

REQUEST FOR TENDER



Tender number **1457**

For a **Workplace Cycling Promotion Program**

The Council of the City of Sydney

Town Hall House
456 Kent Street
SYDNEY NSW 2000

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**VOLUME 1
SECTION 1
INTRODUCTION**

The Council of the City of Sydney ("Council") invites tenders for the carrying out of a Workplace Cycling Promotion Program in accordance with this request for tender.

The City of Sydney is seeking a proposal to run a workplace cycling promotion program in early 2015. The program is aimed at encouraging businesses in Sydney to actively promote and support staff riding more frequently.

For the purpose of development of a timeframe a nominal project start date of 23 February 2015 should be assumed. The expected duration of the workplace cycling promotion program is three (3) weeks. The program will run for one (1) year, with two (2) additional one (1) year terms at the City's discretion.

Tenderers must submit tenders in the manner required by this request for tender.

**VOLUME 1
SECTION 2
KEY CONDITIONS OF TENDER**

Name of Tender	Workplace Cycling Promotion Program
Tender Number	1457
Closing Date	Tuesday 26 August 2014
Closing Time	11:00am
Contact Person	<p>Contract enquiries should be directed to the Tendering Officer only. Enquiries may be submitted by either:</p> <p>(i) the online forum accessed at www.tenderlink.com/cityofsydney</p> <p>Or alternatively,</p> <p>(ii) by e-mail to the Council's Tendering Officer as follows:</p> <p>Michelle Tisdell Tel: 02 9265 9449 Email: mtisdell@cityofsydney.nsw.gov.au</p>
Lodging a Tender	<p>Completed submissions should be lodged electronically in the Electronic Tender Box at www.tenderlink.com/cityofsydney by the closing time on the closing date nominated. Tenderers should ensure they allow sufficient time to upload their submission in full to the Etendering portal. Respondents will receive a successful submission request that is timed and dated upon completion.</p> <p>Alternatively Tenders can also be lodged with Council by the closing date and closing time and in accordance with the standard conditions of tender at the following address or fax (refer to volume 1, section 3, condition 5):</p> <p style="padding-left: 40px;">Tender Box Town Hall House Level 1, 456 Kent Street SYDNEY NSW 2000 Fax: 02 9265 9697</p> <p>If lodging to the Tender Box City of Sydney requests, one original and three hardcopies of the tender and attachments, signed as required must be submitted. The front page of each copy (including all supporting information) must be endorsed by the tenderer as a true copy. The Tender box is accessible between the hours of 8am and 6pm, Monday to Friday.</p>
Tender Documents	<p>The documents that comprise the request for tender include:</p> <ol style="list-style-type: none"> 1. Tender Conditions & Forms 2. Specifications 3. Performance Review 4. General Conditions of Contract 5. Major Services Agreement
General Conditions of Contract	<p>The general conditions of contract for this tender will consist of the City of Sydney Major Services Agreement</p>

**VOLUME 1
SECTION 3
STANDARD CONDITIONS OF TENDER**

1. REQUEST FOR TENDER

This request for tender consists of the documents identified in the key conditions of tender. Where there is any doubt about the meaning of this request for tender, the rules governing the interpretation of the Contract will apply to resolve the ambiguity.

All information submitted by a tenderer as part of an expression of interest (if applicable) is deemed to form part of the tender as if reproduced and submitted in full as part of the tender.

The Council may from time to time issue addenda to amend, alter or clarify the form and contents of the request for tender. Council may include in addenda any queries received regarding the tender. The addenda will be issued before the closing date and upon issue, will form part of the request for tender. Tenderers must acknowledge receipt of the addenda when submitting the tender.

To the extent there is any inconsistency between the request for tender and addenda, the addenda will prevail. Where more than one addendum is issued, the latest addenda will prevail.

The key and standard conditions in this request for tender, and the process of assessing tenders, is not intended to create legal relations, contractual or otherwise. In accordance with standard condition 10, a contractual relationship only comes into effect when a written contract is executed between the Council and the preferred tenderer.

2. TENDERING PROCEDURE

2.1 Tenderers' Briefing

Council may offer briefings to tenderers from time to time. At the briefing Council's representative will discuss, answer or clarify any issues raised by a tenderer about any requirements in the request for tender. Council is not obliged to answer any questions before the briefing.

2.2 Information and Enquiries

Where a tenderer has any doubt about the meaning of any aspect of the request for tender, the tenderer must make enquiries about and clarify matters with Council's Tendering Officer. All enquiries about the request for tender must be referred through the Tenderlink online forum or in writing to Council's Tendering Officer.

All communications related to this RFT should be addressed to the Council's Tendering Officer (via the contact details specified in the key conditions) and not to other Council officers or other persons. The attention of tenderers is drawn to condition 2.6.

2.3 Site Visits

Tenderer's may inspect the site (if applicable) through prior arrangement with Council's Tendering Officer. Tenderers must take their own precautions upon visiting the site.

2.4 Discrepancies, Errors and Omissions

Tenderers must carefully and thoroughly consider and check the request for tender and must notify Council's Tendering Officer in writing of any errors, ambiguities, discrepancies, inconsistencies or omissions in the request for tender. Council will not be liable for any such error, ambiguity, discrepancy, inconsistency or omission.

2.5 Tenderer to Rely on Own Enquiries

All information in the request for tender and in the briefing (if any) is provided for the assistance of tenderers only. Tenderers acknowledge in receiving this request for

tender and in submitting any tender that they have relied entirely on their own knowledge and enquiries and they do not rely on any warranties or representations made or purportedly made to them by or on behalf of Council.

Council will not be liable for any representations or warranties made or purportedly made by Council's representative, Council's agents or any other person or company on Council's behalf, whether in the request for tender, the briefing (if any) or otherwise.

2.6 Tenderer Not to Solicit Council Personnel

Subject to condition 2.2, tenderers (or any representative of a tenderer) must not at any time before Council makes a final decision to accept a tender, contact or interview or attempt to interview or to discuss or to attempt to discuss with Council members, employees, authorised representatives other than Council's Tendering Officer in accordance with the request for tender, any matter about the tender or any other tender submitted in response to the request for tender. Council reserves the right to reject any tender submitted by a tenderer which contravenes this condition.

For clarity, a representative of a tenderer, for the purpose of this condition, includes a person or other legal entity who acts at the request of a tenderer or its agent. Also, this condition does not prevent ordinary business or other contact arising from or pertaining to Council functions (so long as that contact is not used to interview or attempt to interview or to discuss or to attempt discussion on any matter relating the tender).

3. COMPLETION OF TENDER

Unless indicated otherwise in the request for tender, a tenderer must **complete all parts** of the tender forms and submit an offer to carry out the work under the Contract in accordance with the request for tender. Council may reject any tender which does not provide all the required information.

Tenderers must submit a tender by completing and signing the tender forms in the manner as follows:

- (a) If the tenderer is a corporation, in accordance with Section 127 of the Corporations Act 2001.
- (b) If the tenderer is an individual, by the person tendering and the signature must be witnessed.
- (c) If the tenderer is an unincorporated joint venture or partnership (including a business or trade name), each member of the joint venture or partnership must execute the tender in the manner set out in conditions 3(a) and (b).
- (d) If the tenderer is a trustee acting on behalf of a trust, in the manner set out in the trust deed (as varied) that constituted the trust or as otherwise prescribed by law.

4. CONFORMING AND ALTERNATIVE TENDERS

All tenderers must complete the statement of conformance as part of the tender.

A tenderer may also submit an alternative non-conforming tender. Any alternative non-conforming tender must satisfy the objectives of Council in issuing the request for tender, the requirements of the specifications and Contract.

Failure to comply with any condition of tender may render the tender non-conforming.

5. LODGEMENT OF TENDER

Tenders should be lodged by either:

- (i) The Electronic Tender Box at www.tenderlink.com/cityofsydney by the closing time and closing date nominated. Tenderers should ensure they allow sufficient time to upload their submission in full to the Etendering portal. Respondents will receive a Successful Submission Receipt timed and dated upon completion. Should assistance be required please use the online manual on the portal under Support/Online Manuals/Making a Submission or contact Tenderlink Customer Support on 1800 233

533. Tenderlink's instructions on how to make an electronic response and a list of common submission problems are available through the following [link](#).

Or

(ii) Alternatively Tenders may also be placed in the tender box or lodged by fax by the closing time on the closing date in accordance with the key conditions of tender.

Tenders lodged by fax will only be accepted in accordance with the *Local Government (General) Regulation* and where:

- (a) the tender is received **in full** by Councils' Procurement Section on fax number (02) 9265 9697 before the closing time on the closing date ; and
- (b) the original of the tender is received by Council within three (3) business days.

Tenders sent by post and received by Council after the closing date will be deemed to have been received before the closing date only if:

- (a) the envelope bears a postal authority post mark clearly indicating that the time and date of posting were before the closing time on the closing date; and
- (b) the tender would have been able to have been received by Council by the closing time on the closing date in the usual course of business.

Any other tenders received by Council after the closing date will not, unless the *Local Government (General) Regulation* provides otherwise, be considered by Council.

All tenders lodged will become the property of Council and on no account will they be returned to the tenderer.

6. EXTENSION OF TIME

Council may, at its absolute discretion, extend the closing date for the submission of tenders. Tenderers may also request Council to extend the closing date for the submission of tenders by written application to Council's Tendering Officer. Any such request must be received by Council's Tendering Officer at least three (3) business days before the closing date, and must provide sufficient reasons to support the request.

7. TENDER VALIDITY PERIOD

Any tender will be an irrevocable offer by the tenderer to carry out the work under the Contract subject to the conditions set out in the request for tender. The offer will remain open for acceptance by Council for a period of 120 calendar days from the closing date.

8. COUNCIL'S RIGHTS

Without limiting its rights at law or otherwise, Council reserves the right in its absolute discretion at any time to do one or any combination of the following:

- (a) evaluate tenders as Council sees appropriate in the context of its requirement for the works or services;
- (b) cease to proceed with the process outlined in this request for tender or any subsequent process;
- (c) accept all or part of a tender;
- (d) reject any tender;
- (e) accept a non-conforming tender; or
- (f) reject the offer of any Tenderer who has any unresolved disputes with the City

Council is not bound to accept the lowest or any tender.

9. ADDITIONAL INFORMATION

Without in any way limiting the *Local Government (General) Regulation*, Council may require further information from tenderers for the purposes of clarification or explanation of their tender. This includes holding interviews with some or all tenderers, including any personnel nominated by the tenderer in the tender or expression of interest.

If the tenderer is a trustee acting on behalf of a trust, Council may request the tenderer to provide to Council a copy of the trust deed together with any amending or supplementary documents constituting the trust. The tenderer must submit that information to Council's Tendering Officer within 5 working days of being requested. Failure to comply with any such request may render the tender non-conforming.

10. ACCEPTANCE OF TENDER & CONTRACT

If the Council accepts a tender it will issue a letter of acceptance to the successful tenderer. This letter of acceptance does not create a contract with the tenderer. The Council and preferred tenderer are legally bound only when a written Contract is executed by the parties. Lodgement of a tender will itself be an acknowledgement and representation by the tenderer that it agrees to comply with the Contract in its entirety.

11. CONFIDENTIALITY

Information provided in this request for tender or imparted to any tenderer as part of the tendering process must only be used for the purpose of preparing and submitting a tender response. Receipt of this document implies acceptance of this condition.

Information supplied by a tenderer will not be treated as commercially sensitive or confidential unless specifically requested by the tenderer. Information received by Council may be subject to disclosure to the public under the Government Information (Public Access) Act 2009 and regulations unless it has been provided in confidence, relates to commercially sensitive information or falls within an exemption from disclosure under that Act.

12. CONFLICT OF INTEREST

In this clause "conflict of interest" means an actual or potential pecuniary or non-pecuniary conflict of interest (see the Council's Code of Conduct at <http://www.cityofsydney.nsw.gov.au/Council/FormsPoliciesPublication/Policies.asp> under Governance for further explanation of these terms). Tenderers must disclose any conflict of interest in undertaking the requirements of the specifications and contract. Where a tenderer has a conflict of interest, the tenderer must provide Council in writing with detailed information about the nature and scope of the conflict of interest and include details of any arrangements proposed to resolve or manage the conflict of interest should the tenderer be awarded the contract. Based on the information provided by the tenderer, Council will make the final decision regarding the tenderers conflict of interest. If a conflict of interest is not disclosed by a tenderer and Council then becomes aware of the conflict, tenderers may be excluded from this Tender and/or any future process by which Council is seeking the provision of goods or services.

Additional information relating to the City's requirements of Bidders regarding how to tender, frequently asked questions and ethical business conduct can be found on the website at <http://www.cityofsydney.nsw.gov.au/Business/TendersEOIQuotes/default.asp>

13. BUSINESS WITH BURMA

The City has a specific requirement that Council will not, in certain circumstances, purchase goods or services provided by those who, Council is aware, conduct business in, or with, Burma, or who are willing to do so, until democracy has been restored and human rights violations have ceased.

If a bidder is aware that any goods or services provided as part of their bid are subject to the abovementioned clause, these goods or services should be highlighted within their bid and provide the reasons for their inclusion.

14. ASSESSMENT CRITERIA

Tenders will be examined and evaluated according to the following criteria:

- Lump sum price and schedule of prices;

- Program, methodology and approach including, but not limited to demonstrated understanding of the Scope/Requirements, Environmental Management, Stakeholder Management and Innovation;
- Allocation of adequate resources including, but not limited to Key Personnel, Personnel's relevant experience and qualifications and number of personnel;
- Demonstrated experience in delivering programs of a similar nature including, but not limited to experience in the delivery of cycling promotion programs; and
- Workplace Health and Safety; and
- Financial and Commercial trading integrity including Insurances.

Each of the mandatory evaluation criteria listed above is considered to be critical to this tender. They are not of equal weight for evaluation and are not listed in order of priority.

Tenderers compliance on each of the mandatory evaluation criteria will be separately evaluated using the Evaluation Rating Scale below:

<u>Score rating</u>	<u>Description</u>
90-100	No risk, excellent response with added value and innovation
80-89	No risk, excellent response
70-79	Very low risk, good response
60-69	Low risk, good response
50-59	Low risk, acceptable response
40-49	Medium risk, but acceptable response

If a tenderer receives a score of less than 40 in any one mandatory assessment criteria, that tenderer will be deemed non-compliant and will not be recommended for acceptance by Council.

The City may undertake financial assessments of bidders to determine their financial capacity to undertake the works under the contract. This may be undertaken by a third party appointed by the City.

On request the bidder must provide recent years financial information which may include financial statements (P&L, Balance sheets and notes) and Management accounts / Financial statements.

Tenderers must complete all parts of the Tender forms. Council may reject any tender which does not provide all the required information.

**VOLUME 1
SECTION 4
TENDER FORMS**

The following tender forms **must be completed** as part of this request for tender:

Part 1	Execution by Tenderer
Part 2	Schedule of Prices
Part 3	Statement of Conformance
Part 4	Acknowledgement of Addenda & Notices
Part 5	Insurance and Disability Details
Part 6	Company Profile
Part 7	Previous Work Experience
Part 8	Current Commitments
Part 9	Specified Personnel
Part 10	Proposed Sub-contractors & Suppliers
Part 11	Environmental Management
Part 12	Proposed Program & Methodology
Part 13	Workplace Health & Safety

PART 1
EXECUTION BY TENDERER

I/We having read, understood and fully informed myself/ourselves of the contents, requirements and obligations of the request for tender, submit this tender for the performance by myself/ourselves of the **Workplace Cycling Promotion Program** for the Council of the City of Sydney.

I/We hereby offer to supply the goods and/or services described in the tender at the prices offered being \$ **excluding GST (*insert lump sum price*)** and upon and subject to the key and standard conditions of tender and general conditions of contract set out in the request for tender. This offer remains open for acceptance for 120 calendar days from the tender closing date.

<i>Name of Tenderer</i>	
<i>Subsidiary Company (if applicable)</i>	
<i>Address of Tenderer</i>	
<i>Postal Address</i>	
<i>Refer enquiries to: (name, telephone number and email address)</i>	
<i>Phone Number</i>	<i>Fax Number</i>
<i>Legal Entity</i>	<i>ABN</i>
<i>Signature and Date</i>	<i>Official Position Held</i>
<i>Signature of Witness</i>	<i>Address of Witness</i>

PART 2
SCHEDULE OF PRICES

Please provide an itemised list of costs, below.

ITEM NO.	DESCRIPTION	AMOUNT \$ (excluding GST)
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
		\$.....
	TOTAL OF TENDER	\$.....

PART 3 STATEMENT OF CONFORMANCE

[Delete whichever is not applicable:]

- The tender does conform with the request for tender; or
- The tender does not conform with the request for tender. The areas in which the tender does not conform and the reasons for this non-conformance are as follows:

PART 4 ACKNOWLEDGEMENT OF ADDENDA & NOTICES

I / We, **[insert full name of Tenderer]**, acknowledge receipt of the following:

[Tenderers must fully describe all documents including addenda, and any notices, which are issued by Council]

**PART 5
INSURANCE AND DISABILITY DETAILS**

1. Tenderers must complete the following table which details the insurances required.

Insurance Type	Policy No.	Extent of Cover		Expiry Date	Name of Insurer
		Per Incident \$A	Aggregate		
Workers Compensation/ Accident Insurance					
Public Liability (Minimum required \$20m per incident)					
Plant and Equipment					
Motor Vehicles					
Professional Indemnity (Minimum required \$5m per incident)					
Other					

Copies of all insurance certificates are required to be submitted as part of the tender response.

Should work be sub-contracted, it is the tenderer's responsibility to ensure sub-contractors hold and maintain equivalent insurances.

The successful tenderer's insurance policies must be for the amounts required under the contract and the City must be noted as an interested party on the public liability policy certificate of currency.

2. Provide details of current registration with long service and superannuation bodies.
3. Provide details of any disability action plan or disability specific policies and procedures (excluding standard EEO documentation).

**PART 6
COMPANY PROFILE**

Tenderers must provide the following information:

- Details of the size of your organisation
- Details of your corporate structure
- Brief history of your organisation
- Details of quality assurance systems and/or procedures

PART 7 PREVIOUS WORK EXPERIENCE

Tenderers must provide details and references for at least three (3) recent projects that demonstrate expertise applicable to the workplace cycling promotion program.

The following information is to be provided for each project separately:

- Company and address
- Name of project location
- Name and telephone number of principal contact
- Description of works undertaken (or services provided)
- Project value
- Project period

Council may contact these organisations for reference purposes

PART 8 TENDERER'S CURRENT COMMITMENTS

Tenderers must list the current projects the organisation is engaged in or committed to.

The following information is to be provided for each project separately:

- Company and address
- Name of project location
- Name and telephone number of principal contact
- Description of works undertaken (or services provided)
- Project value
- Project period

PART 9 SPECIFIED PERSONNEL

Tenderers must nominate the names of proposed **key personnel for the project**, listing their qualifications, level of expertise, relevant experience and percentage of time to be allocated on the work under the Contract.

The following information is to be provided for each person separately:

- Full Name of Specified Person
- Position Held
- Percentage of Time on the Project
- Qualifications
- Level of Expertise

PART 10 PROPOSED SUB-CONTRACTOR'S & SUPPLIERS

Tenderers must list all proposed sub-contractors and suppliers intended to be engaged by the tenderer in the performance of the work under the Contract.

The following information is to be provided for each sub-contractor or supplier separately:

- Sub-Contractor or Supplier
- Nature of Work

PART 11
ENVIRONMENTAL MANAGEMENT

1. Tenderers must provide details of their environmental systems, accreditations and/or procedures together with the following:
 - Details of initiatives planned and/or undertaken to reduce your environmental impacts, including carbon footprint
 - Examples of environmentally responsible business practices related to this tender

PART 12
PROPOSED PROGRAM & METHODOLOGY

Tenderers must submit a proposed program and methodology for the carrying out of the services under the Contract including sequence of tasks and timeline. The program must contain such information as required by the Contract and how your program will fulfil the full brief.

Tenderers must set out their proposed program and methodology, including details of:

- How the program will target workplaces of all sizes within the City of Sydney council area;
- The incentives, encouragement and motivation elements and how the inclusion of these elements will encourage participation in the program;
- The communications and marketing tool (i.e. website and/or iphone application) and how it will enable automated registration of participants, logging of rides, tracking and comparison of individuals and teams.
- The monitoring and evaluation program including how participants behaviour will be assessed before and after the program and how information on participants barriers to riding and motivation to ride will be assessed;
- The marketing and communications strategy for recruiting at least 5000 participants from 200 businesses;
- The brief program plan or schedule for the proposed human resources (HR), and associated timeframe for the recruitment program if required;
- The key tasks and responsibilities within each project phase of implementation; and
- The dates for testing the marketing and communications tool and making it publicly available.

PART 13

WORK, HEALTH & SAFETY (WHS)

The City's WHS Responsibilities under this Contract

As part of its duty of care obligations, the City requires the successful bidder employed by the City under this contract to comply with WHS Legislation, Australian Standards, relevant Codes of Practice and the City's WHS Policy in accordance with:

- The legislative obligations placed upon all persons conducting a business or undertaking with respect to the Work, Health and Safety Act 2011 and Work, Health and Safety Regulation 2011
- The City's WHS Policy available through City's website at http://www.cityofsydney.nsw.gov.au/_data/assets/pdf_file/0003/114573/Policy-WHS-Policy.pdf

The City will monitor the contract for its duration to ensure that the Contractor manages the project effectively, meets the City's WHS requirements and complies with the relevant WHS legislation to ensure that the Contractor, the City, nor their workers or others in the workplace are placed at risk of injury, illness or prosecution.

The Contractor's WHS Responsibilities under this Contract

The Contractor must demonstrate their safe systems of work are sufficient for the process, and maintain these arrangements for the duration of the agreement. This includes:

Injury and Incident Management

The Contractor must develop and maintain a reporting and corrective action system and register of all injuries and incidents that occur in relation to the delivery of services under this agreement.

Personal Protective Equipment (PPE)

The Contractor must provide, record and maintain PPE for its workers.

Risk Assessments

A risk assessment of the services under the contract must be prepared by the Contractor and reviewed annually. This assessment must form part of the Operations Plan.

Safe Work Method Statements

A documented safe system of work shall be developed and implemented. This is to be provided for all works other than office based administrative services and shall be received and reviewed by the City.

Site inductions and Training

The Contractor must develop and maintain a package of site induction and training that is applicable to all staff working on the City's sites. A register of completed inductions and training must be kept by the Contractor for the duration of the agreement.

Staff inductions

Appropriate levels of WHS Induction shall be provided to, or, carried out by the Contractor which will be documented and maintained throughout the contract.

Traffic Management

Traffic management activities will be the responsibility of the Contractor for sites under their control.

Record Management

The Contractor must maintain work health and safety records in an appropriate format.

Inspection, Testing and Maintenance

The contractor must maintain and inspect plant and equipment to ensure it is in a safe working order.

Hazardous Chemicals

The Contractor must label, store, decant, handle and transport chemicals in accordance with the safety data sheet.

Disclaimer

The provided WHS information in this specification does not reduce the responsibilities of the selected Contractor in identifying hazards and assessing and controlling the risks associated with the proposed works. The information is provided for assistance to the Contractor only.

Item	Response
Advise how you will manage the work health and safety risks outlined within the contract documentation and indicative risk assessment (maximum 5 pages).	
List the number of lost time injuries for the last financial year	
What was your lost time injury severity rate (LTISR) for the last financial year	
What was your lost time injury frequency rate (LTIFR) for the last financial year	
Provide details of any prosecutions or improvements notices issued for WHS offences in any State, Territory or Commonwealth jurisdiction. Explain what prosecution or improvement notice was issued and what measures (e.g. additional controls) were put in place to address these issues.	

VOLUME 2 SPECIFICATIONS

PROJECT BRIEF

The City of Sydney is seeking a proposal to run a workplace cycling promotion program in early 2015. The program is aimed at encouraging businesses in Sydney to actively promote and support staff riding more frequently.

Background

The City of Sydney's 2030 Strategy includes direction 4: *that Sydney is a City for Walking and Cycling*. The City's Cycle Strategy and Action Plan 2007-17 outlined the City's plans for how to make Sydney a cycling City.

In 2010, the StreetShare Strategy,¹ was developed for the City of Sydney and it included a study of the social barriers limiting people riding and identified enabling factors to increase regular cycling.

One of the twelve projects recommended by the StreetShare Strategy report is a workplace cycling promotion program. The project is described as: *"the development of a workplace cycling program provides the opportunity to increase the number of city businesses actively promoting and supporting cycling by employees; encourage awareness of the need for secure parking facilities, showers and lockers; and create positive encouragement for staff to cycle, including managers acting as role models"*.

The City's connected cycleway network is continuing to grow in conjunction with the roll out of the Sydney City Centre Access Strategy (SCCAS). The City is currently working with the NSW Government to roll out more separated bike paths to keep existing riders safe, to encourage new riders and to connect the network. A further increase in the number of bike riders is anticipated as existing cycleways and routes are connected into a network.

Program Objectives

The objectives are to:

- a) Increase the number of City businesses actively promoting and supporting cycling for employees.
- b) Deliver a competitive program targeting Sydney businesses to start pedaling, designed to encourage and support new and existing riders and increase bicycle trips (for both leisure and commuting) in Sydney.

A secondary objective is to encourage safe and considerate behaviour by bike riders when using the City's cycle network.

Program Scope

The tenderer is required to include the following components within the design of their workplace program to promote bike riding and riding to work:

- The program should target workplaces of all sizes within the City of Sydney area.
- The program should use innovative and well considered incentives, encouragement and motivation elements to encourage participation.
- A comprehensive user friendly, interactive communications and marketing tool (e.g. website and/or iPhone application) to enable automated registration of participants, logging of rides, tracking and comparison of individuals and teams.
- A monitoring and evaluation program which includes a pre and post assessment of the participants' behaviour, and barriers to riding and motivation to ride.
- A marketing and communications strategy for recruiting at least 5000 participants from 200 businesses.

¹ http://sydneycycleways.net/wp-content/uploads/2011/03/Final-Strategy-Report_23.11.2010.pdf.

The program delivery timeline will reflect:

- A brief program plan or schedule detailing the resourcing requirements for the program. Please include key dates for the recruitment program if needed.
- Details of the key tasks and responsibilities within each project phase of implementation.
- The dates for testing the marketing and communications tool and making it publicly available.

Sponsorship and Branding

- The winning tenderer will be required to incorporate the City's branding and sponsorship agreements within this program. Any marketing materials will be primarily branded as City of Sydney and/or SydneyCycleways and/or any sponsor that the City nominates. Any branding by the Tenderer or suppliers to the Tenderer must have prior approval from the City.
- Marketing and communications materials can require an estimated 6 weeks for internal approvals, please consider this requirement in your project delivery timeframe. Anticipated approval timeframes will need to be incorporated into the project delivery timeframe by the successful tenderer.

VOLUME 3 PERFORMANCE REVIEW

The City will use the following General Key Performance Indicators to evaluate performance of the successful bidder. For some contracts, Key Performance Indicators (With Repeating Activities) may also be used.

Performance will be evaluated regularly, at least annually, and always upon completion of the contract. Each assessment will form the basis of the Performance Review.

Should one or more of the KPIs be considered irrelevant or unworkable the parties must meet in good faith and agree on an alternative KPI(s) as may be required under the contract.

General Key Performance Indicator Score Rating Scale:

- 1 unacceptable / deficient
- 2 limited / flawed
- 3 adequate / satisfactory / appropriate
- 4 competent / proficient
- 5 strong / superior / exceeds expectations

Key Performance Indicator		Rating					Comments
		1	2	3	4	5	
1	Delivery of the brief in full.						
2	Delivered on time according to the key timeframes specified within the proposal.						
3	At least 5000 participants from over 200 businesses participating in the program.						
4	35% of those participating in the program to be comprised of non-bike riders.						
5	60% of all participants are riding more frequently after participating in the program.						

* The Key Objectives / Deliverables have been set out in this Specification. These are the results that the Supplier is expected to deliver to meet the City's key contract requirements.

KPI (With Repeating Activities) Score Rating Scale

0	Achieved few or none of the specification requirements for the KPI
1	Achieved some of the specification requirements for the KPI
2	Achieved most of the specification requirements for the KPI
3	Achieved all of the specification requirements for the KPI
4	Achieved all and exceeded the specification requirements for the KPI

Major Services Agreement

Council of the City of Sydney

and

[Name of Party]

Alt [ABN/ACN/ARBN] [number]

For a Workplace cycling promotion program

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Schedule

THIS AGREEMENT is made on
BETWEEN:

2014

- (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 **Error! Reference source not found.** 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.

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.

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 **Error! Reference source not found.** 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 **Error! Reference source not found.**

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 **Error! eference source not found.**, 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 **Error! eference source not found.**) 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 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 performance of the Services in accordance with this document, as set out in clauses 7.2 to 7.4.

- (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. data AND PRIVACY

11.1 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.

11.2 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 ensure the City has access at all times and in any manner to the City's Data whilst in the possession or under the control of the Service Provider, which will be available to the City:
 - (i) unconditionally;
 - (ii) without prior notice; and
 - (iii) at no additional charge.
- (d) The Service Provider must follow the City's reasonable directions when collecting, storing and protecting the City's Data.

11.3 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 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.

11.4 Confidentiality and correction of the City's Data

- (a) The Service Provider acknowledges that the City's Data is Confidential Information and is subject to the confidentiality obligations in clause 20.
- (b) The Service Provider must correct any of the City's Data promptly when notified by the City that the City's Data is not accurate, complete or up-to-date.

11.5 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:
 - (i) deliver to the City, or, at the City's option, destroy (in accordance with the City-approved destruction methods) or permanently de-identify, all tangible 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; and
 - (ii) erase, or destroy in another way (in accordance with the City-approved destruction methods) or de-identify (including from electronic storage), all intangible records in the power, possession or control of the Service Provider or any person to whom it has given access to these records.

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, or to the extent the Service Provider's Material is licensed to the Service Provider will procure for the City, a royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce, modify, adapt 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 in Australia 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 is not aware of any matter which may materially affect the Service Provider's ability to perform its obligations under this document;
- (h) all information provided by the Service Provider or set out in any tender document] is complete, true, accurate and not misleading in any respect;
- (i) [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;
- (j) all Personnel will be appropriately trained and experienced;
- (k) 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;
- (l) 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***
- (m) 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

The Service Provider must indemnify the City and each of its directors, employees and agents against, and pay on demand the amount of, all losses including loss of profit, 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 connected with the conduct, operations or performance of the Service Provider;
- (b) any breach of this document by the Service Provider (including a breach of any warranty and/or a breach for which the City terminates this document);
- (c) any negligence, wrongful act or omission, or breach of statutory duty by the Service Provider or by its employees, contractors, officers or suppliers;
- (d) fraud, misrepresentation or wilful misconduct by the Service Provider; or
- (e) any Infringement Claim,

to the fullest extent permitted by law.

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 \$20,000,000 for each and every occurrence giving rise to a public liability claim and with a limit of indemnity of not less than \$20,000,000 for each occurrence and in the aggregate for all occurrences in any 1 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 \$10,000,000 for each claim and in the aggregate for claims in any 12 month policy period and including cover for advertising liability, 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, and where the insurance is written on claims made basis, also for not less than seven years thereafter.

16.3 Named insured

The Service Provider must ensure that the City is named as an additional insured on all insurance policies that it obtains in accordance with clause 16.1.

16.4 Evidence of policies

The Service Provider must, whenever requested by the City, provide the City with a certificate of currency and a full copy of each insurance policy evidencing compliance with clause 16.1.

16.5 No limit to liability

The Service Provider's liability to the City will not be limited in any way because of any insurance.

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 **Error! Reference source not found.**, 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 **Error! Reference source not found.**.

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 honour invoices for Services rendered 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 Disengagement 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 Disengagement 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 perform the Disengagement Services;

- (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 (whether finalised or works in progress); and
 - (iii) 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 after the Disengagement Period any 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 Training

The Service Provider must provide information (including training documents, manuals and all other training materials) and training to all the City personnel or the personnel of the City's nominee, as directed by the City, to enable the City or its nominee to provide the Disengagement Services after the end of the Disengagement Period with minimum disruption and to achieve the Service Levels.

19.7 Assistance to third parties

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

SCHEDULE 1**REFERENCE SCHEDULE**

ITEM	NAME	DESCRIPTION
1	Date of Agreement	XXXX
2	Service Provider's Name Service Provider's ABN Service Provider's Address Service Provider's Contact Details	XXXX
3	Term	1 year
4	Additional Term	Two additional one year terms at the City's discretion.
5	Commencement Date	XXX
6	(a) Contract Manager (b) Service Provider's Representative	Caitlin Brookes, StreetShare Project Co-ordinator XXXX
7	Site	Not applicable
8	Guarantee Amount	Not applicable
9	Service Fee	Not applicable
10	Payment Schedule	25% on public program launch 50% on program completion 25% on acceptance of final report.
11	Reports	Final report (including evaluation)
12	Public Liability Insurance	\$10 million.
13	Professional Indemnity Insurance	\$2 million (tbc).
14	City's Address	Council of the City of Sydney Town Hall House 456 Kent Street Sydney NSW 2000 Facsimile: Telephone:

Executed by the parties as an Agreement:

Signed for and on behalf of the CITY)
OF SYDNEY COUNCIL by its duly)
authorised officer in the presence of:)

Witness:

Signature:

Name (printed):

Name of Authorised Officer:

You need to select the appropriate execution clause for the legal entity. Then
delete those that are not applicable.

[If the other party is a partnership]

SIGNED by **[insert name of)**
partnership] in the presence of:)
)

Witness:

Signature Partner

Name (printed):

Name (printed):

**[OR, If other party is an incorporated
company other than a sole director
proprietary company]**

SIGNED by **[insert name of the entity],)**
ACN **[insert ACN]**, in accordance)
with its Constitution [Section 127 of
the Corporations Act 2001]:)

Director:

Director/Secretary:

Name (printed):

Name (printed):

**[OR, If the other party is a company
with a sole director/secretary**

SIGNED by **[insert name of the entity]**,
ACN **[insert ACN]**, in accordance
with its Constitution [Section 127 of
the Corporations Act 2001]:

Name of Sole Director and secretary
in full who states that he or she is the
Sole Director and Sole Company
Secretary

Name (printed):

**[OR, if the other party is an
Incorporated Association]**

The **COMMON SEAL OF [insert name
of licensee]** was affixed here in
accordance with its Constitution in
the presence of:

Signature of Public Officer/Secretary

Signature of Committee
Member/Secretary

Name (printed):

Name (printed):