval of the Principal that it has satisfied all of its insurance obligations under the Contract. Insurance does not limit the Service Provider's liability under the Contract or otherwise.
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- 19. Indemnity**
- 19.1 The Service Provider must indemnify the Principal on demand from and against any Claim or Loss suffered or incurred by the Principal arising out of or in connection with any breach of the Contract by the Service Provider or negligence by the Service Provider.
- 19.2 The Service Provider's liability to indemnify the Principal under this Clause 19 will be reduced proportionately to the extent that a wrongful or negligent act or omission of the Principal or its employees, agents or other contractors contributed to the Claim or Loss.
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- 20. Termination**
- 20.1 In the event that the Service Provider:
- (a) fails to remedy a Service Provider Breach within 10 Business Days from the date of being notified of the default by the Principal;
  - (b) is insolvent, has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed to it, enters into a scheme of arrangement with its creditors, is wound up or is bankrupt; or
  - (c) abandons the Services,
- The Principal may terminate the Contract by giving written notice to the Service Provider.
- 20.2 Upon termination under Clause 20.1:
- (a) subject to Clause 16.4, will only be liable to the Service Provider for those amounts which were due and payable by the Principal to the Service Provider under the Contract as at the date of termination; and
  - (b) the Service Provider will be liable to the Principal for any Loss that the Principal has incurred or is likely to incur arising out of or in connection with the termination as a debt due and payable from the Service Provider to the Principal.
- 20.3 The Contract may be terminated:
- (a) at any time by the mutual written agreement of the parties; or
  - (b) by the Principal at any time and for any reason (regardless of default) by giving the Service Provider 10 Business Days prior written notice under this Clause 20.3.
- 20.4 Within 20 Business Days after the end of the month in which the Contract is terminated under Clause 20.3(b) the Principal will pay the Service Provider an amount being so much of the Fee as is due to the Service Provider for the Services performed by it under the Contract up to the date of termination, less any amounts that the Principal is entitled to deduct, withhold or set off arising out of the Contract or otherwise.
- 20.5 An amount payable to the Service Provider under Clause 20.4 constitutes the Service Provider's sole and exclusive entitlement to compensation in the event of termination under Clause 20.3(b) and other than that amount the Service Provider will not be entitled to make and forever releases and discharges the Principal from any Claim in respect of such termination.
- 20.6 The rights of the Principal under this Clause 20 are in addition to, and without prejudice to any other right that it may have under this Contract or at common law against the Service Provider.
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- 21. Dispute resolution**
- 21.1 If a dispute or difference between the parties arises in connection with the Contract, then either party may deliver by hand or send by registered post to the other party, a written notice of dispute identifying and providing details of the dispute.
- 21.2 Within 10 Business Days of the receipt of a notice of dispute, the parties will confer and undertake good faith negotiations in an attempt to resolve the dispute.
- 21.3 If the dispute has not been resolved within 20 Business Days after receipt of a notice of dispute, either party may by notice in writing delivered by hand or sent by registered post to the other party, refer that dispute to litigation.
- 21.4 Nothing in this Clause 21 will prejudice the right of a party to seek urgent injunctive or declaratory relief of any matter arising out of this Contract.
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- 22. Time Bar on Claims**
- 22.1 Within 20 Business Days after the date on which:
- (a) the Service Provider becomes aware; or
  - (b) a Competent Service Provider could have become aware,
- of a Claim arising out of or in connection with the Contract, whichever is the earlier to occur, the Service Provider must provide the Principal with a written notice specifying the:
- (c) event, circumstance, breach, act or omission on which the Claim is based; and
  - (d) quantum or likely quantum of the Claim.
- 22.2 To the extent permitted by law, the Service Provider will be barred from making and releases the Principal from any Claim of which the Service Provider fails to give notice in accordance with this Clause 22.1.
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- 23. Notices**
- 23.1 A notice or other communication required or permitted to be delivered to a party must be in writing and subject to Clause 21 may be delivered on the party:
- (a) personally on the party;
  - (b) by leaving it at the party's address for service (including at its registered office, if the party is a company);
  - (c) by posting it by prepaid post addressed to that party at the party's address for service; or
  - (d) by electronic mail to the party's email address for service.
- 23.2 The particulars of the Principal and the Service Provider for service as at the date the Successful Service Provider is notified are set out in Covering Page. Either party may change its address or email address by giving notice to the other party.
- 23.3 A notice or other communication is deemed delivered:
- (a) if delivered personally or left at the person's address, upon delivery;
  - (b) if posted within Australia to an Australian address, 6 Business Days after posting and in any other case, 10 Business Days after posting;
  - (c) if served by email, subject to Clause 23.3(d), at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
  - (d) if received after 5.00pm in the place it is received or on a day which is not a Business Day in the place it is received, at 9.00am on the next Business Day.
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- 24. Meetings and reporting**
- 24.1 The Service Provider must:
- (a) meet with the Principal and any other persons nominated by the Principal regarding the performance of the Services and the Project at the places and at the times directed by the Principal; and
  - (b) bring to the meetings referred to in Clause 24.1(a) the persons and materials required by the Principal.

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**25. Acceptance**

25.1 If written acceptance of these conditions of this Purchase Order is not communicated by the Service Provider to the Principal the supply or commencement of the Services shall constitute acceptance by the Service Provider.