



Major Services Agreement

The Council of the City of Sydney

and

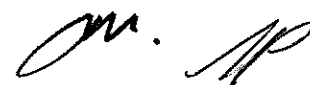
Nextgen Networks Pty Ltd

ABN 32 094 147 403

Sydney 2030 / Green / Global / Connected

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THIS AGREEMENT is made on

2014

BETWEEN:

- (1) **Council of the City of Sydney** whose registered office is at Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **Nextgen Networks Pty Ltd** ABN 32 094 147 403 of Level 6, 333 Collins St, MELBOURNE VIC 3000 (the **Service Provider**).

RECITALS

- (A) The City wishes to appoint the Service Provider for the provision of the Services on the terms and conditions of this document.
- (B) The Service Provider agrees to supply the Services to the City on the terms and conditions of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Data means data of any kind of the City or of any customer or supplier of the City (other than the Service Provider) and includes data that:

- (a) may cause the City reputational or brand damage if it is the subject of unauthorised information disclosure, loss or corruption;
- (b) is the City's Personal Information; or
- (c) is corporate proprietary or financial information such as may be subject to the Corporations Act or would be the subject of Intellectual Property Rights owned by the City.

City's Material means all Material provided by or on behalf of the City to Service Provider for the purposes of this document or any Work Schedule, and all adaptations, enhancements and derivative works of such Material.

City's Personal Information means Personal Information to which the Service Provider, or any third party engaged by the Service Provider, has access directly or indirectly in



connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Service Provider).

City's Policies means all policies and procedures relevant to the provision of the Services, as notified in writing to the Service Provider.

City's Property means any property used or operated by or on behalf of the City and includes any systems, equipment or premises, whether owned, leased, licensed or rented by or on behalf of the City.

Contract Manager means the person named in Item 1 of Schedule 1 or his/her delegate.

Confidential Information means:

- (a) the terms of this document;
- (b) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliverables means any items (including any software or hardware) required to be provided to the City, or a task to be completed for the City, by the Service Provider under any Work Schedule.

Delivery Certificate means a certificate issued by the City in respect of each Work Schedule in the form set out in Schedule 3.

Developed Material means all Material brought or required to be brought into existence by or on behalf of the Service Provider, product or results produced, concepts developed or work done by the Service Provider in the provision of Services, including the Deliverables.

Disengagement Period means the period commencing on the date specified in clause 19 and ending on the intended date of termination of this document, which will either be:

- (a) the end of the Term; or



- (b) the date specified by the City in a termination notice.

Disengagement Services means the services to be provided by the Service Provider in anticipation of the termination of this document, which will include:

- (a) selling, transferring, assigning or relocating the Developed Material (whether finalised or works in progress), and any associated equipment, parts, documents, files, plans and related items;
- (b) novating or assigning or securing the novation or assignment of such third party agreements (including software licences) as are specified by the City; and
- (c) migrating the Services; and
- (d) any other disengagement services set out in a Work Schedule,

to another services provider or to the City itself.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Equipment means all hardware, software and other items supplied by the Service Provider in accordance with this document

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) *Work Health and Safety Act 2011* (NSW);
- (b) the *Protection of the Environmental Operations Act 1997* (NSW); and
- (c) the *Contaminated Land Management Act 1997* (NSW).

Expiry Date means the date in Schedule 1.

Fee means the fee for the Services specified in the relevant Work Schedule.

Force Majeure Event means in relation to a party an act, omission or circumstance which:

- (a) is beyond the reasonable control of that party; and
- (b) constitutes a fire, flood, earthquake, terrorism, riot, explosion or war, communicable disease for which the World Health Organisation or Department of Foreign Affairs and Trade have issued affected area or travel warnings, state-wide or national strike or other state-wide wide or national industrial action (except where caused by the Service Provider).

Further Term means an extension of the Term under clause 18.2.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or



- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means the same as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Infringement Claim means any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting ownership of the Intellectual Property Rights in the Developed Material; or
- (b) that the supply or other use of the Services or the Developed Material infringes or may infringe the Intellectual Property Rights of a third party.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Intellectual Property Rights means all present and future rights conferred in law in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world, but excluding any Moral Rights.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

Material means material in any form (whether visible or not), including documents, advertisements (in print, electronic or recorded format), recordings on disc or any other form of storage, reports, products, equipment, information, data, software, software tools and software development methodologies, and includes all releases, updates and amendments to the original material.

Milestone means a date, phase or provision of a Deliverable specified in the relevant Work Schedule.

Moral Rights means rights of integrity of authorship or performership, rights of attribution of authorship or performership, rights not to have authorship or performership falsely attributed, and rights of a similar nature conferred by statute anywhere in the world that may now exist or that may come to exist in relation to a work.

Performance Date means a date by which a Milestone must be completed by the Service Provider as set out in a Work Schedule.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

Personnel means the Service Provider's officers, employees, agents, contractors or subcontractors.

Planned Outage means a temporary outage or temporary reduction in services of which the nature, date and time have been agreed in writing between the Service Provider and the City.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

Schedule of Rates means the schedule of rates submitted by the Service Provider as part of the tender and as accepted by the City as set out in a Work Schedule.

Service Levels means service levels used for measuring the performance of the Service Provider's obligations under this document, as set out in a Work Schedule.

Service Level Rights means the rights that may be exercised by the City in relation to a Service Level specified in a Work Schedule, including the right to claim rebates and other remedies.

Service Provider's Material means any Material owned by or licensed to the Service Provider associated or connected with the performance of the Services or provision of the Deliverables but does not include the City's Material or the Developed Material.

Service Provider's Representative means the person named in Schedule 1 or his/her delegate.

Services means the services to be provided to the City set out in the relevant Work Schedule, including the provision of the Developed Material.

Site means the site for the performance of the Services set out in Schedule 1.

Specifications means the functional and technical specifications set out in a Work Schedule.

Start Date means the date on which all parties have executed this document.



Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Term has the meaning given to that term in clause 18.1.

WHS Returnable Documents means the WHS documentation listed in Schedule 1, including risk assessments and safe work method statements in relation to the Services.

Work Schedule means the document (substantially in the form set out in Schedule 2) that the parties sign for the City to order Services from the Service Provider.

1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (g) A reference to **this document** includes the agreement recorded by this document.
- (h) Words defined in the GST Act have the same meaning in clauses about GST.

1.3 **The rule about "contra proferentem"**

This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. RELATIONSHIP BETWEEN THE PARTIES

2.1 Independent contractor

The Service Provider is an independent contractor of the City. The Service Provider must not represent itself, and must ensure that its employees, subcontractors and agents do not represent themselves, as being partners, employees or agents of City.

2.2 Subcontractors

(a) The Service Provider may appoint any subcontractors to assist with the provision of the Services, subject to the prior written consent of the City (which may be withheld at the City's absolute discretion or granted subject to conditions).

(b) If the Service Provider appoints a subcontractor under this document, the Service Provider will remain responsible for all acts and omissions of the sub-contractor as if they were acts or omissions of the Service Provider.

2.3 No authority to make certain representations

The Service Provider must not make any representation, statement or warranty that it has authority to bind the City, whether by entering into contracts or otherwise, except with the prior written consent of the City.

3. SERVICES

3.1 Basis of engagement

The City engages the Service Provider as a non-exclusive, independent contractor to provide the Services to the City, and the Service Provider accepts the engagement on the terms of this document.

3.2 Work Schedules

(a) The City may order Services from the Service Provider by creating separate Work Schedules in accordance with the proforma set out in Schedule 2 or in any other manner agreed between the parties.

(b) Each Work Schedule will incorporate the terms of this document and form a separate agreement between the parties.

3.3 No volume guarantee

The Service Provider acknowledges and agrees that the City is under no obligation, at law or under this document, to obtain any quantity or volume of any Services from the Service Provider.

4. PERFORMANCE OF THE SERVICES

4.1 Provision of the Services

The Service Provider must provide the Services for the Term in accordance with this document.



4.2 **Standard of performance**

In providing the Services and performing its obligations under this document, the Service Provider must at all times ensure that the Services are provided:

- (a) in a highly professional and ethical manner and with the level of due care and skill which may be expected of a professional organisation experienced in providing the services of the type and complexity of the Services;
- (b) so that the Services and any Deliverables are fit for the purposes for which services of that type are commonly acquired and any other purposes which have been notified to the Service Provider by the City;
- (c) in accordance with all Laws and the City's Policies; and
- (d) so that the Services meet or exceed the Service Levels; and
- (e) as otherwise agreed by the parties.

4.3 **Additional Service Provider obligations**

The Service Provider must:

- (a) supply everything necessary for the performance of its obligations under this document;
- (b) use any equipment in performance of the Services in the proper manner for the purposes for which it is provided and in accordance with the manufacturer's and supplier's directions;
- (c) cooperate with any of the City's personnel and contractors in the performance of the Services or as otherwise directed by the Contract Manager from time to time;
- (d) take all necessary and reasonable steps to ensure the security of the Site is maintained;
- (e) attend inspections of the Site with the City at the City's request;
- (f) achieve best value for money for the City in the provision of the Services;
- (g) ensure that the City is fully and accurately informed of all matters which are the subject of the Services;
- (h) ensure that the City has the benefit of all manufacturer's warranties for all goods supplied in relation to the Services and will enter into all documents and do all things required to do so; and
- (i) upon request by the City, give to the City free of cost one copy of the manufacturer's specifications (if any) for any products used in performance of the Services.

4.4 **Availability**

The Service Provider must ensure the sufficient availability at all times of the Personnel, equipment, parts and materials required to provide the Services in accordance with this document.

4.5 Not used

4.6 Authorisations

The Service Provider must:

- (a) ensure that it has all Authorisations which are necessary for it to lawfully provide the Services;
- (b) ensure that any such Authorisations are held throughout the Term; and
- (c) provide the City with a copy of any Authorisation and give proof of its currency at the City's request.

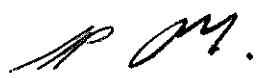
4.7 Personnel

- (a) The Service Provider must ensure that:
 - (i) the Personnel are of good character, and are suitably skilled, experienced, trained and qualified to perform the Service Provider's obligations under this document;
 - (ii) the Personnel comply with all Laws applicable to the provision of the Services;
 - (iii) the Personnel comply with any specific dress code and other requirements notified in writing by the City from time to time, including any requirement to display identification (such as name tags or badges) and accreditation issued by the City; and
 - (iv) the Personnel render the Services in a polite and helpful manner.
- (b) The City may, at any time during the Term in its absolutely discretion, give notice requiring the Service Provider to remove Personnel from work relating to the Services, in which case the Service Provider must promptly arrange for the removal of such Personnel and ensure that any replacement Personnel are acceptable to the City.
- (c) The Service Provider is solely responsible for maintaining the employer/employee relationship with all Personnel which includes:
 - (i) payment to Personnel of all wages, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits or allowances under any legislation, industrial award, agreement or contract of employment that are the employer's responsibility to pay for work performed by Personnel in the execution of an assignment, and payment by the Service Provider of all costs incurred by the Service Provider providing Services to the City; and
 - (ii) ensuring Personnel comply with any other requirements notified by the City.

4.8 Improvements

The Service Provider must also use all reasonable endeavours to identify:

- (a) possible improvements to the Services, the City's processes or any matter related to this document; and
- (b) possible costs savings to the City in relation to the provision of the Services.



4.9 **Quality assurance**

- (a) Where required by the Work Schedule, the Service Provider must establish and maintain a documented quality assurance system about the Services in accordance with the standard set out in the Work Schedule.
- (b) The Service Provider must allow the City, or any person nominated by the City, reasonable access to all premises, personnel, systems, equipment and documents necessary to permit the auditing of the Service Provider's quality control system.

4.10 **Cooperation with third parties**

The Service Provider must work co-operatively with in good faith and provide all reasonable assistance to any third party engaged by the City to provide services to the City relating to or associated with the Services, including any NSW State Government agencies and their representatives.

4.11 **WHS and environmental obligations**

- (a) The Service Provider must accurately complete and then provide to the City the WHS Returnable Documents by the due dates set out in Schedule 1.
- (b) Without limiting clause 4.2(c), the Service Provider must in the performance of the Services:
 - (i) comply with the City's environmental and WHS policies as notified by the City to the Service Provider in writing; and
 - (ii) without limiting clause 4.11(b)(i):
 - (A) act in such a manner as to avoid nuisance, interference or damage to the environment and in accordance with any environmental management plan provided by the City to the Service Provider;
 - (B) dispose of all solid, liquid and gaseous contaminants in accordance with Laws and/or the City's requirements and/or the requirements of any relevant Government Agency;
 - (C) remove all refuse resulting from the performance of the Services; and
 - (D) not use or permit the use of any toxic chemicals or materials without the City's prior consent and the prior consent of any relevant Government Agency or land owner.
- (c) The Service Provider must notify the City if the Service Provider becomes aware that any of its Personnel is not complying with the City's Policies notified by the City to the Service Provider in accordance with clause 4.11(b)(i) or with any work health and safety requirements applicable to the Services.
- (d) Where the legislation requires, the City appoints the Service Provider as the principal contractor under the *Work Health & Safety Act 2011* (NSW). The Service Provider must bear all costs associated with being the principal contractor.

4.12 **Conflict of Interest**

- (a) The Service Provider must not engage in any activity that may result in a conflict of interest arising or continuing.



- (b) If, during the Term, a conflict or risk of conflict of interest arises, the Service Provider must notify the City immediately in writing of that conflict or risk and take such steps as the City may reasonably require to resolve or otherwise deal with the conflict or risk.

5. MILESTONES AND SERVICE LEVELS

5.1 Milestones

- (a) The Service Provider must complete each Milestone by the Performance Date.
- (b) If the Service Provider reasonably believes that any Milestone will not be performed by the Performance Date, the Service Provider must give the City prompt notice of that belief. The notice must specify the reason for the delay and the expected date of performance of the Milestone.
- (c) If the Service Provider gives a notice under clause 5.1(a), the City:
 - (i) must, to the extent the Service Provider's obligations are suspended under clause 21 or the delay arises from the City's failure to comply with this document; and
 - (ii) otherwise may, in its absolute discretion,

without limiting the City's rights, extend the time for performance of the Milestone, by notifying the Service Provider of a later Performance Date.

5.2 Compliance with Service Levels

- (a) The Service Provider must comply with each of the Service Levels.
- (b) Without limiting any other rights or remedies of the City under this document or otherwise, if, in the reasonable opinion of the City, the Service Provider fails to perform its obligations to the standard required by a Service Level:
 - (i) the Service Provider must promptly:
 - (A) investigate the underlying cause of the failure;
 - (B) prepare and supply to the City a comprehensive report on the problem;
 - (C) take whatever action is reasonably necessary to minimise the impact of the problem;
 - (D) correct the problem as soon as practicable; and
 - (E) keep the City advised at all times as to progress being made in rectifying the problem; and
 - (ii) the City may, in its absolute discretion:
 - (A) require the Service Provider to:
 - (aa) submit to the City, within the period specified by the City, a remedial plan; and
 - (bb) on notification by the City that the remedial plan is acceptable to the City, implement the remedial plan; or



- (B) exercise its Service Level Rights.
- (c) If the Service Provider does not implement the remedial plan within a reasonable period (in the sole discretion of the City) after the remedial plan has been accepted by the City under clause 5.2(b)(ii) or if implementation of the remedial plan does not result in the Service Provider performing to the standard required by the Service Level, the City may exercise the Service Level Rights.
- (d) The Service Provider and the City agree that the City may bring proceedings to recover damages from the Service Provider if the City's actual loss resulting from the Service Provider not performing to the standard required by a Service Level exceeds any amount recovered by the City from the Service Provider under a Service Level Right.

5.3 Service Level measurement

- (a) Without limiting any right or remedy of the City under this document or otherwise, the Service Provider agrees to:
 - (i) measure its performance against the Service Levels at the frequency set out in the relevant Work Schedule and as otherwise reasonably requested by the City from time to time;
 - (ii) provide the City with the results of all performance reviews in accordance with clause 8.2;
 - (iii) use measurement and monitoring tools and procedures reasonably required by the City to measure performance accurately; *
 - (iv) if requested by the City, establish an automated process for measuring the delivery of Services against Service Levels; and
 - (v) provide the City with information and access to measurement and monitoring tools and procedures used in assessing the Service Provider's performance pursuant to this clause.
- (b) The City may appoint an independent third party to review measurement and monitoring tools and/or procedures implemented by the Service Provider in accordance with clause 5.3(a).
- (c) The City may also elect to establish and operate its own performance measurement and monitoring systems to measure and monitor the performance of the Service Provider against the Service Levels.

6. CITY'S FACILITIES

6.1 Access to the City's Property

Unless otherwise agreed between the parties, where the Service Provider requires access or connection to the City's Property:

- (a) the City will grant the Service Provider access to or will connect the Service Provider's facilities to the City's Property for the sole purpose of and only to the extent necessary to enable the Service Provider to provide the Services to the City and by such means as the City determines in its absolute discretion;
- (b) the Service Provider must comply with any systems, health, safety, technical, security and other requirements, regulations, policies, directions and safety



standards notified to it by or on behalf of the City from time to time or as might reasonably be inferred from the use to which the City's Property are put;

- (c) the Service Provider must not use its access or connection to the City's Property to:
 - (i) interfere with or disrupt the City's Property or any equipment or service of any person (including the City customers and service providers);
 - (ii) circulate any unsolicited or unauthorised marketing, publicity or advertising material;
 - (iii) transmit computer worms or viruses;
 - (iv) send harassing, obscene, indecent or threatening electronic mail or messages; or
 - (v) forge electronic mail or messages or their source; and
- (d) the City may, without notice, suspend or terminate the Service Provider's access or the connection to the City's Property if:
 - (i) the Service Provider fails to comply with its obligations under this clause 6; or
 - (ii) the City reasonably believes that the Service Provider's access or connection to the City's Property is impairing, interfering with or damaging any part of the City's Property or their operation or any other equipment or service of any person (including any customers or service providers of the City).

6.2 **Service Provider acknowledgment**

The Service Provider acknowledges and agrees that access to the City's Property under clause 6 is at its own risk, excepting any negligent act or omission by the City.

6.3 **Public information**

- (a) The Service Provider must not take or permit to be taken any photograph, drawing or sketch of the Services being performed on the Site except for the purpose of performing the Agreement or with the prior written consent of the City.
- (b) The Service Provider must not, in any advertising or promotional material, use or permit to be used the City's name except with the prior written consent of the City.

6.4 **Keys**

The Service Provider:

- (a) must comply with any directions of the City concerning the use of keys (including electronic cards or other devices necessary for obtaining access) supplied by the City to the Service Provider;
- (b) will be responsible for all keys issued;
- (c) must not be lend the keys or remove they keys from the Site;
- (d) must not use the keys other than for access for provision of the Services; and
- (e) must meet the costs of the City supplying additional or replacement keys and any repining, re-programming or re-keying of locks or security devices that the City



requires due to keys being lost, stolen, damaged or unaccounted for by the Service Provider.

7. PAYMENT, INVOICING AND GST

7.1 Fee

- (a) In consideration of the supply of the Services under this document, the City will pay the Fee to the Service Provider in accordance with the Work Schedule and within 30 days of receipt of a valid tax invoice from the Service Provider in respect of each instalment.
- (b) The parties acknowledge and agree that except as otherwise stated in a Work Schedule the Fee is inclusive of all costs, expenses, disbursements, levies and Taxes incurred by the Service Provider in providing the Services, including any costs incurred by the Service Provider in procuring any equipment for use in connection with the Services.

7.2 Invoices

- (a) Invoices will be issued and payments will be made as set out in the first Work Schedule issued under this document, and in accordance with clauses 7.2 to 7.4 of this document.
- (b) Any correctly rendered invoice submitted to the City under this document must specify:
 - (i) the City's purchase order number;
 - (ii) the details of the Services provided and any reference number (if applicable);
 - (iii) the date of performance of the Services;
 - (iv) the month to which the invoice applies; and
 - (v) the Fee for the Services.
- (c) Unless otherwise set out in a Work Schedule, invoices must be issued:
 - (i) monthly, in advance, for recurring costs; and
 - (ii) monthly, in arrears, for usage and ad hoc costs incurred during a month.

7.3 Method of payment

The Service Provider must be paid:

- (a) by electronic funds transfer (**EFT**) if the box "EFT" has been ticked or otherwise marked in the relevant Work Schedule and the appropriate banking details of the Service Provider have been notified to the City no later than 15 Business Days after the Start Date; or
- (b) otherwise, by cheque.

7.4 Effect of payment

The Service Provider acknowledges that any payment made to it by the City does not imply or constitute an admission on the part of the City that the Services have been



properly performed or a waiver or release of the Service Provider's obligations under this document.

7.5 **Disputed invoices**

If the City has a bona fide dispute as to an amount in an invoice, then within 30 days of the date of the invoice the City must:

- (a) pay to Service Provider the portion of the invoiced amount(s) not in dispute; and
- (b) give the Service Provider a notice of dispute in respect of the disputed amount.

7.6 **Responsibility for Taxes**

- (a) The Service Provider is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Services.
- (b) The Service Provider agrees to indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Service Provider is responsible under clause 7.6(a).

7.7 **GST**

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 7.1 if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 7.7(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.



7.8 **Withholding tax**

The City may deduct from amounts payable to the Service Provider under this document any amounts required by law to be deducted from such payments. The City will:

- (a) before deducting any such amounts inform the Service Provider of its intention to do so; and
- (b) provide to the Service Provider on request, receipts issued from the Australian Taxation Office evidencing payment of any amounts deducted under this clause 7.8.

8. **REPORTS, MEETINGS, ACCOUNTS AND AUDITS**

8.1 **Business as Usual Reports and Meetings**

- (a) The Contract Manager and the Service Provider's Representative under each Work Schedule will meet when necessary, and at least every three months, to discuss the reports provided under this clause 8.1(a), delivery of the Services, and any other matter related to this document.
- (b) The Service Provider will provide to the City, at least 3 Business Days prior to each meeting under clause 8.1(a), written reports of progress on the Services, the Service Levels, , problems and recommendations for development and any other matter related to this document which requires discussion in the meeting under clause 8.1(a).

8.2 **Progress reports**

The Service Provider must deliver to the City during the Term, in accordance with and at the frequency set out in the relevant Work Schedule and as otherwise reasonably requested by the City from time to time, a written report providing full details of:

- (a) the Service Provider's progress in supplying the Services and ability to achieve upcoming Milestones or other action items;
- (b) detailed analysis of the Service Provider's compliance with the Service Levels; and
- (c) such other information as the City may from time to time request.

8.3 **Content of reports**

The Service Provider must ensure that:

- (a) all reports provided under this clause 8 contain all required information and are accurate and not misleading in any respect; and
- (b) all recommendations are clearly explained and substantiated.

8.4 **Meetings**

In addition to the meetings under clause 8.1(a), the Service Provider and the City must meet with the frequency specified in the relevant Work Schedule to review the progress of the performance of the Services. If no frequency is specified, the Service Provider and the City must meet as requested by the City (but no more frequently than once a month unless agreed otherwise).



8.5 **General audit rights**

The Service Provider must permit the City, its personnel or approved agents access, on at least 5 Business Days' prior notice in writing and not more than two times in any 12 month period, to:

- (a) the Service Provider's premises;
- (b) the Service Provider's systems, including information technology systems and physical storage systems;
- (c) the Service Provider's accounts and any other records relating to the provision of the Services;
- (d) the Personnel;
- (e) the work being carried out by the Service Provider under this document;
- (f) the Service Provider's data and records relating to this document and any of the City's Data in the Service Provider's power, possession or control; and
- (g) any other material or thing to which the City reasonably requires access,

in order to, at the City's cost:

- (h) assess the Service Provider's compliance with this document, including in relation to the security of the City's Data;
- (i) verify the Fee; or
- (j) satisfy any legal or regulatory requirements imposed on the City or its related bodies corporate.

8.6 **Not used**

9. **ADMINISTRATION OF THIS DOCUMENT**

9.1 **Direction of Contract Manager**

The Service Provider must comply with all reasonable directions given by the Contract Manager. If a direction by the Contract Manager is given orally, and is to be relied upon by the Service Provider in seeking additional payment, the Service Provider must confirm the oral direction in writing with the Contract Manager within two Business Days of the direction being given.

9.2 **Service Provider's Representative**

- (a) The Service Provider agrees that the Service Provider's Representative has authority to receive and sign notices and written communications for the Service Provider under this document and accept any request or direction in relation to the Services.
- (b) The Service Provider may replace its Service Provider's Representative from time to time by nominating a senior officer to take the place of the Service Provider's Representative in writing to the City. The City may reject such person if it sees fit.
- (c) The City may, at its absolute discretion, give notice to the Service Provider requiring it to replace the Service Provider's Representative. The Service Provider



must promptly nominate a senior officer acceptable to the City to take the place of the Service Provider's Representative.

- (d) The Service Provider's Representative must, from time to time, give sufficient information to the Contract Manager to enable the Contract Manager and the City to properly assess the performance of the Service Provider under this document.

9.3 **Meetings**

The Contract Manager and the Service Provider's Representative must meet at the times set out in the Work Schedule, or at such time reasonably required by the Contract Manager at the City's offices (unless the parties agree otherwise) at a time agreed between the parties.

10. **VARIATIONS**

10.1 **Notice by the City**

At any time during the Term, the City may change the requirements for the provision of the Services by notice in writing in the form of Schedule 4 to the Service Provider (a "**Variation Request**") including:

- (a) requesting additional services be performed by the Service Provider; or
- (b) requesting that a particular part of the Services are no longer required to be performed by the Service Provider

10.2 **Request for additional services**

- (a) The Service Provider must not refuse a request for additional services where:
 - (i) those services are of the same kind already being supplied to the City or to another client of the Service Provider; and
 - (ii) the additional services will not exceed the maximum space and power values in Work Schedule 1 Annexure A Part 2.
- (b) The Service Provider may refuse to make a change requested by the City in a Variation Request on reasonable grounds, including where it does not provide the requested services and is not able to provide the requested services.
- (c) The Service Provider must respond by completing the Variation Request within five Business Days of a Variation Request being submitted, unless the parties agree a shorter or longer period.
- (d) The parties will meet if necessary to discuss the Variation Request and the proposed fees before signing the request.

10.3 **Fee for additional services agreed through Variation Requests**

- (a) In responding to a Variation Request the Service Provider must either:
 - (i) propose a fee for the additional services based on the Schedule of Rates in Work Schedule 1 Annexure D (if applicable); or
 - (ii) if no rate in Work Schedule 1 Annexure D is applicable, propose reasonable rates no higher than the Service Provider's then standard fees for similar services or the Service Provider's then standard time and materials rates.



10.4 **Request for new services**

- (a) Where the City has requested additional services which are not of the same kind as those already being supplied to the City, the Service Provider will clearly identify in its response to the Variation Request:
 - (i) the cost to establish the additional services; and
 - (ii) the cost of providing the service for the minimum viable period.

For the avoidance of doubt the costs listed are the Service Provider's costs for establishing and delivering the additional services and not the fees which it will set for the additional services.

- (b) The Service Provider will not establish a minimum period under clause 10.4(a)(ii) unless the service is supported by, or dependent upon, a contract with a third party which was established for the purposes of establishing the service, in which case the Service Provider will use reasonable efforts to minimise the period and cost.

10.5 **Liability for Service Provider costs**

- (a) If parties agree to proceed with a Variation Request and the City subsequently cancels additional services requested under clause 10.4, the City will pay the Service Provider the establishment cost plus the cost of providing the service for the minimum viable period less any fees paid for the additional services.
- (b) Until agreement is reached between the parties in relation to the Variation Request, the City will not be liable to pay any fee or expense to the Service Provider for any variation of services or costs initiated through a Variation Request.

10.6 **Changes due to a reduction of Services**

If under 10.1(b) the City requests that part of the Services are no longer required to be performed by the Service Provider;

- (a) the Service Provider will not be able to refuse such a request; and
- (b) the monthly fee will be adjusted down (decreased) by the amounts charged for those services as set out in the Schedule of Rates in Work Schedule 1 Annexure D provided that the City may not reduce the Services to be less than the minimum services established in Work Schedule 1 Annexure A Part 2.

10.7 **Effect of Variation Request**

Changes which result from a Variation Request will take effect on the agreed effective date in the relevant Variation Request, unless otherwise agreed between the parties.

10.8 **Urgent additional services**

- (a) Where the City requires additional services of the kind contained in Work Schedule 1, Annexure A, Part 7, the City may issue an oral or email request for such services.
- (b) The Service Provider must use its best endeavours to respond to and comply with each request for additional services under clause 10.3(a) as soon as possible or at a time agreed between the parties.



- (c) The Service Provider will confirm the details of each request, the fees to be levied for each request and the extent of compliance with the request, to the City within seven days after receipt of the request.
- (d) The fees to be charged for requests made under this clause 10.8 will be as per the Schedule of Rates in Work Schedule 1, Annexure A, Part 7.

11. **EQUIPMENT, DATA AND PRIVACY**

11.1 **Ownership Of Equipment**

The Service Provider acknowledges that it is procuring the Equipment for the City and that the City will own all Equipment procured in accordance with this document.

11.2 **Privacy**

Each party:

- (a) must comply with all Privacy Laws in relation to Personal Information, whether or not it is an organisation bound by the *Privacy Act 1988* (Cth), and must take all reasonable steps to ensure that its employees and agents comply with the Privacy Laws; and
- (b) agrees to treat Personal Information disclosed by the other party with the same standard of care as other Personal Information held by that party.

11.3 **Ownership of and access to the City's Data**

- (a) The Service Provider acknowledges that the City's Data remains the property of the City.
- (b) The Service Provider will ensure the City's Data:
 - (i) is to the extent practicable designated as the property of the City; and
 - (ii) remains free of any lien, charge or other encumbrance of a third party.
- (c) The Service Provider will use its best endeavours to ensure the City has access at all times to the City's Data while it is in the possession or under the control of the Service Provider, which will be available to the City at no additional charge unless other terms are set out in the Specification.
- (d) The Service Provider must follow the City's reasonable directions when collecting, storing and protecting the City's Data. The Service Provider must:
 - (i) ensure that it takes a backup of the City's Data in accordance with the Specification or otherwise as agreed between the parties; and
 - (ii) in the event that the City's Data is lost or destroyed, do all things reasonably necessary to restore the City's Data.

11.4 **Use and disclosure of the City's Data**

The Service Provider:

- (a) may use the City's Data, but only as is necessary for the purposes of providing the Services;



- (b) must not directly or indirectly disclose or transfer any of the City's Data to, or allow access to any of the City's Data by, any person:
 - (i) without the City's prior written consent;
 - (ii) except to those of its Personnel who need to know the City's Data for the purposes of providing the Services, on the condition that the Personnel will only use the City's Data for the purposes of providing the Services; or
 - (iii) except as required by law;
- (c) must not transfer any of the City's Data to a person (including itself) outside of Australia without the City's prior written consent, which may be granted or withheld at the City's sole and absolute discretion;
- (d) must not purport to use, sell, let for hire, assign rights in or otherwise dispose of any of the City's Data, commercially exploit the City's Data, or allow any of the Personnel to commercially exploit the City's Data; and
- (e) must not alter the City's Data in any way, other than as required to fulfil its obligations under this document.

11.5 **Confidentiality and correction of the City's Data**

The Service Provider acknowledges that the City's Data is Confidential Information and is subject to the confidentiality obligations in clause 20.

11.6 **Obligation to cease use**

In addition to the Service Provider's obligations under clause 10, on the date any of the City's Data is no longer needed for the purposes of the Service Provider providing the Services, the Service Provider at its cost must:

- (a) immediately stop using the relevant City's Data; and
- (b) within 14 days and subject to any legal requirement in relation to the retention of records deliver to the City, or, at the City's option, erase, destroy (in accordance with the City-approved destruction methods) or permanently de-identify, all records of the City's Data in the power, possession or control of the Service Provider or any person to whom it has given access to these records, whether or not according to this document.

11.7 **Insurance**

The City must take out and maintain during the Term:

- (a) public liability insurance in an amount not less than \$20 million per occurrence in relation to the liability of the City under this Agreement; and
- (b) property insurance for an amount of not less than the reinstatement cost of the City's Property installed at the Sites,

and at the Service Provider's request, the City must produce evidence of currency of such insurance to the Service Provider.



12. **INTELLECTUAL PROPERTY**

12.1 **Service Provider's Material**

- (a) The City acknowledges that it does not own any Intellectual Property Rights in or to the Service Provider's Material.
- (b) The Service Provider hereby grants to the City and its contractors, or to the extent the Service Provider's Material is licensed to the Service Provider will procure for the City and its contractors, a royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce (to the extent it is necessary to use the Service Provider's Material) and otherwise exercise all Intellectual Property Rights in and to that part of the Service Provider's Material which is required to enable the City to fully enjoy and exploit the Services and all Developed Material.

12.2 **City's Material**

- (a) The City's Material remains the property of the City. The Service Provider acknowledges that it does not own any Intellectual Property Rights in or to the City's Material.
- (b) The City grants to the Service Provider a royalty-free, revocable, licence to use the City's Material during the Term for the sole purpose of providing the Services.
- (c) The Service Provider must:
 - (i) maintain and keep secure and separate all the City's Material in its power, possession or control, and must not do or cause to be done anything which may prejudice the subsistence of the City's right, title and interest in and to the City's Material; and
 - (ii) ensure that the City's Material is only used, copied, supplied and reproduced by Service Provider solely and directly for the purposes of this document.

12.3 **Developed Material**

- (a) As between the parties, the Service Provider acknowledges that the City will, on creation, exclusively own all Intellectual Property Rights in and to the Developed Material.
- (b) By this document, the Service Provider:
 - (i) assigns absolutely, or will procure the assignment absolutely of, the right, title and interest, including all Intellectual Property Rights, in or to all Developed Material and all modifications made to any of the Developed Material so that all such right, title and interest throughout the world rests automatically on creation in the City;
 - (ii) must ensure that the Developed Material is only used, copied, supplied and reproduced by the Service Provider solely and directly for the purposes of this document;
 - (iii) must not do or cause to be done anything which will encumber any interest in or to the Developed Material to any person other than the City; and
 - (iv) at the City's request, must execute all documents necessary or desirable to ensure that all Intellectual Property Rights in or to all Developed Material and any modifications made to any of the Developed Material are assigned to the City, and to give full effect to this clause.



- (c) The City grants to the Service Provider a non-exclusive, royalty-free, revocable, non-transferrable licence to use the Developed Material during the Term to the extent needed to perform its obligations under this document, but not to any greater extent or for any other purpose.

12.4 **Third Party Licences and Moral Rights**

- (a) The Service Provider must obtain, at its own cost, all necessary licences and consents from any person relating to each copyright work or other subject matter comprised in the Developed Material, which are necessary to enable the parties to do all things contemplated by this document without infringing any laws or the rights (including the Intellectual Property Rights) of or duties owed to any person whether arising under statute, common law, contract or otherwise.
- (b) Without limiting clause 12.4(a), the Service Provider must ensure that each person involved in creating all or any part of the Developed Material and each person whose performance is recorded in the Developed Material irrevocably waives any and all Moral Rights they have in each copyright work or such other subject matter comprised in the Developed Material and consents to the City doing or failing to do any act in relation to those works that may, except for this clause, infringe their Moral Rights in the works including:
 - (i) exercising any of the rights in the works without identifying them;
 - (ii) exercising any of the rights in the works in a manner which incorrectly attributes any work created by them or their performance to someone else; and
 - (iii) editing, deleting from or otherwise altering the works in any manner determined by the City as contemplated by this document.
- (c) The Service Provider must ensure that the Developed Material does not use the image, likeness or name of any person or any property of any person, unless it has ensured that the person or the property owner has given their written consent to such use in the Developed Material and the use of it as contemplated in this document.

12.5 **Infringement Claim**

- (a) In the event of an Infringement Claim, the Service Provider must:
 - (i) unless otherwise notified by the City, conduct the defence of the Infringement Claim;
 - (ii) as soon as reasonably practicable, consult with the City about the Infringement Claim; and
 - (iii) not agree to any settlement of an Infringement Claim without the City's consent.
- (b) If reasonably requested by the Service Provider, the City must co-operate, at the Service Provider's cost, in the Service Provider's conduct of the defence of an Infringement Claim. The City may, at the Service Provider's cost, conduct the defence of an Infringement Claim if the Service Provider does not use its reasonable endeavours to comply with its obligations under clause 12.5(a).



- (c) Without limiting the City's other rights or remedies under this document or otherwise, if an Infringement Claim occurs, the City may:
 - (i) require the Service Provider promptly and at the Service Provider's cost to:
 - (A) procure for the City and its sub-licensees the right to continue to use the Content or any other material that is the subject of the claim (**Infringing Material**);
 - (B) modify the Infringing Material in a manner acceptable to the City to circumvent the Infringement Claim; or
 - (C) replace the Infringing Material with other content or material acceptable to the City; or
 - (ii) terminate this document on 10 Business Days' written notice to the Service Provider.

13. **WARRANTIES**

13.1 **Mutual warranties**

Each party represents and warrants that:

- (a) (**power**) it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and to carry out the transactions that it contemplates;
- (b) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (**Authorisations**) it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) (**documents effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (**no Controller**) no Controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

13.2 Service Provider's warranties

The Service Provider warrants to the City that, at the Start Date and at all times during the Term:

- (a) it has the skill, competence, experience and ability necessary to perform the Services in accordance with this document;
- (b) it has the right and power to grant to the City the licences and assignments granted under this document and the grant to and exercise by the City of those licences and assignments will not breach any law or infringe the rights (including Intellectual Property Rights) of or duties owed to any person whether arising under statute, common law, contract or otherwise;
- (c) it has obtained all Authorisations and insurances required under any Law to carry out its obligations under this document;
- (d) all work performed by the Service Provider and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Service Provider's size and experience;
- (e) both the Service Provider in performing the Services, and the Services, will not:
 - (i) prejudice or compromise the City's reputation; or
 - (ii) breach any Law;
- (f) all Services supplied and all Deliverables provided, including all components thereof, under this document will:
 - (i) be free from defects in design, material and workmanship to the extent that this is under the control of the Service Provider;
 - (ii) be in conformity with any Specifications and requirements referred to in a Work Schedule; and
 - (iii) be fit for the purpose communicated by the City and fit for any purpose for which they are commonly acquired;
- (g) it will use reasonable endeavours (which must at least comply with accepted information technology industry standards) to ensure that all Deliverables will be free from any computer program virus or other destructive code or device;
- (h) it is not aware of any matter which may materially affect the Service Provider's ability to perform its obligations under this document;
- (i) all information provided by the Service Provider or set out in any tender document is complete, true, accurate and not misleading in any respect;
- (j) except as disclosed in any tender document, all equipment supplied or used by the Service Provider in connection with the provision of the Services is owned by the Service Provider and is not subject to any encumbrance;
- (k) all Personnel will be appropriately trained and experienced;
- (l) it or its licensors owns all right, title and interest, including all Intellectual Property Rights in and to the Service Provider's Material, and the Service Provider has the



right to licence it to the City, its subcontractors and its sub-licensees in accordance with this document;

- (m) neither the Services nor the Developed Material, nor the supply or use of either of them in accordance with this agreement and applicable Laws, will:
 - (a) breach any Laws or infringe the rights (including Intellectual Property Rights) of or duties owed to any person, whether under contract, statute, common law or otherwise; or
 - (b) prejudice or compromise the reputation of the City; and
- (n) it is not aware of any claim, actual or threatened, in relation to the Service Provider's Material or Developed Material (including a claim that the Services Providers' Material or the Developed Material infringes a person's Intellectual Property Rights) and has no grounds to suspect that such a claim will or might be made.

13.3 **Breach of warranties**

If the Service Provider is in breach of clause 13.2, the City may, by written notice to the Service Provider:

- (a) require the Service Provider, promptly to correct or replace (at the Service Provider's expense) the defective elements of the Services and Deliverables until the Services and Deliverables comply with the representations and warranties in that clause; or
- (b) if the Service Provider is unable or unwilling to comply with the requirement above, by written notice to the Service Provider, terminate this document with effect from the date that is specified in the notice.

14. **BEHAVIOUR AND CONDUCT**

The Service Provider must ensure that it and its Personnel do not engage in any conduct that:

- (a) will, or is likely to, harm the City or its name, reputation or services; or
- (b) may bring the Service Provider or the City into disrepute, scandal or ridicule.

15. **INDEMNITY**

15.1 **Indemnity**

The Service Provider must, to the fullest extent permitted by law, indemnify the City and each of its employees and agents against, and pay on demand the amount of, all losses including liabilities, costs, expenses and Taxes arising or incurred in connection with:

- (a) any injury to or death of any person or any damage to or loss of property caused by the Service Provider;
- (b) any negligence, wrongful act or omission, or breach of statutory duty by the Service Provider or by its employees, contractors or officers; or
- (c) any Infringement Claim,



15.2 Liability limit

Any claim made by a party against the other party under this document will be limited to \$2 million except for claims in connection with:

- (a) any injury to or death of any person or any damage to or loss of property caused by the Service Provider;
 - (b) fraud, misrepresentation or wilful misconduct by the Service Provider; or
 - (c) any Infringement Claim,
- liability for which is unlimited.

16. INSURANCE

16.1 Insurance policies

While this document is in force, the Service Provider must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances on terms acceptable to the City acting reasonably:

- (a) worker's compensation insurance or registrations as required by law;
- (b) public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than \$10,000,000 for each and every occurrence giving rise to a public liability claim and with a limit of indemnity of not less than \$10,000,000 for each occurrence and in the aggregate for all occurrences in any 12 month policy period giving rise to a products liability claim, which covers the liability of the Service Provider and its Personnel (including to each other), in respect of:
 - (i) loss of, damage to, or loss of use of, any tangible property; and
 - (ii) the bodily injury of, disease or illness to, or death of, any person (including worker to worker liability but excluding any liability insured under the insurance referred to in clause 16.1(a)),arising out of or in connection with the performance of this document by the Service Provider; and
- (c) professional indemnity covering the liability of the Service Provider for a breach of professional duty as a result of an act or omission by the Service Provider or its Personnel in connection with the performance of this document with a limit of liability of not less than \$20,000,000 for each claim and in the aggregate for claims in any 12 month policy period and including cover for unintentional breaches of consumer protection legislation and unintentional infringement of Intellectual Property Rights.

16.2 Duration of insurance

The insurances referred to in clause 16.1 must be effected on or before the Start Date and be thereafter maintained until the expiry or termination of this document.

16.3 Evidence of policies

The Service Provider must, whenever requested by the City, provide the City with a certificate of currency evidencing compliance with clause 16.1.



17. **NOT USED**

18. **TERM AND TERMINATION**

18.1 **Term**

This document commences on the Start Date and, unless otherwise extended under clause 18.2 or terminated on its terms, expires on the Expiry Date (Term).

18.2 **Further Terms**

The City may extend this document for the Further Term (if any) specified in Schedule 1, commencing on the Expiry Date or the expiry of a previous Further Term (as applicable), by giving written notice to the Service Provider no later than 2 months prior to the Expiry Date or the expiry of a previous Further Term (as applicable). The maximum number of Further Terms is specified in Schedule 1.

At the end of the Term or any Further Term, the Service Provider will continue to provide the Services to the City on the same terms and conditions on a month to month basis unless and until either party terminates those Services on not less than 30 days' notice to the other party.

18.3 **Termination for the Service Provider's default**

The City may, without prejudice to any other rights and remedies it may have under this document or at law, immediately terminate any Work Schedule or this document in whole or in part by notice in writing to the Service Provider, if:

- (a) the Service Provider is in breach of any of its obligations under any Work Schedule or this document, including any warranties in clause 13, and if the breach is capable of remedy, the Service Provider has failed to rectify that breach within 20 Business Days after receipt of written notice from the City or any further time allowed by the City;
- (b) the Service Provider is in breach of any of its obligations under this document or any Work Schedule and the breach is not capable of remedy;
- (c) an Insolvency Event occurs in respect of the Service Provider;
- (d) the Service Provider or any employee or agent of the Service Provider acts in a way that in the City's opinion may cause harm or bring into disrepute or otherwise adversely affect the reputation or image of the City;
- (e) a material change in ownership or control of the Service Provider occurs which in the reasonable opinion of the City:
 - (i) adversely affects the City's rights;
 - (ii) adversely affects the Service Provider's ability to perform its obligations under this document or any Work Schedule; or
 - (iii) is otherwise contrary to the City's interests;
- (f) the Service Provider is unable to provide acceptable replacement Personnel under clause 4.7(b); or
- (g) unless the Service Level failure has been agreed by the City as a Planned Outage: the Service Provider fails to:



- (i) provide the Services at one or more sites for a period of one or more hours; or
- (ii) there is a pattern of Service Level failures which the Service Provider fails to remediate in accordance with clause 5.2(b).

18.4 Termination rights under a Work Schedule

Without limiting this clause 18, a Work Schedule may also be terminated in accordance with any termination rights that might be specified in the relevant Work Schedule.

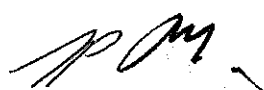
18.5 Survival

The following clauses survive termination or expiry of this document: 1 (Interpretation), 4.3 (Manufacturer's Warranties), 15 (Indemnity), 16 (Insurance), 18.6 (Consequences of termination), 19 (Disengagement), 20 (Confidentiality and disclosures), 22 (Dispute Resolution), 23 (Notices), 24 (Amendment and assignment) and 25 (General).

18.6 Consequences of termination

If the City terminates Work Schedule 1 or this document, or where the Service Provider terminates Work Schedule 1 or this document pursuant to clause 18.8, then, without limiting any other rights or remedies of the parties under this document or otherwise:

- (a) the City will not be required to make any payment in respect of Services not yet supplied on the effective date of termination unless:
 - (i) the City has signed and delivered the Acceptance Certificate for Site B to the Service Provider; and
 - (ii) the total fees paid by the City up to and including the effective termination date are less than the minimum services defined in Work Schedule 1 Annexure A Part 2, in which case the City will pay the balance of the minimum services amount defined in Work Schedule 1 Annexure A Part 2; and
 - (iii) if the City has requested additional services under clause 10.4, the City will, in addition to the amount referred to in clause 18.6(a)(ii), pay the Service Provider the establishment cost plus the cost of providing the service for the minimum viable period, both amounts to be as agreed in the Variation Request less any fees paid in respect of the additional services;
- (b) the City will not be liable for any of the payments under clauses 18.6(a) if the Work Schedule or this document have been terminated under clause 18.3;
- (c) the Service Provider must take all steps reasonably necessary to minimise any loss to the City as a result of the expiry or termination of a Work Schedule or this document;
- (d) the Service Provider must cease to use the City's Material, the Developed Material and any Confidential Information and the City, after expiry of its rights under clause 19, must cease to use the Service Provider's Material, Developed Material and any Confidential Information;
- (e) the Service Provider must deliver to the City at a place specified by the City, without retaining any copies (in hard copy or electronically), all copies of the City's Material, the Developed Material and Confidential Information in the possession custody or power of the Service Provider.



- (f) without limiting the City's rights under clause 25.8 or other enforcement rights, the City may apply (without notice) any amount due from the City to the Service Provider under this document or any Work Schedule, towards satisfaction of:
 - (i) costs and expenses recoverable by the City from the Service Provider in consequence of the Service Provider's breach of this document or any Work Schedule; and
 - (ii) any amounts payable by the Service Provider to the City under this document, any Work Schedule, or any other agreement between the City and the Service Provider,

and the Service Provider authorises the City to do anything (including to execute documents) that is required for that purpose.

18.7 **Preservation of rights**

Expiry or termination of this document for any reason does not affect any rights of either party against the other which arose prior to the time at which such termination or expiry occurred, or which otherwise relate to or which may arise at any future time for any breach or non-observance of obligations under this document occurring prior to the termination or expiry.

18.8 **Termination for City default**

The Service Provider may, without prejudice to any rights and remedies it may have under this document or at Law, immediately terminate any Work Schedule or this document in whole or in part by notice in writing to the City, if:

- (a) the City is in breach of any of its obligations under any Work Schedule or this document, and if the breach is capable of remedy, the City has failed to rectify that breach within 20 Business Days after receipt of written notice from the Service Provider or any further time allowed by the Service Provider; or
- (b) the City is in breach of any of its obligations under this document or any Work Schedule and the breach is not capable of remedy.

In the event of termination by the Service Provider under this clause the Service Provider must:

- (c) comply with clause 19; and
- (d) allow the City a reasonable time to arrange an alternative supplier, it being acknowledged that a reasonable time for the purpose of this clause is a minimum of two months from the date of termination.

19. **DISENGAGEMENT**

19.1 **Application**

This clause 19 applies whenever Services are to be terminated. This includes:

- (a) 2 months before the Expiry Date or the expiry of a previous Further Term (as applicable); or
- (b) if Services are terminated before that date, the date on which the City issues a termination notice in respect of this document or a Work Schedule.



19.2 Objectives

The purpose of the Disengagement Services is to:

- (a) enable the City or its nominee to perform the Services from the end of the Disengagement Period; and
- (b) eliminate or minimise any disruption to the Services (including the Disengagement Services) as a result of the transition of the Services from the Service Provider to the City or its nominee.

19.3 Requirements for Disengagement

- (a) The Service Provider must ensure that as part of the Disengagement Services:
 - (i) the City's right to use the Materials, equipment and parts provided by the Service Provider to the City under this document and the Service Provider's Material continues following the Disengagement Period at no cost to the City (other than agreed maintenance and support fees);
 - (ii) it makes available to the City all of its Personnel and provides all resources necessary to maintain the provision of the Services while the Disengagement Services are being performed;
 - (iii) there is no degradation of Service Levels or quality of service during the Disengagement Period; and
 - (iv) there is no interruption to the Services during the Disengagement Period.
- (b) The Service Provider must use its best efforts to ensure that the Disengagement Services are completed by the end of the Disengagement Period.

19.4 Implementation of Disengagement

- (a) The Service Provider must ensure that, at all times during the Term, on 30 days' notice it is able to deploy all necessary resources to complete the Disengagement Services.
- (b) If clause 19 applies, the Service Provider must, unless directed otherwise by the City:
 - (i) do all things necessary to effect the Disengagement Services;
 - (ii) at the Service Provider's expense, immediately deliver to the City or a third party nominated by the City all Developed Material and completed Deliverables;
 - (iii) do all things reasonably necessary to deliver all partially completed Developed Material and Deliverables to the City; and
 - (iv) ensure that all permitted subcontractors comply with this clause 19.
- (c) The Service Provider acknowledges all Service Levels and Service Level Rights apply during the Disengagement Period.
- (d) The fees payable for the Disengagement Services will be the same as, or calculated in the same manner as, the fees in effect immediately prior to the termination or expiry of this document.



19.5 **Third party services**

The Service Provider will make available to the City or its nominee the contact details of any party providing third party services utilised by the Service Provider in the performance of the Services during the Disengagement Period. For the avoidance of doubt, if the City elects to use any third party services made available to the City by the Service Provider pursuant to this clause, the City shall be solely liable for any costs, fees or other liabilities arising in respect of the use of those services by the City.

19.6 **Assistance to third parties**

If the City appoints a third party to assume its role in relation to any or all of the Services, the Service Provider must provide all reasonable assistance to that third party during the Disengagement Period and in performing the Disengagement Services.

20. **CONFIDENTIALITY AND DISCLOSURES**

20.1 **Use and disclosure of Confidential Information**

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 20.2 or 20.3.

20.2 **Disclosures to personnel and advisers**

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party must ensure that any person to whom Confidential Information is disclosed under clause 20.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 20.2(a).

20.3 **Disclosures required by law**

- (a) Subject to clause 20.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 20.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;



- (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
- (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

20.4 **Receiving party's return or destruction of documents**

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

20.5 **Security and control**

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is secure from theft, loss, damage or unauthorised access or alteration.

20.6 **Media releases**

The Service Provider must not issue any information, publication, document or article for publication in any media concerning the Services or the Developed Material without the City's prior written consent.

21. **FORCE MAJEURE**

21.1 **Notice and suspension of obligations**

If a party to this document is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other party prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.



21.2 **Effort to overcome**

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

21.3 **Alternative supply**

During any period in which the Service Provider is not performing obligations because of a claimed Force Majeure Event, the City may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the Service Provider is not performing without incurring any liability to the Service Provider.

21.4 **Termination**

If a Force Majeure Event continues for more than 10 Business Days, the City may terminate this document by giving at least one Business Day's written notice to the other party.

22. **DISPUTE RESOLUTION**

22.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 22.

22.2 **Negotiation**

(a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Service Provider's Representative and the Contract Manager for resolution. The Dispute Notice must:

- (i) be in writing;
- (ii) state that it is given pursuant to this clause 22; and
- (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.

(b) Within 10 Business Days of the Referring Party giving the Dispute Notice (**Resolution Period**), the Service Provider's Representative and the Contract Manager must meet at least once to attempt to resolve the Dispute.



- (c) The Service Provider's Representative and the Contract Manager may meet more than once to resolve a Dispute. The Service Provider's Representative and the Contract Manager may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) The Service Provider warrants that the Service Provider's Representative has full authority to resolve any Dispute.
- (e) The City warrants that the Contract Manager has full authority to resolve any Dispute.

22.3 **Condition precedent to litigation**

Subject to clause 22.4, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

22.4 **Summary or urgent relief**

Nothing in this clause 22 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

23. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received 6 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address and fax number are those set out in the Schedule for the Service Provider's Representative and the Contract Manager, or as the person notifies the sender from time to time.

24. **AMENDMENT AND ASSIGNMENT**

24.1 **Amendment**

This document can only be amended or replaced by another document executed by the parties.

24.2 **Assignment**

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party, which must not be unreasonably withheld or delayed.

25. **GENERAL**

25.1 **Governing law**

- (a) This document is governed by the law in force in New South Wales, Australia.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia, and any court that may hear appeals from any of



those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

25.2 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

25.3 Duty of cooperation

Each party must:

- (a) do all that is reasonably required on its part to enable the other party to perform any obligation under this document which cannot be performed effectively without the co-operation of both parties; and
- (b) not do anything with the intention of making it impossible to perform its own obligations under this document, or to make it impossible for the other party to carry out its obligations under this document.

25.4 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

25.5 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:


- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

25.6 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

25.7 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.



25.8 Set off

The City at its discretion may set off or apply any amounts payable by it to the Service Provider under this document or any other agreement towards satisfaction of any amount payable to the City by the Service Provider under this document or any other agreement after giving the Service Provider prior written notice of its intention to do this.

25.9 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

25.10 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) clauses 1 to 25 of this document;
- (b) any Schedule (including any Work Schedule); and
- (c) the provisions of any tender document, delivery docket, invoice, account or other document of the Service Provider,

the order of precedence between them will be the order listed above, this document having the highest level of precedence, unless the City agrees in writing to change the order of precedence.

25.11 Counterparts

This document may be executed in counterparts.

25.12 Contributory liability

The liability of a party arising out of or in connection with this document or a Work Schedule will be reduced to the extent that the other party caused or contributed to such liability being suffered or incurred.

25.13 City's obligations

The City must:

- (a) comply with all laws;
- (b) maintain the security of any passwords and user identification in respect of the Services;
- (c) not do anything which will damage or interfere with any property or the Service Provider's network, equipment or facilities; and
- (d) not share the Services or on-supply the Services to any third party without the Service Provider's prior written consent.



EXECUTED as an agreement.

Signed for THE COUNCIL OF THE CITY OF SYDNEY by its duly authorised officer, in the presence of:

[Redacted signature]

Signature of witness *officer*

[Redacted name]

Name

[Redacted signature]

Signature of officer witness

[Redacted name]

Name

Dirck WTIS.

EXECUTED by NEXTGEN NETWORKS PTY LIMITED in accordance with s127 of the Corporations Act 2001 in the presence of:

[Redacted signature]

Signature of director

[Redacted name]

Name

[Redacted signature]

Signature of director/secretary

[Redacted name]

Name

PM

SCHEDULE 1

AGREEMENT DETAILS

ITEM	TERM	DESCRIPTION
1.	Contract Manager	Name: Manager Technical Services, Information Services Unit (At the time of execution, [REDACTED]) Address: Town Hall House, 456 Kent Street, SYDNEY NSW 2000 Fax number: [REDACTED]
2.	Expiry Date	The date the City delivers a signed Acceptance Certificate for Site B to the Service Provider plus 5 years
3.	Further Terms	Length of Further Terms (if applicable): One year Maximum number of Further Terms (if any): Two
4.	Site	Nextgen Group - Metronode Data Centres Site A: [REDACTED] NSW Site B: [REDACTED] NSW
5.	Service Provider's Representative	Name: [REDACTED] Address: Nextgen Networks Pty Ltd, Level 4, 80 Pacific Highway, North Sydney NSW 2060 Telephone number: [REDACTED] Email: [REDACTED]
6.	Start Date	30 June 2014

Work Schedule 1

PART 1: SCHEDULE DETAILS		
1.	Term	This Work Schedule commences on the Work Schedule Start Date and expires on the Work Schedule End Date.
2.	Invoicing and Payment	<p>The Supplier will provide one monthly itemised invoice containing charges for all facilities and services in accordance with the terms of this Agreement and Work Schedule:</p> <ul style="list-style-type: none"> (a) Invoices must be in form similar to and contain the information in the example invoice contained in Annexure B of this Work Schedule, or as otherwise agreed by the parties. (b) Invoices will be raised for services by calendar month and issued by the 10th business day of the following month (c) Recurring services will be invoiced monthly in advance, and other Services will be invoiced monthly in arrears. (d) Fees charged in the first and final months of the contract will be prorated (e) Method of payment will be EFT unless otherwise agreed by the parties. (f) Unless in dispute, invoice payment will be within 30 days of invoice receipt by the City.
3.	Reports and Meetings	<p>Reports: Quarterly</p> <p>Meetings: Quarterly</p>
4.	Work Schedule Start Date	The Work Schedule Start date is the Date on which the City delivers a signed Acceptance Certificate for Site B to the Service Provider
5.	Work Schedule End Date	The Work Schedule End date is the Agreement expiry date unless the Work Schedule is terminated earlier or extended under the terms of the Agreement.



PART 2: SERVICES			
6.	Services	The Service Provider will (at its cost) provide the Services set out in Annexure A of this Work Schedule in accordance with the terms of this Work Schedule.	
7.	Disengagement Services	The Service Provider must provide the City with the Disengagement Services set out in Annexure A of this Agreement and Work Schedule.	
8.	Milestones and Performance Dates	The Service Provider must perform the Services in accordance with the timeframes set out in the following table:	
		Milestone	Performance Date
		Delivery of three dedicated high speed point to point data links	30 September 2014
		Delivery of two Data Centre Colocation Facilities (including Rittal network racks, power cabling, structured data cabling and cross connect) ready for occupation by the City	30 September 2014
		City to include data links in the City network, test and assess Data Centre facilities When Acceptable sign and deliver two Acceptance Certificates	8 October 2014 If either deliverable is not acceptable the relocations will be rescheduled or abandoned
		Relocation of the City's equipment from Equinix to Site B, including, installation and connection (both power and data)	8:00am Saturday 11 October 2014
		If relocation and establishment completed satisfactory the City to sign and return the Acceptance Certificate for Site B	15 October 2014
		Relocation of the City's equipment from Town Hall House to Site A, including, installation and connection (both power and data)	8.00am Saturday 18 October 2014

		If relocation and establishment completed satisfactory the City to sign and return the Acceptance Certificate for Site A	22 October 2014
9.	Service Levels	The Services must be provided in accordance with the service levels set out in Annexure C.	
10.	Service Level Rights	The City will be entitled to exercise its Service Level Rights in in accordance with the Agreement and Annexure C.	
PART 3: FEE			
11.	Schedule of Rates	The Schedule of Rates is set out in Annexure D of this Work Schedule.	

Work Schedule 1

Annexure A - Services

PART 1: NETWORK SERVICES	
Supply of three dedicated high speed 10Gbps point-to-point Ethernet links to be used as part of the City's network. The high speed data links are to be installed and ready for the City within 12 weeks of Agreement date. Refer to Network Service Levels in Annexure D	
Site A to Site B	Site A Nextgen Silverwater data centre to Site B Nextgen Rosebery data centre network racks
Site A to THH	Nextgen Silverwater data centre network rack to Town Hall House, 456 Kent St, Sydney
Site B to Pitt St	Nextgen Rosebery data centre network rack to 307 Pitt St, Sydney

PART 2: DATA CENTRE COLOCATION FACILITIES AND SERVICES	
The Nextgen Data Centre facilities will house:	
Site A	Nextgen Silverwater data centre Rack spaces to suit the City's requirements and allow for growth, initially six (6) City HP racks and two (2) x Rittal TS-IT 5516.110 47RU racks with capacity for up to 8KW power per rack
Site A Maximum Space and Power	No practical limit on Space and Power at Site A
Site B	Nextgen Rosebery data centre Rack spaces to suit the City's requirements and allow for growth, initially five (5) City HP racks and one (1) x Rittal TS-IT 5516.110 47RU rack with capacity for up to 8KW power per rack.
Site B Maximum Space and Power	9 Racks and 70kw power
Minimum Services	12 racks at 5 kw for 36 months or services to the equivalent total contract value of [REDACTED] (ex GST)

PART 2: DATA CENTRE COLOCATION FACILITIES AND SERVICES

Data centre facilities and services include:

- Two Tier III-like data centre colocation facilities (all systems rated at minimum N+1) including access to loading bays, staging rooms, temporary storage facilities and front of house facilities
- The data centres will provide secure space to suit the infrastructure with capacity to grow
- Ability for the City to use its own racks
- Staging room facilities (booked in advance) for power-up testing of new equipment
- Loading bay access, pallet jacks and server lifts
- Temporary storage in the loading dock
- Secure storage for spare cables
- System monitoring real-time with drill down capabilities and escalation procedures
- System level and business level process in place to actively monitor and manage expectations
- Established processes followed with any variations approved and documented
- Executive support for immediate action for problem avoidance and system auto-recovery
- Secure site access for pre-approved and inducted City representatives (as at the Start Date being those listed in Annexure E to this Work Schedule, and as notified to the Service Provider from time to time) unescorted 24/7 to approved zones of the facility. All visitors to be authenticated by electronic / security procedures prior to accessing the City's racks and made aware of and comply with the Service Provider's reasonable data centre process and procedures, as agreed in writing from time to time
- Service Provider to report any breach of site security and access regulations or failure to follow a reasonable request by a City representative to the City's Contract Manager



PART 3: ESTABLISHMENT AND DATA CENTRE MIGRATION SERVICES

The Service Provider will supply the following establishment and migration services as per the schedule in Work Schedule 1 Part 2 – Milestone and Performance Dates.

Service	Fees
Establishment	
Establish High Speed network links and Data Centre Colocation Facilities (including Rittal network racks, power cabling, structured data cabling and cross connect) ready for occupation by the City in accordance with Work Schedule 1 Part 2 – Milestone and Performance Dates	
Supply & Install three (3) Rittal TS-IT 5516.110 47RU comms racks	
Two (2) Rittal vertical cable management 5502.115 one each for SN1, SN2 comms racks	
Establish & test all cross connects including 2 additional third party services at each site	
Silverwater Copper Cabling	
Silverwater Fibre ties	
Rosebery Copper Cabling	
Rosebery Fibre ties	
Equinix move to Site B	
Move five (5) racks from Equinix to Site B	
Relocation of 14 switches to identified racks	
Bay racks in Site B in accordance with agreed floor plan, install patch panels and connect all cross-connect cables to the racks and enable power to the rack PDUs	
Hand-over to City and complete Delivery Certificate Support City's testing and, repair any incorrect or fault connections	
Total – Equinix to Site B	

PART 3: ESTABLISHMENT AND DATA CENTRE MIGRATION SERVICES	
Town Hall House move to Site A	
Move six (6) identified racks from Town Hall House to Site A	
Relocation of 14 switches to identified racks	
Bay racks in Site A in accordance with agreed floor plan, install patch panels and connect all cross-connect cables to the racks and enable power to the rack PDUs	
Hand-over to City and complete Delivery Certificate	
Support City's testing and, repair any incorrect or fault connections	
Total Town Hall House to Site A	
Total Migration Cost	
To be paid on first monthly invoice following successful migration	

PART 4: ACCOUNT MANAGEMENT SERVICES

Dedicated Account Manager	<ul style="list-style-type: none">• attend quarterly meetings to discuss capacity planning provide quarterly reports, review billing, service faults/outcomes and provide Service Desk procedures and procedural updates• provide efficient and well documented Service Desk escalation procedures
---------------------------	---

PART 5: REPORTING SERVICES

Remote monitoring	<ul style="list-style-type: none">• remote monitoring via Customer Portal• unlimited users and logins
Reports presented to the City's Contract Manger Manager at quarterly meetings to include:	<ul style="list-style-type: none">• unique fault number• fault type & brief description• fault priority• fault logged, response and resolution times and dates• Security Access Logs• power usage• environmental data (temperature, humidity...)• link utilisation statistics• physical cage/rack access attempts• summary of ad hoc service requests

PART 6: INCIDENT MANAGEMENT SERVICES

Provide incident management support services	<ul style="list-style-type: none">• 24/7 Service Desk via a single telephone number• accept calls from the approved City staff via telephone & email• log faults reported by approved City staff into its fault management system• provide client facing service status dashboard
--	--



PART 7: AD HOC SERVICES

Ad hoc services	<ul style="list-style-type: none">• Remote Hands services• Cabling and cross-connect services• Fault rectification• Other services as requested by the City from time to time in writing (email acceptable) or by phone (and confirmed by email) <p>Refer to Schedule of Rates , Annexure D</p>

PART 8: DISENGAGEMENT SERVICES

<p>Without limiting clause 19 of the Agreement, upon termination or expiry of the Agreement or part of the Agreement by the City, the Service Provider will provide any services required to transition the City's facilities from the Service Provider to an alternate service provider</p>	
Disengagement	<ul style="list-style-type: none">• If requested by the City, the Service Provider will propose a Disengagement Plan or cooperate in the implementation plan by delivering the required Disengagement Services• The Service Provider will propose prices for Disengagement Services that are consistent with the Schedule of Rates• The Service Provider will provide quotations for other costs and expenses incurred in the provision of Disengagement Services, calculated to the extent practicable in a manner consistent with the Schedule of Rates, such amount to be agreed and specified in the Disengagement Plan



Work Schedule 1

Annexure B – Invoicing

PART 1: INVOICING AND BILLING SERVICES

Invoice data must be delivered to the City in CSV or Excel format.

Invoices must include:

- The City's purchase order number, date of invoice & billing period
- A line item for each item being charged per the example shown below:

Service Identifier	Description	Unit Charge	Qty	Extended Amount
Data Centre Colocation Facilities				
DC1-Rack01	Rack space inclusive 5kW power		1	
DC1-Rack01	Additional power (kW)		1	
DC1-Rack02	Rack space inclusive 5kW power		1	
DC1-Rack02	Additional power (kW)		3	
DC2-Rack01	Rack space inclusive 5kW power		1	
DC2-Rack01	Additional power (kW)		2	
	"			
	"			
	"			
Total Data Centre Colocation Services Charges				
High Speed Data Links				
Site A-B	Dedicated 10Gbps point-to-point link		1	
Site A-THH	Dedicated 10Gbps point-to-point link		1	
Site B-Pitt St	Dedicated 10Gbps point-to-point link		1	
Total Data Link Charges				

Other Charges				
XXXXXX	ZZZZZZZZZZZZZZZZZZZZ	\$		\$
XXXXXX	EEEEEEEEEEEEEEEE	\$		\$
Total Other Charges				\$
Total Charges				\$
GST				\$
Total Invoice Amount				\$

Work Schedule 1

Annexure C - Service Levels and Service Level Rights

Part A - DATA CENTRE COLOCATION SERVICE LEVELS		
Item	Service Level	Service Level Default (Clause 18.3(g))
Power		
Temperature as measured by agreed equipment		
Humidity within data halls		



Part B - NETWORK SERVICES - SERVICE LEVELS

COMMUNICATION

Event	Communication Time and Method
Order Receipt Automated receipt for service application received	2 working days from receiving order - Email
Request for Validation Request for validation of service application	2 working days from Order Receipt - Email
Order Confirmation The Service Provider will confirm it can deliver the service and confirm the delivery date	5 working days from Request for Validation - Email
Progress Reports For all service applications, the Service Provider will send an activation status report	Weekly or as agreed with the customer - Email
Service Completion Certificate When service is installed. Billing to commence in accordance with the contract	Within one day of implementation of service - Email

SERVICE ACTIVATION DATE GUARANTEE

The Service Provider will install the services in accordance with the contract.

The Service Provider's activation date guarantee is backed by the following rebate offer:

Delay after CCD (Business Days)	5 to 10	10 to 20	Above 20
Percentage of Installation Fee Rebated			

FAULT MANAGEMENT AND SERVICE AVAILABILITY FAULT REPORTING PROCESS

The City is to report faults in network services **the Service Provider's 24x7 Service Management Centre (SMC)** by dialling **1800 099 299**.

The City should provide the following information:

- (1) Customer Name and Service ID affected by the fault
- (2) Description of the fault
- (3) Name and contact details of the person reporting the fault
- (4) Name and location of the site

The Service Provider will issue a unique identifier ("Trouble Ticket") to be used in all subsequent communications regarding that fault.

Part B - NETWORK SERVICES - SERVICE LEVELS

FAULT REPORTING AND COMMUNICATION

In the event that the City notices a service interruption or degradation and lodges a fault call, the Service Provider will communicate with the City as follows:

Communications Type	Target Response Time
Call Receipt and Confirmation Answer City calls and confirm there is a fault issue requiring resolution	Personally answer all City calls within one minute. If possible, confirm the existence of a fault condition while City representative is on the phone
Response Advice Initial notification to advise the issue's progress and the latest expectation of a resolution timeframe	Target within 0.5 hours of the issue being logged, unless the Service Provider has agreed otherwise with the City
Follow Up Advice An updated notification of the latest progress of the issue and expected resolution timeframe	Every 4 hours, or as otherwise agreed with the City, or in the event of changed circumstances
Resolution Advice Notification that the issue has been resolved and a cause identified	As soon as practical and with consideration to the City's requirements
Post Incident Reporting If an incident exceeds the target restore time, the Service Provider can provide a report with details of that particular incident, provided the City requests this report within 28 days of the service being restored	5 Working Days from request, subject to incident complexity and vendor analysis

FAULT ESCALATION

The Service Provider will escalate faults according to the severity and duration of each individual service fault. Major outages (such as cable cuts impacting multiple Customers) are handled as priority faults outside the standard escalation process. If the City is of the view that an issue is not progressing satisfactorily, in addition to its rights under the contract the City may escalate the issues using the details below.

Escalation Level	Point of Escalation	Contact Details
Level 1 (initial Contact)	The Service Management Centre is for initial and ongoing Customer contact with respect to an incident or service inquiry. Please contact the 1800 number first for all escalations.	Nextgen Service Management Centre Telephone: [REDACTED] Email: [REDACTED] Note: You must phone the SMC for urgent faults
Level 2 (Restore target exceeded)	SMC Manager	Current incumbent and phone number
Level 3 (Restore target exceeded by 50%)	Network and Service Operations Manager	Current incumbent and phone number
Level 4 (Restore target exceeded by 100%)	Chief Operating Officer	Current incumbent and phone number

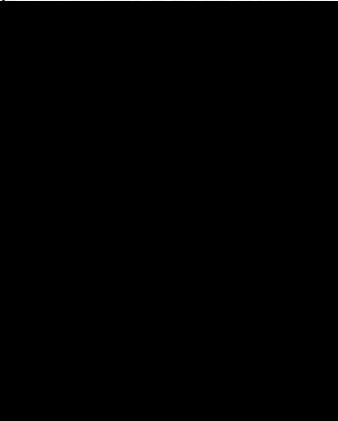
Part B - NETWORK SERVICES - SERVICE LEVELS

PLANNED OUTAGES

The Service Provider may schedule Planned Outages that are necessary to maintain the Service Provider's network. The Service Provider must minimise the frequency and impact of Planned Outages. Wherever possible, the Service Provider must provide the City with 10 business days' written notice of a Planned Outage.

SERVICE RESTORATION AND AVAILABILITY TARGETS

The following are service restoration and availability target times for the Service Provider's services:

Service Access Technology	80% of Faults Restored in CBD / Metro (Note 1)	Availability Target (Note 2)
Fibre	4 Hrs	
Fibre2	12 Hrs	
Microwave	4 Hrs	
SHDSL	12 Hrs	
EoE1 (X.163)	12 Hrs	
ADSL	Not Applicable (Note 3)	
Dark Fibre Product	24 Hrs	

(Note 1) Based on the cumulative monthly outage within the field services coverage window (see table 4.6) only for the affected service component. Plus reasonable travel time.

(Note 2) For Standard Services

(Note 3) The Service Provider sets no target for restoration or availability of these services but will take reasonable actions to minimise the outage period.



Part B - NETWORK SERVICES - SERVICE LEVELS

SERVICE AVAILABILITY GUARANTEES

In the event that a Service Provider network fault corresponds to a service outage that is unplanned and reasonably avoidable, the Service Provider must rebate part of the monthly service fee as a service credit, as follows:

(a) Standard Services (^5)

Availability guarantees up to 99.95% (corresponding to 22 minutes unavailable per month) apply to Standard Services with unprotected access circuits delivered as per the table below.

Service Access Technology(^7)	Field Service Coverage (Note 4)		Outage Rebate as % of Monthly Service Fee (Note 5)		
Fibre	24x7	Up to 22 mins	22 min to 2.5 hrs	2.5 hrs to 3.5 hrs	> 3.5 hrs
Microwave (Note 6)	8am to 5pm Mon-Sun	Up to 4 hours	4 to 8 hrs	8 to 12 hrs	> 12 hrs
SHDSL (Note 7)	8am to 5pm Mon-Fri (Note 8)	Up to 12 hours	12 hrs to 14 hrs	14 hrs to 16 hrs	> 16 hrs
EoE1 (X.163)	8am to 5pm Mon-Fri (Note 8)	Up to 12 hours	12 hrs to 14 hrs	14 hrs to 16 hrs	> 16 hrs
ADSL	8am to 5pm Mon-Fri (Note 8)	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Dark Fibre Product	24x7	Not Applicable	Not Applicable	Not Applicable	Not Applicable

(Note 4) Refers to the hours of operation when field service staff are normally available to attend customer site. Note that the Service Provider operates a 24x7 Help Desk and Service Management Centre for all categories of service. Core Network faults are diagnosed and restored 24x7.

(Note 5) Outages Rebates are based on the cumulative monthly outage within the field services coverage window only for the affected service component, measured from the time customer reports the fault.

(Note 6) Excluding field work where tower access is required in wet or dark conditions.

(Note 7) Applicable to urban locations. For rural locations add one extra business day. For remote locations, add two extra business days. (Note 8) Excluding Public Holidays.

Applicable conditions:

- Excludes periods of planned outage necessary for the Service Provider, in its reasonable opinion, to carry out work on its facilities, network, or systems for any reason, including but not limited to installation of infrastructure, maintenance and upgrades.
- The payment of a rebate is conditional on the City requesting a rebate within 3 months of the relevant issue, and the amount of rebate and whether a rebate is payable is a matter solely for the Service Provider, acting in good faith.

Work Schedule 1

Annexure D - Schedule of Rates

FACILITIES & SERVICES	UNIT	COST/UNIT	ONE-OFF COST	MONTHLY COST
Data Centre Colocation Facilities				
Rack space to suit the City's HP or Rittal TS-IT 5516.110 47RU racks inclusive of 5kW power	See below		Nil	See below
Additional kW power	1		Nil	
Site A - Rack space initial requirement of six (6) x City's HP racks and two (2) x Rittal comms rack	8		Nil	
Site B - Rack space initial requirement of five (5) x City's HP racks and one (1) x Rittal comms rack	6		Nil	
High Speed Data Links				
High speed 10 Gbps point-to-point data link between Site A Nextgen Silverwater and Site B Nextgen Rosebery	1		Nil	
High speed 10 Gbps point-to-point data link between Site A & Town Hall House, 456 Kent St Sydney	1		Nil	
High speed 10 Gbps point-to-point data link between Site B & 307 Pitt St, Sydney	1		Nil	
Reporting Services				
Reporting Services (included)		Nil	Nil	Nil
IaaS Services (As requested from time to time)				
Other Services (RFT Section 1.7) (As agreed from time to time)		Nil	Nil	Nil
Remote hands				
Remote hands (as required) per half hour during business hours 8:30am-5:30pm – minimum of 1 hour	1			
Remote hands (as required) per half hour outside business hours – minimum of 1 hour	1			

FACILITIES & SERVICES	UNIT	COST/UNIT	ONE-OFF COST	MONTHLY COST
Cabling and cross-connect services For single copper or SMOF fibre x-connect from Nextgen PoP/ Handoff to the City's rack				
Additional circuit - Installation fee (other provider/PoP room)	1			
Additional circuit - Monthly fee (other provider/PoP room)	1			

Work Schedule 1

Annexure E- Authorised Access

Initial List of people Requiring Access	
<p>Initial list of inductees, City and third party suppliers who will require unescorted access to the City's facilities within Nextgen Silverwater and Rosebery data centres</p>	<ul style="list-style-type: none">• City of Sydney staff and contractors:<ul style="list-style-type: none">○ [Redacted]○ [Redacted]○ [Redacted]○ [Redacted]○ [Redacted]○ [Redacted]○ [Redacted]○ [Redacted]○ [Redacted]○ [Redacted]• Allcom Networks<ul style="list-style-type: none">○ [Redacted]○ [Redacted]○ [Redacted]• Interactive Group (TBA)• VM Tech<ul style="list-style-type: none">○ [Redacted]



SCHEDULE 3

Variation Request

The variation Request varies the agreement between the City and Nextgen Networks Pty Ltd.

Variation Request Number:	
Date Proposed	
Date Required	
Full details of variation	
Resulting Contractual Changes	<i>If it is known or proposed that contract clauses will change draft changes in mark-up must be attached to the Variation request</i>

Assessment of Variation	
Impact of variation:	<i>What will have to be done to deliver the variation</i>
Negative Effect	<i>Does the responder foresee and negative or unexpected effects of the variation and /or the actions necessary to implement it?</i>

Effect on Fees	<i>List all new and all changed fees and the services to which they relate</i>
Effort Required	<i>Time and cost to implement</i> <i>If the Variation proposes a new service (not a service already provided and covered by agreed rates), the Supplier must identify here the cost to establish the service for the City and which the City will pay under clause 10.4</i>
Minimum viable period	<i>Service Provider to set out the minimum period for which the City must commit to take the services. Note there will only be a minimum period where the service is supported by, or dependent on, a contract with a third party and that contract has been established for the purposes of establishing the service.</i>
Validity Date	<i>The date after which the respondent's impact and cost estimates are no longer valid and will have to be reviewed</i>

Responsibilities of the Parties	
The City will:	<i>List the responsibilities of the City in successfully implementing the variation</i>
The Services Provider will	<i>List the responsibilities of the Service Provider in successfully implementing the variation</i>

Agreed Effective Date	<i>The date at which it is agreed the change will be implemented and the new fees start to accrue.</i>
-----------------------	--

**THE AGREEMENT IS VARIED IN ACCORDANCE
WITH THE TERMS OF THIS VARIATION REQUEST**

The City hereby endorses its consent to this Variation.

Signed by:

[name]

[position]

Signature

Nextgen Networks Pty Ltd hereby endorses its consent to this Variation.

Signed by:

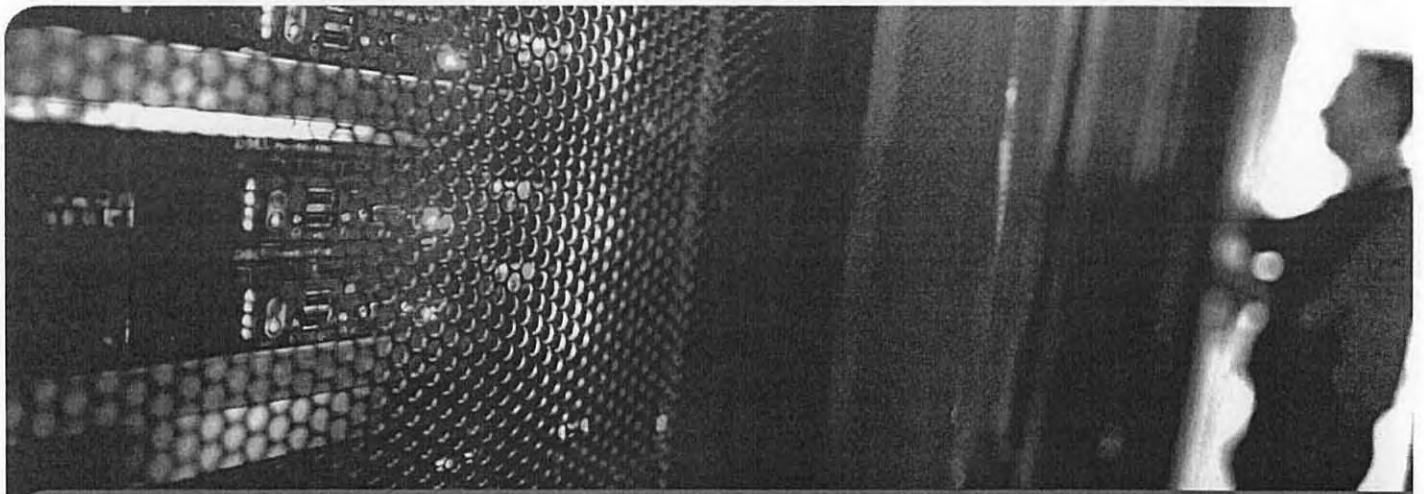
[name]

[position]

Signature



nextgen
GROUP



The Council of the City of Sydney

**Data Centre Facilities & Services
Tender number 1404**

Nextgen Group Response
11th February 2014

R.M.S.



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REQUEST FOR TENDER

SERVICES



Tender number 1404

For Data Centre Facilities & Services

The Council of the City of Sydney

Town Hall House
456 Kent Street
SYDNEY NSW 2000

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V1.5 - 2013

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City of Sydney

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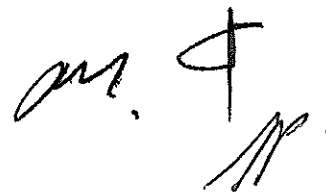
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Volume 4	Major Services Agreement

Tender Number 1404

Addendum Number 6

Questions & Answers

<p>Cage requirements Does the City have a requirement (or preference) for a caged environment within the secure primary &/or secondary DCs for their exclusive use?</p>	<p>No, no preference and certainly not if this would increase the cost to the City with not additional benefit. The protection and integrity of the City's equipment is the vendor's responsibility.</p>
---	--



Major Services Agreement

The Council of the City of Sydney

and

[Name of Party]

Alt[ABN/ACN/ARBN] [number]

Sydney 2030 Green/Global/Connected

A handwritten signature in black ink, appearing to be a stylized name, possibly "M. P.". The signature is written in a cursive style with a prominent vertical stroke.

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THIS AGREEMENT is made on

2013

BETWEEN:

- (1) **Council of the City of Sydney** whose registered office is at Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **[Insert name]** ABN **[insert number]** of **[insert address]** (the **Service Provider**).

RECITALS

- (A) The City wishes to appoint the Service Provider for the provision of the Services on the terms and conditions of this document.
- (B) The Service Provider agrees to supply the Services to the City on the terms and conditions of this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Data means data of any kind of the City or of any customer or supplier of the City (other than the Service Provider) and includes data that:

- (a) may cause the City reputational or brand damage if it is the subject of unauthorised information disclosure, loss or corruption;
- (b) is the City's Personal Information; or
- (c) is corporate proprietary or financial information such as may be subject to the Corporations Act or would be the subject of Intellectual Property Rights owned by the City.

City's Material means all Material provided by or on behalf of the City to Service Provider for the purposes of this document or any Work Schedule, and all adaptations, enhancements and derivative works of such Material.

City's Personal Information means Personal Information to which the Service Provider, or any third party engaged by the Service Provider, has access directly or indirectly in

connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Service Provider).

City's Policies means all policies and procedures relevant to the provision of the Services, including any specific policies incorporated into a Work Schedule.

City's Property means any property used or operated by or on behalf of the City and includes any systems, equipment or premises, whether owned, leased, licensed or rented by or on behalf of the City.

Contract Manager means the person named in Item **Error! Reference source not found.** of Schedule 1 or his/her delegate.

Confidential Information means:

- (a) the terms of this document;
- (b) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliverables means any items (including any software or hardware) required to be provided to the City, or a task to be completed for the City, by the Service Provider under any Work Schedule.

Delivery Certificate means a certificate issued by the City in respect of each Work Schedule in the form set out in Schedule 3.

Developed Material means all Material brought or required to be brought into existence by or on behalf of the Service Provider, product or results produced, concepts developed or work done by the Service Provider in the provision of Services, including the Deliverables.

Disengagement Period means the period commencing on the date specified in clause 19 and ending on the intended date of termination of this document, which will either be:

- (a) the end of the Term; or
- (b) the date specified by the City in a termination notice.

Disengagement Services means the services to be provided by the Service Provider in anticipation of the termination of this document, which will include:

- (a) selling, transferring, assigning or relocating the Developed Material (whether finalised or works in progress), and any associated equipment, parts, documents, files, plans and related items;
- (b) novating or assigning or securing the novation or assignment of such third party agreements (including software licences) as are specified by the City; and
- (c) migrating the Services; and
- (d) any other disengagement services set out in a Work Schedule,

to another services provider or to the City itself.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Equipment means all hardware, software and other items supplied by the Service Provider in accordance with this document

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) *Work Health and Safety Act 2011 (NSW)*;
- (b) *the Protection of the Environmental Operations Act 1997 (NSW)*; and
- (c) *the Contaminated Land Management Act 1997 (NSW)*.

Expiry Date means the date in Schedule 1.

Fee means the fee for the Services specified in the relevant Work Schedule.

Force Majeure Event means in relation to a party an act, omission or circumstance which:

- (a) is beyond the reasonable control of that party; and
- (b) constitutes a fire, flood, earthquake, terrorism, riot, explosion or war, communicable disease for which the World Health Organisation or Department of Foreign Affairs and Trade have issued affected area or travel warnings, state-wide or national strike or other state-wide wide or national industrial action (except where caused by the Service Provider).

Further Term means an extension of the Term under clause 18.2.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means the same as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Infringement Claim means any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting ownership of the Intellectual Property Rights in the Developed Material; or
- (b) that the supply or other use of the Services or the Developed Material infringes or may infringe the Intellectual Property Rights of a third party.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Intellectual Property Rights means all present and future rights conferred in law in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of

intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world, but excluding any Moral Rights.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

Material means material in any form (whether visible or not), including documents, advertisements (in print, electronic or recorded format), recordings on disc or any other form of storage, reports, products, equipment, information, data, software, software tools and software development methodologies, and includes all releases, updates and amendments to the original material.

Milestone means a date, phase or provision of a Deliverable specified in the relevant Work Schedule.

Moral Rights means rights of integrity of authorship or performership, rights of attribution of authorship or performership, rights not to have authorship or performership falsely attributed, and rights of a similar nature conferred by statute anywhere in the world that may now exist or that may come to exist in relation to a work.

Performance Date means a date by which a Milestone must be completed by the Service Provider as set out in a Work Schedule.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

Personnel means the Service Provider's officers, employees, agents, contractors or subcontractors.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

Schedule of Rates means the schedule of rates submitted by the Service Provider as part of the tender and as accepted by the City as set out in a Work Schedule.

Service Levels means service levels used for measuring the performance of the Service Provider's obligations under this document, as set out in a Work Schedule.

Service Level Rights means the rights that may be exercised by the City in relation to a Service Level specified in a Work Schedule, including the right to claim rebates and other remedies.

Service Provider's Material means any Material owned by or licensed to the Service Provider associated or connected with the performance of the Services or provision of the Deliverables but does not include the City's Material or the Developed Material.

Service Provider's Representative means the person named in Schedule 1 or his/her delegate.

Services means the services to be provided to the City set out in the relevant Work Schedule, including the provision of the Developed Material.

Site means the site for the performance of the Services set out in Schedule 1.

Specifications means the functional and technical specifications set out in a Work Schedule.

Start Date means the date on which all parties have executed this document.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Term has the meaning given to that term in clause 18.1.

WHS Returnable Documents means the WHS documentation listed in Schedule 1, including risk assessments and safe work method statements in relation to the Services.

Work Schedule means the document (substantially in the form set out in Schedule 2) that the parties sign for the City to order Services from the Service Provider.

1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (g) A reference to **this document** includes the agreement recorded by this document.
- (h) Words defined in the GST Act have the same meaning in clauses about GST.

1.3 **The rule about "contra proferentem"**

This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. **RELATIONSHIP BETWEEN THE PARTIES**

2.1 **Independent contractor**

The Service Provider is an independent contractor of the City. The Service Provider must not represent itself, and must ensure that its employees, subcontractors and agents do not represent themselves, as being partners, employees or agents of City.

2.2 **Subcontractors**

- (a) The Service Provider may appoint any subcontractors to assist with the provision of the Services, subject to the prior written consent of the City (which may be withheld at the City's absolute discretion or granted subject to conditions).
- (b) If the Service Provider appoints a subcontractor under this document, the Service Provider will remain responsible for all acts and omissions of the sub-contractor as if they were acts or omissions of the Service Provider.

2.3 **No authority to make certain representations**

The Service Provider must not make any representation, statement or warranty that it has authority to bind the City, whether by entering into contracts or otherwise, except with the prior written consent of the City.

3. **SERVICES**

3.1 **Basis of engagement**

The City engages the Service Provider as a non-exclusive, independent contractor to provide the Services to the City, and the Service Provider accepts the engagement on the terms of this document.

3.2 **Work Schedules**

- (a) The City may order Services from the Service Provider by creating separate Work Schedules in accordance with the proforma set out in Schedule 2 or in any other manner agreed between the parties.
- (b) Each Work Schedule will incorporate the terms of this document and form a separate agreement between the parties.

3.3 **No volume guarantee**

The Service Provider acknowledges and agrees that the City is under no obligation, at law or under this document, to obtain any quantity or volume of any Services from the Service Provider.

4. **PERFORMANCE OF THE SERVICES**

4.1 **Provision of the Services**

The Service Provider must provide the Services for the Term in accordance with this document.

4.2 **Standard of performance**

In providing the Services and performing its obligations under this document, the Service Provider must at all times ensure that the Services are provided:

- (a) in a highly professional and ethical manner and with the level of due care and skill which may be expected of a professional organisation experienced in providing the services of the type and complexity of the Services;
- (b) so that the Services and any Deliverables are fit for the purposes for which services of that type are commonly acquired and any other purposes which have been notified to the Service Provider by the City;
- (c) in accordance with all Laws and the City's Policies;
- (d) so that the Services meet or exceed the Service Levels; and
- (e) as otherwise instructed by the City.

4.3 **Additional Service Provider obligations**

The Service Provider must:

- (a) supply everything necessary for the performance of its obligations under this document;
- (b) use any equipment in performance of the Services in the proper manner for the purposes for which it is provided and in accordance with the manufacturer's and supplier's directions;
- (c) cooperate with any of the City's personnel and contractors in the performance of the Services or as otherwise directed by the Contract Manager from time to time;
- (d) take all necessary and reasonable steps to ensure the security of the Site is maintained;
- (e) attend inspections of the Site with the City at the City's request;
- (f) achieve best value for money for the City in the provision of the Services;
- (g) ensure that the City is fully and accurately informed of all matters which are the subject of the Services;
- (h) ensure that the City has the benefit of all manufacturer's warranties for all goods supplied in relation to the Services and will enter into all documents and do all things required to do so; and
- (i) upon request by the City, give to the City free of cost one copy of the manufacturer's specifications (if any) for any products used in performance of the Services.

4.4 **Availability**

The Service Provider must ensure the sufficient availability at all times of the Personnel, equipment, parts and materials required to provide the Services in accordance with this document.

4.5 **Proprietary items**

- (a) The Service Provider must make a written request to the City on each occasion that the Service Provider wishes to use a substitute for any approved products, methods or procedures.
- (b) A request under clause 4.5(a) must be supported by such technical information as the City may require, including certification that the substitution is of a standard, quality and effectiveness equalling or exceeding the standards of the approved product, method or procedure.
- (c) The City may choose, in its sole discretion, to approve the substitution of an item which equals or exceeds the standard or quality and effectiveness of the approved product, method or procedure.
- (d) The Service Provider may only claim an increase in the Fee, if the substitution and increase in cost is approved in writing by the City.

4.6 **Authorisations**

The Service Provider must:

- (a) ensure that it has all Authorisations which are necessary for it to lawfully provide the Services;
- (b) ensure that any such Authorisations are held throughout the Term; and
- (c) provide the City with a copy of any Authorisation and give proof of its currency at the City's request.

4.7 **Personnel**

- (a) The Service Provider must ensure that:
 - (i) the Personnel are of good character, and are suitably skilled, experienced, trained and qualified to perform the Service Provider's obligations under this document;
 - (ii) the Personnel comply with all Laws applicable to the provision of the Services;
 - (iii) the Personnel comply with any specific dress code and other requirements notified in writing by the City from time to time, including any requirement to display identification (such as name tags or badges) and accreditation issued by the City; and
 - (iv) the Personnel render the Services in a polite and helpful manner.
- (b) The City may, at any time during the Term in its absolutely discretion, give notice requiring the Service Provider to remove Personnel from work relating to the Services, in which case the Service Provider must promptly arrange for the removal of such Personnel and ensure that any replacement Personnel are acceptable to the City.
- (c) The Service Provider is solely responsible for maintaining the employer/employee relationship with all Personnel which includes:
 - (i) payment to Personnel of all wages, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any

other similar benefits or allowances under any legislation, industrial award, agreement or contract of employment that are the employer's responsibility to pay for work performed by Personnel in the execution of an assignment, and payment by the Service Provider of all costs incurred by the Service Provider providing Services to the City; and

- (ii) ensuring Personnel comply with any other requirements notified by the City.

4.8 **Improvements**

The Service Provider must also use all reasonable endeavours to identify:

- (a) possible improvements to the Services, the City's processes or any matter related to this document; and
- (b) possible costs savings to the City in relation to the provision of the Services.

4.9 **Quality assurance**

- (a) Where required by the Work Schedule, the Service Provider must establish and maintain a documented quality assurance system about the Services in accordance with the standard set out in the Work Schedule.
- (b) The Service Provider must allow the City, or any person nominated by the City, reasonable access to all premises, personnel, systems, equipment and documents necessary to permit the auditing of the Service Provider's quality control system.

4.10 **Cooperation with third parties**

The Service Provider must work co-operatively with in good faith and provide all reasonable assistance to any third party engaged by the City to provide services to the City relating to or associated with the Services, including any NSW State Government agencies and their representatives.

4.11 **WHS and environmental obligations**

- (a) The Service Provider must accurately complete and then provide to the City the WHS Returnable Documents by the due dates set out in Schedule 1.
- (b) Without limiting clause 4.2(c), the Service Provider must in the performance of the Services:
 - (i) comply with the City's environmental and WHS policies as notified by the City to the Service Provider in writing; and
 - (ii) without limiting clause 4.11(b)(i):
 - (A) act in such a manner as to avoid nuisance, interference or damage to the environment and in accordance with any environmental management plan provided by the City to the Service Provider;
 - (B) dispose of all solid, liquid and gaseous contaminants in accordance with Laws and/or the City's requirements and/or the requirements of any relevant Government Agency;
 - (C) remove all refuse resulting from the performance of the Services; and

- (D) not use or permit the use of any toxic chemicals or materials without the City's prior consent and the prior consent of any relevant Government Agency or land owner.
- (c) The Service Provider must notify the City if the Service Provider becomes aware that any of its Personnel is not complying with the City's Policies notified by the City to the Service Provider in accordance with clause 4.11(b)(i) or with any work health and safety requirements applicable to the Services.
- (d) Where the legislation requires, the City appoints the Service Provider as the principal contractor under the *Work Health & Safety Act 2011* (NSW). The Service Provider must bear all costs associated with being the principal contractor.

4.12 **Conflict of Interest**

- (a) The Service Provider must not engage in any activity that may result in a conflict of interest arising or continuing.
- (b) If, during the Term, a conflict or risk of conflict of interest arises, the Service Provider must notify the City immediately in writing of that conflict or risk and take such steps as the City may reasonably require to resolve or otherwise deal with the conflict or risk.

5. **MILESTONES AND SERVICE LEVELS**

5.1 **Milestones**

- (a) The Service Provider must complete each Milestone by the Performance Date.
- (b) If the Service Provider reasonably believes that any Milestone will not be performed by the Performance Date, the Service Provider must give the City prompt notice of that belief. The notice must specify the reason for the delay and the expected date of performance of the Milestone.
- (c) If the Service Provider gives a notice under clause 5.1(a), the City:
 - (i) must, to the extent the Service Provider's obligations are suspended under clause 21 or the delay arises from the City's failure to comply with this document; and
 - (ii) otherwise may, in its absolute discretion,

without limiting the City's rights, extend the time for performance of the Milestone, by notifying the Service Provider of a later Performance Date.

5.2 **Compliance with Service Levels**

- (a) The Service Provider must comply with each of the Service Levels.
- (b) Without limiting any other rights or remedies of the City under this document or otherwise, if, in the reasonable opinion of the City, the Service Provider fails to perform its obligations to the standard required by a Service Level:
 - (i) the Service Provider must promptly:
 - (A) investigate the underlying cause of the failure;
 - (B) prepare and supply to the City a comprehensive report on the problem;

- (C) take whatever action is reasonably necessary to minimise the impact of the problem;
 - (D) correct the problem as soon as practicable; and
 - (E) keep the City advised at all times as to progress being made in rectifying the problem; and
- (ii) the City may, in its absolute discretion:
- (A) require the Service Provider to:
 - (aa) submit to the City, within the period specified by the City, a remedial plan; and
 - (bb) on notification by the City that the remedial plan is acceptable to the City, implement the remedial plan; or
 - (B) exercise its Service Level Rights.
- (c) If the Service Provider does not implement the remedial plan within a reasonable period (in the sole discretion of the City) after the remedial plan has been accepted by the City under clause 5.2(b)(ii) or if implementation of the remedial plan does not result in the Service Provider performing to the standard required by the Service Level, the City may exercise the Service Level Rights.
- (d) The Service Provider and the City agree that the City may bring proceedings to recover damages from the Service Provider if the City's actual loss resulting from the Service Provider not performing to the standard required by a Service Level exceeds any amount recovered by the City from the Service Provider under a Service Level Right.

5.3 **Service Level measurement**

- (a) Without limiting any right or remedy of the City under this document or otherwise, the Service Provider agrees to:
- (i) measure its performance against the Service Levels at the frequency set out in the relevant Work Schedule and as otherwise reasonably requested by the City from time to time;
 - (ii) provide the City with the results of all performance reviews in accordance with clause 8.2;
 - (iii) use measurement and monitoring tools and procedures reasonably required by the City to measure performance accurately;
 - (iv) if requested by the City, establish an automated process for measuring the delivery of Services against Service Levels; and
 - (v) provide the City with information and access to measurement and monitoring tools and procedures used in assessing the Service Provider's performance pursuant to this clause.
- (b) The City may appoint an independent third party to review measurement and monitoring tools and/or procedures implemented by the Service Provider in accordance with clause 5.3(a). The Service Provider must adopt any reasonable recommendations made by such independent third party to the extent that those

recommendations are designed to ensure the accuracy and efficiency of the measurement and monitoring process.

- (c) The City may also elect to establish and operate its own performance measurement and monitoring systems to measure and monitor the performance of the Service Provider against the Service Levels.

6. CITY'S FACILITIES

6.1 Access to the City's Property

Unless otherwise agreed between the parties, where the Service Provider requires access or connection to the City's Property:

- (a) the City will grant the Service Provider access to or will connect the Service Provider's facilities to the City's Property for the sole purpose of and only to the extent necessary to enable the Service Provider to provide the Services to the City and by such means as the City determines in its absolute discretion;
- (b) the Service Provider must comply with any systems, health, safety, technical, security and other requirements, regulations, policies, directions and safety standards notified to it by or on behalf of the City from time to time or as might reasonably be inferred from the use to which the City's Property are put;
- (c) the Service Provider must not use its access or connection to the City's Property to:
 - (i) interfere with or disrupt the City's Property or any equipment or service of any person (including the City customers and service providers);
 - (ii) circulate any unsolicited or unauthorised marketing, publicity or advertising material;
 - (iii) transmit computer worms or viruses;
 - (iv) send harassing, obscene, indecent or threatening electronic mail or messages; or
 - (v) forge electronic mail or messages or their source; and
- (d) the City may, without notice, suspend or terminate the Service Provider's access or the connection to the City's Property if:
 - (i) the Service Provider fails to comply with its obligations under this clause 6; or
 - (ii) the City reasonably believes that the Service Provider's access or connection to the City's Property is impairing, interfering with or damaging any part of the City's Property or their operation or any other equipment or service of any person (including any customers or service providers of the City).

6.2 Service Provider acknowledgment

The Service Provider acknowledges and agrees that access to the City's Property under clause 6 is at its own risk.

6.3 **Public information**

- (a) The Service Provider must not take or permit to be taken any photograph, drawing or sketch of the Services being performed on the Site except for the purpose of performing the Agreement or with the prior written consent of the City.
- (b) The Service Provider must not, in any advertising or promotional material, use or permit to be used the City's name except with the prior written consent of the City.

6.4 **Keys**

The Service Provider:

- (a) must comply with any directions of the City concerning the use of keys (including electronic cards or other devices necessary for obtaining access) supplied by the City to the Service Provider;
- (b) will be responsible for all keys issued;
- (c) must not be lend the keys or remove they keys from the Site;
- (d) must not use the keys other than for access for provision of the Services; and
- (e) must meet the costs of the City supplying additional or replacement keys and any repining, re-programming or re-keying of locks or security devices that the City requires due to keys being lost, stolen, damaged or unaccounted for by the Service Provider.

7. **PAYMENT, INVOICING AND GST**

7.1 **Fee**

- (a) In consideration of the supply of the Services under this document, the City will pay the Fee to the Service Provider in instalments in accordance with the Work Schedule and within 30 days of receipt of a valid tax invoice from the Service Provider in respect of each instalment.
- (b) The parties acknowledge and agree that the Fee is inclusive of all costs, expenses, disbursements, levies and Taxes incurred by the Service Provider in providing the Services, including any costs incurred by the Service Provider in procuring any equipment for use in connection with the Services.

7.2 **Invoices**

- (a) Unless otherwise set out in a Work Schedule, the Service Provider may only invoice the City in respect of the Services after:
 - (i) performance of the Services in accordance with this document, as set out in clauses 7.2 to 7.4; and
 - (ii) the City has issued a signed and dated Delivery Certificate to the Service Provider in respect of that Work Schedule.
- (b) Any invoice submitted to the City under this document must specify:
 - (i) the reference number of this document;
 - (ii) the details of the Services provided and any reference number (if applicable);

- (iii) the date of performance of the Services; and
 - (iv) the Fee for the Services performed.
- (c) Unless otherwise set out in a Work Schedule, invoices must be submitted monthly, in arrears.

7.3 **Method of payment**

The Service Provider must be paid:

- (a) by electronic funds transfer (**EFT**) if the box "EFT" has been ticked or otherwise marked in the relevant Work Schedule and the appropriate banking details of the Service Provider have been notified to the City no later than 15 Business Days after the Start Date; or
- (b) otherwise, by cheque.

7.4 **Effect of payment**

The Service Provider acknowledges that any payment made to it by the City does not imply or constitute an admission on the part of the City that the Services have been properly performed or a waiver or release of the Service Provider's obligations under this document.

7.5 **Disputed invoices**

If the City has a bona fide dispute as to an amount in an invoice, then within 45 days of the date of the invoice the City must:

- (a) pay to Service Provider the portion of the invoiced amount(s) not in dispute; and
- (b) give the Service Provider a notice of dispute in respect of the disputed amount.

7.6 **Responsibility for Taxes**

- (a) The Service Provider is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Services.
- (b) The Service Provider agrees to indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Service Provider is responsible under clause 7.6(a).

7.7 **GST**

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount

which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 7.1 if the payment is consideration for a taxable supply.

- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 7.7(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

7.8 **Withholding tax**

The City may deduct from amounts payable to the Service Provider under this document any amounts required by law to be deducted from such payments. The City will:

- (a) before deducting any such amounts inform the Service Provider of its intention to do so; and
- (b) provide to the Service Provider on request, receipts issued from the Australian Taxation Office evidencing payment of any amounts deducted under this clause 7.8.

8. **REPORTS, MEETINGS, ACCOUNTS AND AUDITS**

8.1 **Business as Usual Reports and Meetings**

- (a) The Contract Manager and the Service Provider's Representative under each Work Schedule will meet when necessary, and at least every three months, to discuss the reports provided under this clause 8.1(a), delivery of the Services, and any other matter related to this document.
- (b) The Service Provider will provide to the City, at least 3 Business Days prior to each meeting under clause 8.1(a), written reports of progress on the Services, the Service Levels, , problems and recommendations for development and any other matter related to this document which requires discussion in the meeting under clause 8.1(a).

8.2 **Progress reports**

The Service Provider must deliver to the City during the Term, in accordance with and at the frequency set out in the relevant Work Schedule and as otherwise reasonably requested by the City from time to time, a written report providing full details of:

- (a) the Service Provider's progress in supplying the Services and ability to achieve upcoming Milestones or other action items;
- (b) detailed analysis of the Service Provider's compliance with the Service Levels; and
- (c) such other information as the City may from time to time request.

8.3 **Content of reports**

The Service Provider must ensure that:

- (a) all reports provided under this clause 8 contain all required information and are accurate and not misleading in any respect; and
- (b) all recommendations are clearly explained and substantiated.

8.4 **Meetings**

In addition to the meetings under clause 8.1(a), the Service Provider and the City must meet with the frequency specified in the relevant Work Schedule to review the progress of the performance of the Services. If no frequency is specified, the Service Provider and the City must meet as requested by the City (but no more frequently than once a month unless agreed otherwise).

8.5 **General audit rights**

The Service Provider must permit the City, its personnel or approved agents access, on at least 5 Business Days' prior notice in writing and not more than four times in any 12 month period, to:

- (a) the Service Provider's premises;
- (b) the Service Provider's systems, including information technology systems and physical storage systems;
- (c) the Service Provider's accounts and any other records relating to the provision of the Services;
- (d) the Personnel;
- (e) the work being carried out by the Service Provider under this document;
- (f) the Service Provider's data and records relating to this document and any of the City's Data in the Service Provider's power, possession or control; and
- (g) any other material or thing to which the City reasonably requires access,

in order to:

- (h) assess the Service Provider's compliance with this document, including in relation to the security of the City's Data;
- (i) verify the Fee; or
- (j) satisfy any legal or regulatory requirements imposed on the City or its related bodies corporate.

8.6 **External audit**

- (a) At the City's request, the Service Provider must, at its expense, give a report to the City from its external auditor as to the accuracy of any reports provided, or account accessed, under this clause 8.
- (b) If a payment is found to have been incorrectly made, any underpayment or overpayment will be recoverable from or by the Service Provider (as the case may

be) and without limitation, may be offset against any amount subsequently due by the City to the Service Provider.

9. ADMINISTRATION OF THIS DOCUMENT

9.1 Direction of Contract Manager

The Service Provider must comply with all reasonable directions given by the Contract Manager. If a direction by the Contract Manager is given orally, and is to be relied upon by the Service Provider in seeking additional payment, the Service Provider must confirm the oral direction in writing with the Contract Manager within two Business Days of the direction being given.

9.2 Service Provider's Representative

- (a) The Service Provider agrees that the Service Provider's Representative has authority to receive and sign notices and written communications for the Service Provider under this document and accept any request or direction in relation to the Services.
- (b) The Service Provider may replace its Service Provider's Representative from time to time by nominating a senior officer to take the place of the Service Provider's Representative in writing to the City. The City may reject such person if it sees fit.
- (c) The City may, at its absolute discretion, give notice to the Service Provider requiring it to replace the Service Provider's Representative. The Service Provider must promptly nominate a senior officer acceptable to the City to take the place of the Service Provider's Representative.
- (d) The Service Provider's Representative must, from time to time, give sufficient information to the Contract Manager to enable the Contract Manager and the City to properly assess the performance of the Service Provider under this document.

9.3 Meetings

The Contract Manager and the Service Provider's Representative must meet at the times set out in the Work Schedule, or at such time reasonably required by the Contract Manager at the City's offices (unless the parties agree otherwise) at a time agreed between the parties.

10. VARIATIONS

10.1 Notice by the City

At any time during the Term, the City by notice in writing to the Service Provider change the requirements for the provision of the Services (a "**Variation Notice**") including:

- (a) directing additional services be performed by the Service Provider; or
- (b) directing that a particular part of the Service is no longer required to be performed by the Service Provider.

10.2 Effect of Variation Notice

Subject to clause 10.3, if no date is specified in the Variation Notice, the change to the Services will take effect on the date on which agreement is reached between the parties under clause 10.5 or determined in accordance with clause 10.6.

10.3 **Urgent additional services**

- (a) The City may require the performance of additional services on an urgent basis and may issue an oral direction for urgent additional services.
- (b) The Service Provider must use its best endeavours to comply with each request for additional services and confirm the details of each request and the extent of compliance to the City within seven days after receipt of the request.

10.4 **Fee for additional services**

If the Variation Notice requires the Service Provider to provide additional services:

- (a) the Service Provider must submit a quotation for the additional services based on the Schedule of Rates (if applicable) or if no rate is applicable, reasonable rates no higher than Service Provider's then standard time and materials rates; and
- (b) until agreement is reached between the parties in relation to the variation, the City will not be liable to pay any fee or expense to the Service Provider for the additional services.

10.5 **Changes to Fee**

Upon receipt by the Service Provider of a Variation Notice, the parties must meet immediately to negotiate and conclude in good faith an agreement about the value of the variation or the amount by which the Service Fee should be reduced in the case of a direction by the City to omit Services.

10.6 **If no agreement reached**

If the parties are unable to agree on the value of a variation or the amount by which the Service Fee should be reduced in the case of an omission within ten Business Days after receipt by the Service Provider of the Variation Notice, the City, acting in good faith, will determine the value of a variation having regard to the Schedule of Rates or if no rate is applicable, reasonable rates.

11. **EQUIPMENT, DATA AND PRIVACY**

11.1 **Ownership Of Equipment**

The Service Provider acknowledges that it is procuring the Equipment for the City and that the City will own all Equipment procured in accordance with this document.

11.2 **Privacy**

Each party:

- (a) must comply with all Privacy Laws in relation to Personal Information, whether or not it is an organisation bound by the *Privacy Act 1988* (Cth), and must take all reasonable steps to ensure that its employees and agents comply with the Privacy Laws; and
- (b) agrees to treat Personal Information disclosed by the other party with the same standard of care as other Personal Information held by that party.

11.3 **Ownership of and access to the City's Data**

- (a) The Service Provider acknowledges that the City's Data remains the property of the City.

- (b) The Service Provider will ensure the City's Data:
 - (i) is to the extent practicable designated as the property of the City; and
 - (ii) remains free of any lien, charge or other encumbrance of a third party.
- (c) The Service Provider will use its best endeavours to ensure the City has access at all times to the City's Data while it is in the possession or under the control of the Service Provider, which will be available to the City at no additional charge unless other terms are set out in the Specification.
- (d) The Service Provider must follow the City's reasonable directions when collecting, storing and protecting the City's Data. The Service Provider must:
 - (i) ensure that it takes a backup of the City's Data in accordance with the Specification or otherwise as agreed between the parties; and
 - (ii) in the event that the City's Data is lost or destroyed, do all things reasonably necessary to restore the City's Data.

11.4 Use and disclosure of the City's Data

The Service Provider:

- (a) may use the City's Data, but only as is necessary for the purposes of providing the Services;
- (b) must not directly or indirectly disclose or transfer any of the City's Data to, or allow access to any of the City's Data by, any person:
 - (i) without the City's prior written consent;
 - (ii) except to those of its Personnel who need to know the City's Data for the purposes of providing the Services, on the condition that the Personnel will only use the City's Data for the purposes of providing the Services; or
 - (iii) except as required by law;
- (c) must not transfer any of the City's Data to a person (including itself) outside of Australia without the City's prior written consent, which may be granted or withheld at the City's sole and absolute discretion;
- (d) must not purport to use, sell, let for hire, assign rights in or otherwise dispose of any of the City's Data, commercially exploit the City's Data, or allow any of the Personnel to commercially exploit the City's Data; and
- (e) must not alter the City's Data in any way, other than as required to fulfil its obligations under this document.

11.5 Confidentiality and correction of the City's Data

The Service Provider acknowledges that the City's Data is Confidential Information and is subject to the confidentiality obligations in clause 20.

11.6 Obligation to cease use

In addition to the Service Provider's obligations under clause 10, on the date any of the City's Data is no longer needed for the purposes of the Service Provider providing the Services, the Service Provider at its cost must:

- (a) immediately stop using the relevant City's Data; and
- (b) within 14 days and subject to any legal requirement in relation to the retention of records deliver to the City, or, at the City's option, erase, destroy (in accordance with the City-approved destruction methods) or permanently de-identify, all records of the City's Data in the power, possession or control of the Service Provider or any person to whom it has given access to these records, whether or not according to this document.

12. **INTELLECTUAL PROPERTY**

12.1 **Service Provider's Material**

- (a) The City acknowledges that it does not own any Intellectual Property Rights in or to the Service Provider's Material.
- (b) The Service Provider hereby grants to the City and its contractors, or to the extent the Service Provider's Material is licensed to the Service Provider will procure for the City and its contractors, a royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce (to the extent it is necessary to use the Service Provider's Material) and otherwise exercise all Intellectual Property Rights in and to that part of the Service Provider's Material which is required to enable the City to fully enjoy and exploit the Services and all Developed Material.

12.2 **City's Material**

- (a) The City's Material remains the property of the City. The Service Provider acknowledges that it does not own any Intellectual Property Rights in or to the City's Material.
- (b) The City grants to the Service Provider a royalty-free, revocable, licence to use the City's Material during the Term for the sole purpose of providing the Services.
- (c) The Service Provider must:
 - (i) maintain and keep secure and separate all the City's Material in its power, possession or control, and must not do or cause to be done anything which may prejudice the subsistence of the City's right, title and interest in and to the City's Material; and
 - (ii) ensure that the City's Material is only used, copied, supplied and reproduced by Service Provider solely and directly for the purposes of this document.

12.3 **Developed Material**

- (a) As between the parties, the Service Provider acknowledges that the City will, on creation, exclusively own all Intellectual Property Rights in and to the Developed Material.
- (b) By this document, the Service Provider:
 - (i) assigns absolutely, or will procure the assignment absolutely of, the right, title and interest, including all Intellectual Property Rights, in or to all Developed Material and all modifications made to any of the Developed Material so that all such right, title and interest throughout the world rests automatically on creation in the City;

- (ii) must ensure that the Developed Material is only used, copied, supplied and reproduced by the Service Provider solely and directly for the purposes of this document;
 - (iii) must not do or cause to be done anything which will encumber any interest in or to the Developed Material to any person other than the City; and
 - (iv) at the City's request, must execute all documents necessary or desirable to ensure that all Intellectual Property Rights in or to all Developed Material and any modifications made to any of the Developed Material are assigned to the City, and to give full effect to this clause.
- (c) The City grants to the Service Provider a non-exclusive, royalty-free, revocable, non-transferrable licence to use the Developed Material during the Term to the extent needed to perform its obligations under this document, but not to any greater extent or for any other purpose.

12.4 **Third Party Licences and Moral Rights**

- (a) The Service Provider must obtain, at its own cost, all necessary licences and consents from any person relating to each copyright work or other subject matter comprised in the Developed Material, which are necessary to enable the parties to do all things contemplated by this document without infringing any laws or the rights (including the Intellectual Property Rights) of or duties owed to any person whether arising under statute, common law, contract or otherwise.
- (b) Without limiting clause 12.4(a), the Service Provider must ensure that each person involved in creating all or any part of the Developed Material and each person whose performance is recorded in the Developed Material irrevocably waives any and all Moral Rights they have in each copyright work or such other subject matter comprised in the Developed Material and consents to the City doing or failing to do any act in relation to those works that may, except for this clause, infringe their Moral Rights in the works including:
- (i) exercising any of the rights in the works without identifying them;
 - (ii) exercising any of the rights in the works in a manner which incorrectly attributes any work created by them or their performance to someone else; and
 - (iii) editing, deleting from or otherwise altering the works in any manner determined by the City as contemplated by this document.
- (c) The Service Provider must ensure that the Developed Material does not use the image, likeness or name of any person or any property of any person, unless it has ensured that the person or the property owner has given their written consent to such use in the Developed Material and the use of it as contemplated in this document.

12.5 **Infringement Claim**

- (a) In the event of an Infringement Claim, the Service Provider must:
- (i) unless otherwise notified by the City, conduct the defence of the Infringement Claim;
 - (ii) as soon as reasonably practicable, consult with the City about the Infringement Claim; and

- (iii) not agree to any settlement of an Infringement Claim without the City's consent.
- (b) If reasonably requested by the Service Provider, the City must co-operate, at the Service Provider's cost, in the Service Provider's conduct of the defence of an Infringement Claim. The City may, at the Service Provider's cost, conduct the defence of an Infringement Claim if the Service Provider does not use its reasonable endeavours to comply with its obligations under clause 12.5(a).
- (c) Without limiting the City's other rights or remedies under this document or otherwise, if an Infringement Claim occurs, the City may:
 - (i) require the Service Provider promptly and at the Service Provider's cost to:
 - (A) procure for the City and its sub-licensees the right to continue to use the Content or any other material that is the subject of the claim (**Infringing Material**);
 - (B) modify the Infringing Material in a manner acceptable to the City to circumvent the Infringement Claim; or
 - (C) replace the Infringing Material with other content or material acceptable to the City; or
 - (ii) terminate this document on 10 Business Days' written notice to the Service Provider.

13. **WARRANTIES**

13.1 **Mutual warranties**

Each party represents and warrants that:

- (a) (**power**) it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and to carry out the transactions that it contemplates;
- (b) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (**Authorisations**) it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted,
 and it is complying with any conditions to which any of these Authorisations is subject;
- (d) (**documents effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the

extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;

- (e) (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (**no Controller**) no Controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

13.2 **Service Provider's warranties**

The Service Provider warrants to the City that, at the Start Date and at all times during the Term:

- (a) it has the skill, competence, experience and ability necessary to perform the Services in accordance with this document;
- (b) it has the right and power to grant to the City the licences and assignments granted under this document and the grant to and exercise by the City of those licences and assignments will not breach any law or infringe the rights (including Intellectual Property Rights) of or duties owed to any person whether arising under statute, common law, contract or otherwise;
- (c) it has obtained all Authorisations and insurances required under any Law to carry out its obligations under this document;
- (d) all work performed by the Service Provider and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Service Provider's size and experience;
- (e) both the Service Provider in performing the Services, and the Services, will not:
 - (i) prejudice or compromise the City's reputation; or
 - (ii) breach any Law;
- (f) all Services supplied and all Deliverables provided, including all components thereof, under this document will:
 - (i) be free from defects in design, material and workmanship;
 - (ii) be in conformity with any Specifications and requirements referred to in a Work Schedule; and
 - (iii) be fit for the purpose communicated by the City and fit for any purpose for which they are commonly acquired;
- (g) it will use reasonable endeavours (which must at least comply with accepted information technology industry standards) to ensure that all Deliverables will be free from any computer program virus or other destructive code or device;
- (h) it is not aware of any matter which may materially affect the Service Provider's ability to perform its obligations under this document;
- (i) all information provided by the Service Provider or set out in any tender document is complete, true, accurate and not misleading in any respect;

- (j) except as disclosed in any tender document, all equipment supplied or used by the Service Provider in connection with the provision of the Services is owned by the Service Provider and is not subject to any encumbrance;
- (k) all Personnel will be appropriately trained and experienced;
- (l) it or its licensors owns all right, title and interest, including all Intellectual Property Rights in and to the Service Provider's Material, and the Service Provider has the right to licence it to the City, its subcontractors and its sub-licensees in accordance with this document;
- (m) neither the Services nor the Developed Material, nor the supply or use of either of them, will:
 - (a) breach any Laws or infringe the rights (including Intellectual Property Rights) of or duties owed to any person, whether under contract, statute, common law or otherwise; or
 - (b) prejudice or compromise the reputation of the City; and
- (n) it is not aware of any claim, actual or threatened, in relation to the Service Provider's Material or Developed Material (including a claim that the Services Providers' Material or the Developed Material infringes a person's Intellectual Property Rights) and has no grounds to suspect that such a claim will or might be made.

13.3 **Breach of warranties**

If the Service Provider is in breach of clause 13.2, the City may, by written notice to the Service Provider:

- (a) require the Service Provider, promptly to correct or replace (at the Service Provider's expense) the defective elements of the Services and Deliverables until the Services and Deliverables comply with the representations and warranties in that clause; or
- (b) if the Service Provider is unable or unwilling to comply with the requirement above, by written notice to the Service Provider, terminate this document with effect from the date that is specified in the notice.

14. **BEHAVIOUR AND CONDUCT**

The Service Provider must ensure that it and its Personnel do not engage in any conduct that:

- (a) will, or is likely to, harm the City or its name, reputation or services; or
- (b) may bring the Service Provider or the City into disrepute, scandal or ridicule.

15. **INDEMNITY**

15.1 **Indemnity**

The Service Provider must, to the fullest extent permitted by law, indemnify the City and each of its employees and agents against, and pay on demand the amount of, all losses including liabilities, costs, expenses and Taxes arising or incurred in connection with:

- (a) any injury to or death of any person or any damage to or loss of property caused by the Service Provider;

- (b) any negligence, wrongful act or omission, or breach of statutory duty by the Service Provider or by its employees, contractors or officers; or
- (c) any Infringement Claim,

15.2 Liability limit

Any claim made by a party against the other party under this document will be limited to \$2 million except for claims in connection with:

- (a) any injury to or death of any person or any damage to or loss of property caused by the Service Provider;
- (b) fraud, misrepresentation or wilful misconduct by the Service Provider; or
- (c) any Infringement Claim,

liability for which is unlimited.

16. INSURANCE

16.1 Insurance policies

While this document is in force, the Service Provider must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances on terms acceptable to the City acting reasonably:

- (a) worker's compensation insurance or registrations as required by law;
- (b) public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than \$10,000,000 for each and every occurrence giving rise to a public liability claim and with a limit of indemnity of not less than \$10,000,000 for each occurrence and in the aggregate for all occurrences in any 12 month policy period giving rise to a products liability claim, which covers the liability of the Service Provider and its Personnel (including to each other), in respect of:
 - (i) loss of, damage to, or loss of use of, any tangible property; and
 - (ii) the bodily injury of, disease or illness to, or death of, any person (including worker to worker liability but excluding any liability insured under the insurance referred to in clause 16.1(a)),

arising out of or in connection with the performance of this document by the Service Provider; and

- (c) professional indemnity covering the liability of the Service Provider for a breach of professional duty as a result of an act or omission by the Service Provider or its Personnel in connection with the performance of this document with a limit of liability of not less than \$5,000,000 for each claim and in the aggregate for claims in any 12 month policy period and including cover for unintentional breaches of consumer protection legislation and unintentional infringement of Intellectual Property Rights.

16.2 Duration of insurance

The insurances referred to in clause 16.1 must be effected on or before the Start Date and be thereafter maintained until the expiry or termination of this document.

16.3 **Evidence of policies**

The Service Provider must, whenever requested by the City, provide the City with a certificate of currency evidencing compliance with clause 16.1.

17. **STEP-IN RIGHTS**

- (a) If the Service Provider fails to perform a material obligation strictly in accordance with the terms of this document and fails to rectify that failure within 5 Business Days of being required by written notice from the City to do so, then the City may, either by itself or through a third party, perform that obligation.
- (b) If the City:
 - (i) has not yet paid the Service Provider in relation to the obligation that the Service Provider has failed to perform, then the costs, expenses, losses and damages incurred by the City in performing that obligation will be a debt due from the Service Provider to the City; and
 - (ii) has already paid the Service Provider in relation to the obligation that the Service Provider has failed to perform, then any costs, expenses, losses and damages in excess of the proportion of the payment applicable to the obligation, incurred by the City in performing that obligation will be a debt due from the Service Provider to the City.
- (c) the City will set off any debt from the Service Provider arising under this clause or make appropriate adjustments to the Service Provider's invoice for the subsequent month.
- (d) This clause 17 does not limit any other remedy which the City may have against the Service Provider for any breach of this document.

18. **TERM AND TERMINATION**

18.1 **Term**

This document commences on the Start Date and, unless otherwise extended under clause 18.2 or terminated on its terms, expires on the Expiry Date (**Term**).

18.2 **Further Terms**

The City may extend this document for the Further Term (if any) specified in Schedule 1, commencing on the Expiry Date or the expiry of a previous Further Term (as applicable), by giving written notice to the Service Provider no later than 2 months prior to the Expiry Date or the expiry of a previous Further Term (as applicable). The maximum number of Further Terms is specified in Schedule 1.

18.3 **Termination without cause**

The City may terminate this document or any Work Schedule at any time and for any reason on 30 days' written notice to the Service Provider. The City will:

- (a) honour invoices for Services rendered and pay for Deliverables delivered to the City prior to the effective date of termination; and
- (b) act reasonably in assessing and reimbursing the Service Provider for costs incurred in partially delivering the Deliverables prior to the effective date of termination,

but it will have no further liability to the Service Provider. The Service Provider will continue to perform its obligations under any Work Schedule existing at the date of the termination unless the City has also terminated the Work Schedule under this clause 18.

18.4 Termination for the Service Provider's default

The City may, without prejudice to any other rights and remedies it may have under this document or at law, immediately terminate any Work Schedule or this document in whole or in part by notice in writing to the Service Provider, if:

- (a) the Service Provider is in breach of any of its obligations under any Work Schedule or this document, including any warranties in clause 13, and if the breach is capable of remedy, the Service Provider has failed to rectify that breach within 15 Business Days after receipt of written notice from the City or any further time allowed by the City;
- (b) the Service Provider is in breach of any of its obligations under this document or any Work Schedule and the breach is not capable of remedy;
- (c) an Insolvency Event occurs in respect of the Service Provider;
- (d) a material change in ownership or control of the Service Provider occurs which in the reasonable opinion of the City:
 - (i) adversely affects the City's rights;
 - (ii) adversely affects the Service Provider's ability to perform its obligations under this document or any Work Schedule; or
 - (iii) is otherwise contrary to the City's interests;
- (e) the Service Provider is unable to provide acceptable replacement Personnel under clause 4.7(b); or
- (f) the Service Provider fails to achieve a significant Service Level or there is a pattern of Service Level failures which the Service Provider fails to remediate in accordance with clause 5.2(b).

18.5 Termination rights under a Work Schedule

Without limiting this clause 18, a Work Schedule may also be terminated in accordance with any termination rights that might be specified in the relevant Work Schedule.

18.6 Survival

The following clauses survive termination or expiry of this document: 1 (Interpretation), 4.3 (Manufacturer's Warranties), 15 (Indemnity), 16 (Insurance), 18.7 (Consequences of termination), 19 (Disengagement), 20 (Confidentiality and disclosures), 22 (Dispute Resolution), 23 (Notices), 24 (Amendment and assignment) and 25 (General).

18.7 Consequences of termination

If the City terminates any Work Schedule or this document then, without limiting any other rights or remedies of the City under this document or otherwise:

- (a) the City will not be required to make any payment in respect of Services not yet supplied on the effective date of termination;

- (b) the City may recover from the Service Provider all money paid for any Service, or part of any Service, not yet supplied;
- (c) the Service Provider must take all steps reasonably necessary to minimise any loss the City may suffer as a result of the expiry of termination of this document;
- (d) the Service Provider must cease to use the City's Material, the Developed Material and any Confidential Information;
- (e) the Service Provider must deliver to the City at a place specified by the City, without retaining any copies (in hard copy or electronically), all copies of the City's Material, the Developed Material and Confidential Information in the possession custody or power of the Service Provider.
- (f) without limiting the City's rights under clause 25.8, the City may apply (without notice) any amount due from the City to the Service Provider under this document, any Work Schedule, or any other agreement between the parties, towards satisfaction of:
 - (i) any damages, costs and expenses recoverable by the City from the Service Provider in consequence of the Service Provider's breach of this document or any Work Schedule; and
 - (ii) any amounts payable by the Service Provider to the City under this document, any Work Schedule, or any other agreement between the City and the Service Provider,

and the Service Provider authorises the City to do anything (including to execute documents) that is required for that purpose.

18.8 **Preservation of rights**

Expiry or termination of this document for any reason does not affect any rights of either party against the other which arose prior to the time at which such termination or expiry occurred, or which otherwise relate to or which may arise at any future time for any breach or non-observance of obligations under this document occurring prior to the termination or expiry.

19. **DISENGAGEMENT**

19.1 **Application**

This clause 19 applies whenever Services are to be terminated. This includes:

- (a) 2 months before the Expiry Date or the expiry of a previous Further Term (as applicable); or
- (b) if Services are terminated before that date, the date on which the City issues a termination notice in respect of this document or a Work Schedule.

19.2 **Objectives**

The purpose of the Disengagement Services is to:

- (a) enable the City or its nominee to perform the Services from the end of the Disengagement Period; and
- (b) eliminate or minimise any disruption to the Services (including the Disengagement Services) as a result of the transition of the Services from the Service Provider to the City or its nominee.

19.3 Requirements for Disengagement

- (a) The Service Provider must ensure that as part of the Disengagement Services:
 - (i) the City's right to use the Materials, equipment and parts provided by the Service Provider to the City under this document and the Service Provider's Material continues following the Disengagement Period at no cost to the City (other than agreed maintenance and support fees);
 - (ii) it makes available to the City all of its Personnel and provides all resources necessary to maintain the provision of the Services while the Disengagement Services are being performed;
 - (iii) there is no degradation of Service Levels or quality of service during the Disengagement Period; and
 - (iv) there is no interruption to the Services during the Disengagement Period.
- (b) The Service Provider must use its best efforts to ensure that the Disengagement Services are completed by the end of the Disengagement Period.

19.4 Implementation of Disengagement

- (a) The Service Provider must ensure that, at all times during the Term, on 30 days' notice it is able to deploy all necessary resources to complete the Disengagement Services.
- (b) If clause 19 applies, the Service Provider must, unless directed otherwise by the City:
 - (i) do all things necessary to effect the Disengagement Services;
 - (ii) at the Service Provider's expense, immediately deliver to the City or a third party nominated by the City all Developed Material and completed Deliverables;
 - (iii) do all things reasonably necessary to deliver all partially completed Developed Material and Deliverables to the City; and
 - (iv) ensure that all permitted subcontractors comply with this clause 19.
- (c) The Service Provider acknowledges all Service Levels and Service Level Rights apply during the Disengagement Period.
- (d) The fees payable for the Disengagement Services will be the same as, or calculated in the same manner as, the fees in effect immediately prior to the termination or expiry of this document.

19.5 Third party services

The Service Provider will make available to the City or its nominee the contact details of any party providing third party services utilised by the Service Provider in the performance of the Services during the Disengagement Period. For the avoidance of doubt, if the City elects to use any third party services made available to the City by the Service Provider pursuant to this clause, the City shall be solely liable for any costs, fees or other liabilities arising in respect of the use of those services by the City.

19.6 Assistance to third parties

If the City appoints a third party to assume its role in relation to any or all of the Services, the Service Provider must provide all reasonable assistance to that third party during the Disengagement Period and in performing the Disengagement Services.

20. CONFIDENTIALITY AND DISCLOSURES

20.1 Use and disclosure of Confidential Information

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 20.2 or 20.3.

20.2 Disclosures to personnel and advisers

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party must ensure that any person to whom Confidential Information is disclosed under clause 20.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 20.2(a).

20.3 Disclosures required by law

- (a) Subject to clause 20.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 20.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and

- (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

20.4 **Receiving party's return or destruction of documents**

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

20.5 **Security and control**

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is secure from theft, loss, damage or unauthorised access or alteration.

20.6 **Media releases**

The Service Provider must not issue any information, publication, document or article for publication in any media concerning the Services or the Developed Material without the City's prior written consent.

21. **FORCE MAJEURE**

21.1 **Notice and suspension of obligations**

If a party to this document is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other party prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

21.2 **Effort to overcome**

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

21.3 **Alternative supply**

During any period in which the Service Provider is not performing obligations because of a claimed Force Majeure Event, the City may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the Service Provider is not performing without incurring any liability to the Service Provider.

21.4 **Termination**

If a Force Majeure Event continues for more than 10 Business Days, the City may terminate this document by giving at least one Business Day's written notice to the other party.

22. **DISPUTE RESOLUTION**

22.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 22.

22.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Service Provider's Representative and the Contract Manager for resolution. The Dispute Notice must:
- (i) be in writing;
 - (ii) state that it is given pursuant to this clause 22; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party giving the Dispute Notice (**Resolution Period**), the Service Provider's Representative and the Contract Manager must meet at least once to attempt to resolve the Dispute.
- (c) The Service Provider's Representative and the Contract Manager may meet more than once to resolve a Dispute. The Service Provider's Representative and the Contract Manager may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) The Service Provider warrants that the Service Provider's Representative has full authority to resolve any Dispute.

- (e) The City warrants that the Contract Manager has full authority to resolve any Dispute.

22.3 Condition precedent to litigation

Subject to clause 22.4, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

22.4 Summary or urgent relief

Nothing in this clause 22 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

23. NOTICES

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received 6 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address and fax number are those set out in the Schedule for the Service Provider's Representative and the Contract Manager, or as the person notifies the sender from time to time.

24. AMENDMENT AND ASSIGNMENT

24.1 Amendment

This document can only be amended or replaced by another document executed by the parties.

24.2 Assignment

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.

25. GENERAL

25.1 Governing law

- (a) This document is governed by the law in force in New South Wales, Australia.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

25.2 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

25.3 **Duty of cooperation**

Each party must:

- (a) do all that is needed on its part to enable the other party to perform any obligation under this document which cannot be performed effectively without the co-operation of both parties; and
- (b) not do anything with the intention of making it impossible to perform its own obligations under this document, or to make it impossible for the other party to carry out its obligations under this document.

25.4 **Giving effect to this document**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

25.5 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

25.6 **Operation of this document**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

25.7 **Operation of indemnities**

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

25.8 **Set off**

The City at its discretion may set off or apply any amounts payable by it to the Service Provider under this document or any other agreement towards satisfaction of any amount

payable to the City by the Service Provider under this document or any other agreement after giving the Service Provider prior written notice of its intention do this.

25.9 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

25.10 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) clauses 1 to 25 of this document;
- (b) any Schedule (including any Work Schedule); and
- (c) the provisions of any tender document, delivery docket, invoice, account or other document of the Service Provider,

the order of precedence between them will be the order listed above, this document having the highest level of precedence, unless the City agrees in writing to change the order of precedence.

25.11 Counterparts

This document may be executed in counterparts.

EXECUTED as an agreement.

Signed for COUNCIL OF THE CITY OF SYDNEY by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

EXECUTED by [**SERVICE PROVIDER**]:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION	
1.	Contract Manager	Name: <i>[insert]</i> Address: Town Hall House, 456 Kent Street, SYDNEY NSW 2000 Fax number: XXXXXXXXXX	
2.	Expiry Date	<i>[insert]</i>	
3.	Further Terms	Length of Further Terms (if applicable): <i>[insert]</i> Maximum number of Further Terms (if any): <i>[insert]</i>	
4.	Site	<i>[insert]</i>	
5.	Service Provider's Representative	Name: <i>[insert name]</i> Address: <i>[insert]</i> Fax number: <i>[insert]</i>	
6.	Start Date	<i>[insert]</i>	
7.	WHS Returnable Documents	Document Description	Due Date
		Signed Acknowledgement Form of the City of Sydney Contractor Safety Book (page 19)	Start Date
		Risk Assessment	<i>[insert date]</i>
		Safe Work Method Statement	<i>[insert date]</i>
		Any other document which the City considers relevant to the safe delivery of the Services	As required

SCHEDULE 2

Pro Forma Work Schedule

PART 1: SCHEDULE DETAILS		
1.	Term	This Work Schedule commences on the Work Schedule Start Date and expires on the Work Schedule End Date, unless terminated earlier in accordance with the Major Services Agreement.
2.	Payment (clauses 7.3)	<p>(a) Method of payment: EFT <input type="checkbox"/> Cheque <input type="checkbox"/> (mark box as appropriate)</p> <p>(b) Payment of invoice required within this period after receipt by the City (if not standard terms): _____ (insert payment period)</p> <p>(c) Settlement Discount for early payment (if any): _____% , if paid within 14 days of receipt of invoice; and _____% , if paid within 30 days of receipt of invoice.</p>
3.	Reports and Meetings (clause 8)	<p>Reports: [<i>insert reports to be provided and the frequency</i>]</p> <p>Meetings: [<i>insert frequency of meetings</i>]</p>
4.	Quality assurance system (clause 4.9)	<p>Documented Quality Assurance System Required</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/> (mark box as appropriate)</p>
5.	Work Schedule Start Date	[<i>insert</i>]
6.	Work Schedule End Date	[<i>insert</i>]
PART 2: SERVICES		
7.	Services	The Service Provider will (at its cost) provide the Services set out in Annexure A of this Work Schedule in accordance with the terms of this Work Schedule.
8.	Maintenance services	The Service Provider must provide the maintenance services set out in Annexure A of this Work Schedule to the City.
9.	Support services	The Service Provider must provide support services set out in Annexure A of this Work Schedule to the City.

10.	Training	The Service Provider must provide the City with the training services set out in Annexure A of this Work Schedule.								
11.	Disengagement Services	The Service Provider must provide the City with the Disengagement Services set out in Annexure A of this Work Schedule.								
12.	Milestones and Performance Dates	<p>The Service Provider must perform the Services in accordance with the timeframes set out in the following table:</p> <p><i>[The Services should be divided into meaningful Milestones which then feed into the following timetable]</i></p> <table border="1"> <thead> <tr> <th>Milestone</th> <th>Performance Date</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table>	Milestone	Performance Date	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
Milestone	Performance Date									
[insert]	[insert]									
[insert]	[insert]									
[insert]	[insert]									
13.	Specifications	The Service Provider must provide the Services and the Developed Material so that they meet the functional and technical specifications provide the Services set out in Annexure B of this Work Schedule.								
14.	Service Levels	The Services must be provided in accordance with the service levels set out in Annexure C.								
15.	Service Level Rights	The City will be entitled to exercise its Service Level Rights in in accordance with Major Services Agreement and Annexure C.								
PART 3: FEE										
16.	Fee	The City will pay the Service Provider the following Fee: [insert]								
17.	Schedule of Rates	The Schedule of Rates is set out in Annexure D of this Work Schedule.								

Work Schedule

Annexure A

Services

[Insert a full description of all Services to be provided by the Service Provider, including a full description of any maintenance services, support services, training services and any additional disengagement services for the stage of work covered by the Work Schedule]

Work Schedule

Annexure B

Specifications

[Insert full Specifications that will apply to the Services and any Developed Material for the stage of work covered by the Work Schedule]

Work Schedule

Annexure C

Service Levels and Service Level Rights

[Insert a full Service Levels and Service Level Rights for the stage of work covered by the Work Schedule]

Work Schedule

Annexure D

Schedule of Rates

[Insert from the tender for the stage of work covered by the Work Schedule]



SCHEDULE 3
Delivery Certificate

Handwritten signature in black ink, consisting of a stylized 'M.' followed by a vertical line and a flourish, and a second signature below it.