

Town of Gawler

Services Agreement

Insert short description of services

Agreement Number: **insert agreement number.**

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Schedule

Item 1 Council	Town of Gawler Address: 43 High Street Gawler East SA 5118 ABN 29 861 749 581 Email: council@gawler.sa.gov.au Phone: (08) 8522 9211
Item 2 Contractor	Name: [Name] Address: [Address] ABN: [ABN] Email: [Email] Phone: [Phone no]
Item 3 Agreed Sum	<p><i>[Choose former option if lump sum, latter is not lump sum]</i></p> \$ _____ (exclusive of GST) \$ _____ (GST) \$ _____ (Total – including GST) <p>(being a fixed lump sum price and not subject to any rise and fall escalation)</p> <p>OR</p> <p>Refer Schedule of Rates in Annexure B</p>
Item 4 Services	Insert name of services
Item 5 Date of Commencement	[Commencement Date]
Item 6 Date for Completion	Insert date for completion
Item 7 Contractor's Representative	insert name and position of representative and any other person as may be advised by the Contractor in writing
Item 8 Contractor's Staff	insert name and position of representative and any other person as may be approved by the Council in writing
Item 9 Council's Representative	insert name and position of representative and any other person as may be advised by the Council in writing
Item 10 Confidential Sections	Refer Annexure B – Fee and Annexure C – Special Conditions
Item 11 Insurance requirements	Public Liability Insurance



Amount: \$20 million for any one occurrence

Professional Indemnity Insurance

Amount: \$ [Click here to insert amount](#)

Product Liability Insurance

Amount: \$ [Click here to insert amount](#)

Property & Facilities

Amount: \$ [Click here to insert amount](#)

Contents

Amount: \$ [Click here to insert amount](#)

Vehicle, Plant & Equipment Insurance

Amount: \$ [Click here to insert amount](#)

Return to Work SA – Current Registration

DRAFT

Parties

The council specified in Item 1 of the Schedule (**Council**)

and

The person specified in Item 2 of the Schedule (**Contractor**)

Background

- A. Pursuant to a request for **insert tender OR quote**, the Council sought tenders from suitably qualified parties for the Services.
- B. The Contractor submitted a **insert tender, quote, etc** for the Services, and the Council has accepted it.
- C. The Contractor agrees to perform the Services on the terms in this Agreement.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

Agreement means this agreement and includes the Schedule and the Annexures.

Annexure means an Annexure of this Agreement.

Authorisation means the inclusion of any authorisation, agreement, approval, licence, permit, consent, qualification, accreditation, registration, certificate, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

Background Intellectual Property means Intellectual Property Rights in the Deliverables which were not specifically created as part of the Services (including the pre-existing Intellectual Property Rights of the Contractor and Intellectual Property Rights of third parties).

Business Day means a day that is not a Saturday, Sunday or public holiday in the State of South Australia.

Confidential Information means any documentation or information of a confidential nature supplied by either of the parties to the other in connection with this Agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by each party, but specifically excludes any documentation or information which has been previously

published or otherwise disclosed to the general public or is required to be disclosed by Law.

Confidential Sections means those clauses, Schedules and/or Annexures specified in Item 10 of the Schedule that are deemed to be confidential for the purposes of the FOI Act.

Contractor means the person bound to carry out the Services as specified in Item 2 of the Schedule.

Contractor's Representative means the person specified in Item 7 of the Schedule.

Contractor's Staff means the people approved by the Council to perform the Services, being those persons specified in Item 8 of the Schedule.

Council means the Council specified in Item 1 of the Schedule.

Council's Representative means the person specified in Item 9 of the Schedule.

Data means information directly or indirectly relating to this Agreement and/or the Services.

Date of Commencement means the date specified in Item 5 of the Schedule.

Date for Completion means the date specified in Item 6 of the Schedule, as adjusted from time to time in accordance with this Agreement.

Deliverables means all documents, equipment, software, information, and data produced as part of the Services and supplied to the Council as part of the Services.

Existing Conditions means the conditions as described in clause 2.3 of this Agreement, a summary of which is detailed in Annexure C.

Fee means the fee payable by the Council for the Services, which is to be determined and reviewed in the manner set out in Annexure B.

FOI Act means *Freedom of Information Act 1991 (SA)*.

Force Majeure Event means an unforeseeable and unknown event occurring after the date of this Agreement beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this Agreement. Such circumstances include:

- a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- c) a pandemic is declared by a Governmental Agency and measures are implemented by the Governmental Agency to address the pandemic; and/or
- d) a suspension or termination of services or works is necessitated by legislative requirement or is ordered by a Governmental Agency;

but does **not** include any event or circumstance which the Contractor ought to have reasonably foreseen from or as a result of the Existing Conditions.

Governmental Agency means any government or any government, semi-governmental, administrative, fiscal, or judicial body, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.

Intellectual Property Rights means the inclusion of any property and rights in respect of or in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), business or company names, or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions) whether created before or on or after the Agreement.

Law means any statute, regulation, order, rule, subordinate legislation, or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Notice means a notice, demand, consent, approval, or communication under this Agreement.

Order means an order issued by Council for provision of Services for continuing or standing offer arrangements).

Recipient means a party who receives a supply pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Reportable Incident means any accident, injury, property or environmental damage or any potential breach of any Law that occurs during or as a result of this Agreement.

Schedule means the Schedule of this Agreement.

Services means those services which the Contractor is to perform under this Agreement, more specifically set out in Annexure A.

Special Conditions mean the special conditions set out in Annexure C, if any.

Supplier means a party who makes any supply under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the period starting on the Date of Commencement and finishing on the Date of Completion, subject to any extension or renewal.

Variation means any change to the Services in this Agreement or an Order (for continuing or standing offer arrangements), including:

- a) any increase of, or decrease in, or omission from the Services; and
- b) any change in the character, specifications, quality, scope and/or extent of the Services; or

c) any supply of additional Services.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.2 words importing persons shall include individuals, partnerships, bodies corporate or unincorporated;
- 1.2.3 a reference to this Agreement includes any schedules and annexures to this Agreement;
- 1.2.4 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.5 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.6 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.7 an unenforceable provision or part of a provision may be severed, and the remainder of this Agreement continues in force, unless this would materially change the intended effect of this Agreement;
- 1.2.8 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this Agreement;
- 1.2.9 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this Agreement.

2. Engagement of Contractor

- 2.1 The Council engages the Contractor who accepts the engagement for the Term to perform the Services on the terms of this Agreement.
- 2.2 The parties acknowledge that nothing in this Agreement creates or infers a relationship between the parties of partnership or employer/employee.
- 2.3 Existing Conditions
 - 2.3.1 The Contractor acknowledges and agrees that it enters into this Agreement with knowledge of the existence and impact of the COVID-19 pandemic in the State of South Australia, Australia and the world as at the date of this Agreement (**Existing Conditions**), and has had regard to those Existing Conditions in entering into this Agreement.
 - 2.3.2 The Contractor warrants to the Council that it has not relied on any advice or statements by the Council regarding the Existing Conditions and has taken

appropriate advice in respect of the Existing Conditions or chosen not to seek or receive such advice. The Council has relied on the Contractor's warranties in entering into this Agreement.

2.4 Publicity and Changes

2.4.1 The Contractor must not (without the prior written consent of the Council) advertise, promote, or publish in any form, the fact that the Contractor is providing the Services to the Council.

2.4.2 The Contractor must immediately notify the Council in writing of:

2.4.2.1 any change in the financial or technical capacity of the Contractor which a reasonable person would consider adversely impacts upon the Contractor's ability to provide the Services to the Council; and/or

2.4.2.2 any change in the Contractor's ownership.

PLEASE NOTE - There are 2 options for Basis of Engagement Below. The first option is based on continuing for a set period of time and the second option is if you wish to include them on a panel continuing

*DELETE 1 of the 2 options below that do not apply
If the agreement is for a one off then delete **BOTH** options below.*

3. Basis of Engagement **Continuing**

3.1 Standing Offer Arrangement

3.1.1 The Contractor hereby irrevocably grants the Council with a Standing Offer during the Term to provide the Services for the Fee at the times requested by the Council.

3.1.2 The Council may place an order for the Services at any time during the Term by sending an Order to the Contractor.

3.1.3 Each Order by the Council constitutes an acceptance of the Standing Offer by the Contractor to provide the Services and will constitute an Agreement for the Contractor to provide the Services to the Council in accordance with the Order and the terms and conditions of this Agreement.

3.1.4 The Council is not obliged to request any or any minimum number of Services from the Contractor under this Agreement.

3.1.5 The arrangements contemplated by this Agreement are not an exclusive arrangement and the Council may, at its discretion, engage other Contractors to provide the Services.

3.1.6 The Services will be provided as and when required by the Council in accordance with an Order.

4. Basis of Engagement **Panel**

4.1 Panel Arrangement

- 4.1.1 The Contractor acknowledges that the Council has established the Panel for the provision of the Services.
- 4.1.2 The Council has agreed to include the Contractor in the Panel during the Term for the provision of the Services and the Contractor has agreed to provide the Services to the Council on the terms and conditions of this Agreement.

4.2 Standing Offer Arrangement

- 4.2.1 The Contractor hereby irrevocably grants the Council with a Standing Offer during the Term to provide the Services for the Fee at the times requested by the Council.
- 4.2.2 The Council may place an order for the Services at any time during the Term by sending a Order to the Contractor.
- 4.2.3 Each Order by the Council constitutes an acceptance of the Standing Offer by the Contractor to provide the Services and will constitute an agreement for the Contractor to provide the Services to the Council in accordance with the Order and the terms and conditions of this Agreement.
- 4.2.4 The Council is not obliged to request any or any minimum number of Services from the Contractor under this Agreement.
- 4.2.5 The arrangements contemplated by this Agreement are not an exclusive arrangement and the Council may, at its discretion, engage other Contractors to provide the Services.
- 4.2.6 The Services will be provided as and when required by the Council in accordance with an Order.

4.3 No Guarantee of Engagement

The Council and the Contractor mutually acknowledge and agree that the inclusion of the Contractor on the Panel for the provision of the Services does not guarantee that the Contractor will be engaged by the Council to provide the Services to the Council during the Term.

[Drafting Note -End of basis of engagement section and the 2 Options of engagement [Delete RED text once read]

5. Invoicing and Payment

5.1 Payment of the Fee

The Council will pay to the Contractor the Fee for the supply of the Services, which may be calculated on a percentage, lump sum or time charge basis or a combination as set out in Annexure B.

5.2 Payment Terms

- 5.2.1 The Contractor will issue a tax invoice to the Council within seven (7) days of the completion of the Services.

5.2.2 Payment of the Fee will be due within thirty (30) days from the end of the month in which the Council receives a correctly rendered tax invoice from the Contractor.

5.2.3 A tax invoice is correctly rendered when it:

- 5.2.3.1 describes the Services provided and the period to which the Services relate;
- 5.2.3.2 displays the terms of payment of the Fee described in the invoice;
- 5.2.3.3 displays the Council's purchase order number (if relevant);
- 5.2.3.4 is addressed to the Council's address as specified in this Agreement; and
- 5.2.3.5 set out in reasonable detail the manner and basis of the calculation of the Fee, including the component of GST.

5.3 Effect of payment

A payment of all or part of the Fee is not an acceptance of the Services or a waiver of a right or action of the Council.

5.4 Right of set off

The Council may deduct from amounts otherwise payable to the Contractor any amount due from the Contractor to the Council.

6. Standard and Scope of Services

6.1 The Contractor represents and warrants to the Council that:

- 6.1.1 it has undertaken and fulfilled all actions and conditions required in order to enable it to enter into, exercise its rights and perform its obligations under this Agreement; and
- 6.1.2 all Authorisations required for its entry into, exercise of its rights under, and performance of its obligations under this Agreement have been obtained.

6.2 The Contractor must provide the Council with the Services in the manner and at the times or within the timeframe specified in Annexure A.

6.3 The Contractor must:

- 6.3.1 perform the Services with all the skill, care and diligence to be expected from a qualified, competent and experienced provider of services similar to the Services;
- 6.3.2 devote such of its time and ability as is appropriate and reasonably necessary for the proper and timely performance of the Services;
- 6.3.3 comply with all Authorisations and all applicable Laws, accepted industry standards, specifications, and procedures in the performance of the Services and its obligations under this Agreement; and

- 6.3.4 comply with any reasonable requests of the Council, whether in relation to the manner of the performance of the Services or otherwise.
- 6.4 The Contractor must supply at its own expense all plant, equipment and facilities required for the performance of the Services and maintain them in a safe and good working condition.
- 6.5 The Contractor must keep the Council fully and regularly informed as to all matters affecting or relating to the Services and must provide to the Council any information reasonably requested by the Council to monitor the performance of the Contractor's obligations under this Agreement.
- 6.6 The Contractor shall:
- 6.6.1 when using the Council's premises or facilities, comply with all reasonable directions and procedures relating to workplace safety and security in effect at those premises or in regard to those facilities as notified by the Council or as might reasonably be inferred from the use to which the premises or facilities are made; and
- 6.6.2 when applicable, at the Contractor's cost and expense comply with all basic safety rules imposed by the Council upon its employees or as otherwise notified to the Contractor by the Council's Representative and without limiting the generality of the above and when applicable the Contractor shall comply with all safety requirements regarding the wearing of approved safety apparel and work practices.
- 6.7 Where the Contractor has provided Services to the Council prior to the execution of this Agreement, those Services shall be deemed to have been provided on the terms and conditions contained in this Agreement.
- 6.8 The Contractor must promptly notify the Council of a Reportable Incident within twenty-four (24) hours of the incident taking place. The Contractor must provide a report to the Council's Representative giving complete details, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.
- 6.9 Times for the fulfilment of the Contractor's obligations under this Agreement are essential terms of this Agreement.

7. Contractor is a Trustee

If the Consultant is acting as trustee of a trust, then in relation to this Agreement:

- 7.1 the Contractor is liable both personally and in its capacity as a trustee of that trust;
- 7.2 it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust (but, for the avoidance of doubt, may apply its right of indemnity out of the assets of the trust to any of its liabilities including those arising in relation to this Agreement);
- 7.3 it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and

- 7.4 it represents and warrants that:
- 7.4.1 such trust has been duly established and currently exists;
 - 7.4.2 it is the duly appointed, current and only trustee of that trust;
 - 7.4.3 as trustee it has the power to enter into and perform its obligations under this Agreement;
 - 7.4.4 it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - 7.4.5 it either has no conflict of interest affecting it as trustee (and/or its directors, if any) or such conflict is otherwise overcome by the terms of the relevant trust Agreement; and
 - 7.4.6 no breach of the relevant trust Agreement exists or would arise.

8. Variation to Services and Extensions of Time

8.1 General

8.1.1 Variations

No Variation invalidates this Agreement.

8.1.2 No unauthorised variation

8.1.2.1 The Contractor must not, and is not authorised to, make any Variation of the Services except:

- a) a Variation instructed by the Council; and/or
- b) a Variation requested by the Contractor, which has been approved by the Council in writing.

8.1.2.2 Variations by the Contractor arising from, or related or attributable to the Existing Conditions which were, or ought to have been, reasonably foreseen as at the date of this Agreement or an Order (for continuing or standing offer arrangements) are not permitted.

8.1.3 Execute Variations

The Contractor must provide as part of the Services or not provide as part of the Services (as is required) any Variation instructed by the Council.

8.1.4 Variations in Writing

All Variations must be documented in writing and must be signed by both the Council's and the Contractor's Representatives.

8.1.5 Adjustment of Fee

For the purpose of any adjustment to the Fee for a Variation:

- 8.1.5.1 if practicable, the value of a Variation must be agreed by the Contractor and the Council before the Contractor commences to execute the Variation; or
- 8.1.5.2 if the value of the Variation is not agreed by the Contractor and the Council, the value must be determined by the Council by application of rates accepted by the Council; and
- 8.1.5.3 if the Council gives the Contractor a written instruction that a matter is so urgent that the Contractor should proceed with the Variation before it is valued, the Contractor may proceed with the Variation and the Council's Representative and the Contractor's Representative will jointly negotiate a reasonable value for the Variation.

A Variation must be valued as soon as practicable, and the Contractor must promptly and diligently supply to the Council all information relevant to the valuation.

8.2 Extension of Time

8.2.1 Extension

8.2.1.1 Subject always to clause 8.2.1.2, if performance of the Services is delayed by a cause beyond the control of the Contractor, the Contractor is entitled, subject to clauses 8.2.2 and 8.2.3, to a fair and reasonable extension of the time for performing the Services, and the time and date for which the Services are to be performed must be extended under clause 8.2.3.

8.2.1.2 For the avoidance of doubt, the Contractor is not entitled to an extension of time for any delays or disruptions arising from the Existing Conditions which were, or ought to have been, reasonably foreseen as at the date of this Agreement or an Order (for continuing or standing offer arrangements).

8.2.2 Conditions precedent

The Contractor is entitled to a time extension only if the Contractor took reasonable steps to minimise the delay in performance of the Services.

8.2.3 Council's determination

The Council must determine what (if any) fair and reasonable extension of time for performing the Services should be allowed to the Contractor in respect of each claim, and must give written notice of every such determination to the Contractor, and the date and time for performing the Services must be extended accordingly.

8.2.4 Documentation

All extensions of time must be in writing, and must be duly signed by both the Council's Representative and a representative of the Contractor.

8.2.5 No costs or damages

The Contractor accepts the risk of all costs, losses and expenses incurred because of a delay in performance of the Services (including a delay caused by a Variation directed by the Council). The Contractor's sole remedy for such a delay is an extension of time approved by the Council under this clause. No costs or damages are payable by the Council in respect of such a delay.

9. Contractor's Staff

- 9.1 The Contractor acknowledges that the Council enters into this Agreement on the basis of the skills, reputation, qualifications, experience and knowledge of the Contractor's Staff and that the Services must be performed only by the Contractor's Staff.
- 9.2 The Contractor may request in writing that the Council approve further people as Contractor's Staff.
- 9.3 The Council may, in its absolute discretion, give (conditionally or unconditionally) or withhold such approval.
- 9.4 The Contractor is responsible for the performance of the Services by Contractor's Staff and will not be relieved of its obligations or liabilities under this Agreement.
- 9.5 The Contractor is responsible for labour management and industrial relations in respect of the provision of the Services by the Contractor's Staff.
- 9.5.1 The Council does not bear or accept any additional costs as a result of the impact of any industrial dispute on the performance of the Services.
- 9.5.2 In the event of an industrial dispute, the Contractor must take all reasonable steps to ensure the continuation of the Services without adverse impact on the Council.

10. Insurance

- 10.1 During the Term, the Contractor must maintain all insurances required by Law and this Agreement, including:
- 10.1.1 public liability insurance for the amount specified in Item 11 of the Schedule in respect of any one incident arising during or in consequence of the performance of the Services. The insurance policy must bear an endorsement from the insurer acknowledging the indemnities given by the Contractor under this Agreement;
- 10.1.2 any other insurances specified in Item 11 of the Schedule.
- 10.2 The Contractor must produce evidence of those insurances to the Council upon request.
- 10.3 The Contractor must the Council if the policy is cancelled or altered or allowed to lapse.

- 10.4 The Contractor must not allow any act or omission which would make any policy of insurance void or unenforceable.
- 10.5 Where required by law the Contractor must register itself with Return to Work SA and maintain that registration and pay all levies pursuant to the *Return to Work Act 2014 (SA) (Act)* at all times during the Term. The Contractor must produce evidence of that registration to the Council upon request.
- 10.6 The Contractor must ensure that its subcontractors (so long as they have been approved by the Council) comply with this clause.
- 10.7 If on demand, the Contractor fails to produce evidence of compliance with this Clause, the Council's Representative, on behalf of the Council, may effect such insurance and recover the costs thereof from money otherwise payable by the Council to the Contractor.
- 10.8 The Contractor shall give immediate notice in writing to the Council following any occurrence which may result in a claim against any of the insurances required under this Agreement.

11. Ownership of Intellectual Property Rights and Deliverables

- 11.1 The Contractor warrants that the Deliverables will not infringe the Intellectual Property Rights of any person. The Contractor fully indemnifies the Council against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against the Council alleging that the Deliverables infringe any such Intellectual Property Rights.
- 11.2 The Contractor hereby assigns to the Council all future copyright and all other rights of a like nature in the Deliverables throughout all countries of the world to the intent that such rights will, upon their creation, vest in the Council.
- 11.3 Subject to clause 11.4, title to all Intellectual Property Rights in the Deliverables (other than copyright vesting in the Council under clause 11.2), will be assigned to the Council upon its creation.
- 11.4 The Contractor hereby grants the Council a perpetual, royalty-free, non-exclusive licence of Background Intellectual Property, with a right to grant sub-licences, to the extent necessary to use or reproduce in any way the Deliverables.
- 11.5 The Contractor must do all such things and execute all such forms and documents as are necessary to permit or facilitate the performance of the transactions contemplated by this clause 11.

12. Indemnity and Exclusion of Liability

- 12.1 The Contractor must indemnify the Council and its employees, officers and Contractors against all claims, demands, expenses, loss or damage whatsoever in respect of the provision of the Services, including any claims, demands, expenses, loss or damage that arise as a result of damage to any property, or the death of or personal injury to any person, and any claim action or proceeding by a third party

against the Council or its employees officers and contractors caused or contributed to by the Contractor.

- 12.2 This indemnity is reduced by the extent to which the Council contributes to the event giving rise to the claim for the indemnity.
- 12.3 The Contractor must perform the Services at its own risk in all things and releases the Council and its employees, officers, members and contractors from all claims, actions, proceedings, costs, expenses, losses, suffering, and liabilities incurred by the Contractor or its employees, agents, subcontractors and third parties which arise in relation to the performance of the Services.

13. Non Performance by Contractor

If the Contractor breaches a provision of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so, the Council may:

- 13.1 suspend any or all payment of the Fee until the breach is remedied; and/or
- 13.2 remedy the breach itself whether by the use of the Council's employees or other contractors and deduct the cost of remediation from any Fee due to the Contractor; and/or
- 13.3 terminate this Agreement in accordance with clause 15.1; and/or
- 13.4 pursue any other legal remedies available to the Council.

14. Force Majeure

- 14.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this Agreement:
 - 14.1.1 neither party is liable for such delay or failure; and
 - 14.1.2 all obligations of a party under this Agreement are suspended until the Force Majeure Event ceases to apply.
- 14.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this Agreement must:
 - 14.2.1 notify the other party as soon as possible giving:
 - 14.2.1.1 reasonably full particulars of the Force Majeure Event;
 - 14.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
 - 14.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - 14.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;

- 14.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 14.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 14.2.5 notify the other party when resumption of performance occurs.
- 14.3 If a delay or failure under this clause exceeds sixty (60) days, the Council may immediately terminate this Agreement by written notice to the Contractor (**Termination Date**).
- 14.4 In the event of the Council terminating this Agreement pursuant to clause 14.3:
- 14.4.1 the Council will be liable to pay the Contractor any unpaid Fees properly owing up to the Termination Date; and
 - 14.4.2 within twenty (20) Business Days of the Termination Date the Contractor must give the Council a final invoice for Services provided up to and including the Termination Date and not the subject of any previous invoice.
- 14.5 Without limiting the effect of clause 14.4, the Council will not be liable to compensate the Contractor for loss of potential profits or other consequential loss incurred by the Contractor arising from termination by the Council pursuant to clause 14.3.

15. Termination

- 15.1 Termination by Council
- 15.1.1 The Council may immediately terminate this Agreement by giving notice to the Contractor if the Contractor:
 - 15.1.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this Agreement; or
 - 15.1.1.2 fails to carry out the Services with due diligence and competence; or
 - 15.1.1.3 breaches a material or essential term of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so; or
 - 15.1.1.4 becomes an externally administered body corporate or an insolvent under administration; or
 - 15.1.1.5 becomes insolvent or bankrupt.
 - 15.1.2 In such circumstances, the Council will be liable to the Contractor only in respect of the Fees properly owing up to the date of termination in respect of the Services (or part thereof) performed to that time. Without limiting the effect of this clause 14.1.2, the Council will not be liable to compensate the Contractor for loss of potential profits or other consequential loss incurred by the Contractor arising from termination by the Council pursuant to this clause.

15.2 Termination by Contractor

The Contractor may immediately terminate this Agreement if the Council breaches a material term of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so.

15.3 Accrued rights and remedies

Termination of this Agreement under this clause does not affect any accrued rights or remedies of either party.

16. Confidential Information and Freedom of Information

16.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this Agreement, and agrees that it will:

16.1.1 keep confidential;

16.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

16.1.3 maintain proper and secure custody of; and

16.1.4 not use or reproduce in any form;

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this Agreement.

16.2 The Contractor consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

16.3 Unauthorised disclosure of any Confidential Sections constitutes a breach of a party's obligations under this Agreement.

17. Dispute Resolution

17.1 A party claiming that a dispute has arisen under this Agreement must give written notice to the other party specifying the nature and details of the dispute.

17.2 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.

17.3 If the parties are unable to resolve the dispute within ten (10) Business Days, they must promptly refer the dispute:

17.3.1 in the case of the Council to the Chief Executive Officer; and

17.3.2 in the case of the Contractor to the Contractor's Representative.

17.4 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

- 17.5 All disputes or differences between the Council and the Contractor must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the Chairperson for the time being of the South Australian Chapter of the Institute of Arbitrators and Mediators Australia.
- 17.6 If possible, each party must perform its obligations under this Agreement during negotiations, mediation and arbitration proceedings.

18. Subcontracting and Assigning

- 18.1 The Contractor must not assign or subcontract this Agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld by the Council in its absolute discretion and subject to whatever conditions the Council deems necessary.
- 18.2 With any application for such consent, the Contractor must provide all information required by the Council, including evidence that the proposed assignee or subcontractor is capable of performing the Services to be assigned or subcontracted.
- 18.3 Unless otherwise agreed in writing by the Council, no such assignment or subcontract relieves the Contractor from any liability under this Agreement or at Law in respect of the performance or purported performance of this Agreement and the Contractor is responsible for the acts and omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Contractor.
- 18.4 For the purpose of this clause, if the Contractor is a company, an assignment of this Agreement includes any change in the beneficial ownership of the share capital of the Contractor, or the resignation, death or appointment of any director of the company, which alters the effective control of the Contractor.

19. Miscellaneous

19.1 Special Conditions

If there is an inconsistency between a Special Condition set out in Annexure D and the rest of this Agreement, the Special Condition prevails to the extent of the inconsistency.

19.2 Business Days

Except for the commencement carrying out or completion of any works, if the day on which an act is to be done under this Agreement is not a Business Day, that act may be done on the next Business Day.

19.3 Alteration

This Agreement may be altered only in writing signed by each party.

19.4 Entire agreement

This Agreement:

19.4.1 constitutes the entire agreement between the parties about its subject matter;

19.4.2 supersedes any prior understanding, negotiations, arrangements and agreements, condition, warranty, indemnity or representation about its subject matter.

19.5 Waiver

A waiver of a provision of or right under this Agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

19.6 Exercise of power

19.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this Agreement is not a waiver of that power or right.

19.6.2 An exercise of a power or right under this Agreement does not preclude a further exercise of it or the exercise of another right or power.

19.7 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this Agreement, remains in force after the expiration or termination of this Agreement.

19.8 Counterparts

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.

19.9 Conflict of Interest

The Contractor must disclose in writing to the Council all actual and potential conflicts of interest that exist, arise or may arise in the course of performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.

19.10 Severance

Should any term of this Agreement be found to be invalid or unenforceable then that provision will be severed and the remainder of this Agreement would continue in force, unless this would materially change the intended effect of this Agreement.

19.11 Further action

Each party must do all things necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

19.12 Governing law

19.12.1 This Agreement is governed by the law in South Australia.

19.12.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

19.13 Ombudsman

The Contractor acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Contractor must ensure compliance with all obligations arising under that or any other Act and all applicable Laws.

19.14 Work Health and Safety

In complying with its obligations pursuant to this Agreement, the Contractor agrees to:

- 19.14.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Contractor;
- 19.14.2 comply with all requirements of the *Work Health and Safety Act 2012 (SA) (WHS Act)* and any regulations made under it;
- 19.14.3 comply with any reasonable requests of the Council in relation to the Contractor's performance of its obligations pursuant to this Agreement; and
- 19.14.4 promptly notify the Council of any accident, injury, property or environmental damage of any potential breach of any law (reportable incident) that occurs during or as a result of this Agreement (including those involving the public). Within twenty-four (24) hours of a reportable incident, the Contractor must provide a report to the Council's Representative giving complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future, and

the Contractor acknowledges that the Council has non-delegable duties imposed upon it by the WHS Act and as such the Council has the right:

- 19.14.5 to ensure that the Contractor complies with the WHS Act;
- 19.14.6 to inspect safety measures and documentation; and
- 19.14.7 to interrupt or suspend the Services if safety standards are violated.

19.15 Return To Work SA

- 19.15.1 The Contractor must ensure that it is registered as an employer under the *Return to Work Act 2014 (RTW Act)* and must pay all monthly levies due thereunder in respect of its employees engaged in and about the Services.
- 19.15.2 The Contractor must produce to the Council's Representative on the execution of this Agreement a current certificate of registration as an employer under the RTW Act.
- 19.15.3 The Contractor must ensure that all sub-contractors engaged by it have current certificates of registration as employers under the RTW Act and must produce the same to the Council's Representative upon request in writing by the Council's Representative.
- 19.15.4 The Contractor agrees to indemnify the Council in respect of any action, claim, demands, suit, or proceedings made by any employee of the Contractor or sub-contractor brought in connection with the RTW Act.

- 19.15.5 Insurance effected by the Contractor pursuant to this Clause is limited only by the amount stated in any statute and is in all other respects unlimited.
- 19.15.6 If the Contractor (or any sub-contractor) is unable to register as an employer under the RTW Act, then the Contractor must instead adequately insure against accident, personal injury and disability. The Contractor must maintain such insurance at all times during the currency of this Agreement (including the Defects Liability Period) and must produce evidence of:
- 19.15.6.1 the existence and adequacy of such insurance; and
 - 19.15.6.2 the Contractor's (and/or any sub-contractor's) inability to register as an employer under the RTW Act.

19.16 ICAC

The Contractor acknowledges and agrees that by entering into this Agreement with the Council the Contractor will be considered to be a public officer for the purposes of the *Independent Commission Against Corruption Act, 2012* (SA) (**ICAC Act**) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

20. Goods and Services Tax

20.1 Consideration does not include GST

Unless specifically described as 'GST inclusive', any payment or consideration under this Agreement does not include GST.

20.2 Gross up of consideration

Where a supply by one party (**Supplier**) to another party (**Recipient**) under this Agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

- 20.2.1 the expressed consideration for that supply must be increased by, and the Recipient must pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- 20.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

20.3 Reimbursements

If a payment to a party under this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the previous subclause.

20.4 Tax invoices

Notwithstanding any other provision of this Agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under this Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

20.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under this Agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than twenty-eight (28) days after the Supplier first becomes aware that the adjustment event has occurred.

21. Notices

21.1 A Notice must be:

- 21.1.1 in writing, in English and signed by a person authorised by the sender; and
- 21.1.2 hand delivered or sent by pre-paid post or electronic communication to the recipient's address specified in the Schedule, as varied by any Notice given by the recipient to the sender.

21.2 A Notice is deemed to be received:

- 21.2.1 if hand delivered, on delivery;
- 21.2.2 if sent by prepaid mail, two (2) Business Days after posting (or seven (7) Business Days after posting if posting to or from a place outside Australia);
or
- 21.2.3 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 2000* (SA) if the notice was being given under a law of this jurisdiction.

21.3 However, if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

21.4 If two or more people comprise a party, Notice to one is effective Notice to all.

22. Costs

Each party must pay its own costs of preparing this Agreement and any document required by it.

Annexure A Services

Insert detailed description of the Services, including detailed specifications for the Services

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Annexure B Fee

[Insert the Fee payable by the Council to the Contractor for the Services, including:

- basis for determination of the Fee;
- the review mechanism for the Fee, if applicable;
- what, if any, milestones the Contractor needs to have satisfied before the Council is obligated to pay the Fee]

To be inserted

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Annexure C Existing Conditions

Emergency Management Directions were made pursuant to Section 25 of the Emergency Act 2004 and declared on 22 March 2020. These Emergency Management Directions are applicable for the duration of this Agreement.

On 24 May 2022 the Major Emergency Directions were lifted, and amendments made to the South Australian Public Health Act 2011 to enable public health measures to be maintained to limit the spread of COVID-19.

Despite the lifting of the Major Emergency Declaration, Emergency Management Directions continue to be in force under Section 90C of the South Australian Public Health Act.

In order to comply with the requirements of this Agreement, please ensure that you are up to date with the relevant directions – refer to the Government of South Australia website (see following link) for directions and updates to these Emergency Directions:

www.legislation.sa.gov.au/legislation/CV19

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Annexure D Special Conditions

[Drafting Note – Special Conditions should be used to add or to amend the position put forward in the agreement. They should be used to highlight any unusual or special circumstances particular to the circumstances of the case which have made it necessary to amend the standard terms and conditions. Please use the Special Conditions with care as you may inadvertently modify the agreement in a way which exposes the Council to risk or results in the agreement between the Council and the supplier not being clear. Councils should have appropriate controls in place which facilitate Special Conditions being checked by a Council Officer with appropriate authority to bind the Council and sufficient training and expertise to ensure that the Council is not exposed to unnecessary risk. If you have any concerns about any aspects of the Special Conditions, you should seek legal advice] [Delete RED text once read]

To be inserted

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EXECUTED as an agreement

By the Council

<p>SIGNED by insert name and title under delegated authority in the presence of:</p>	
<p>.....</p> <p>Signature</p> <p>Date:</p>	<p>.....</p>

By the Contractor

If the Contractor is a company, the document must be executed as follows:

<p>Executed by insert name pursuant to section 127 of the <i>Corporations Act 2001</i></p>	
<p>.....</p> <p>Signature of Director</p> <p>.....</p> <p>Name of Director</p> <p>Date:</p>	<p>.....</p> <p>Signature of Director/Company Secretary <i>(Please delete as applicable)</i></p> <p>.....</p> <p>Name of Director/Company Secretary</p> <p>Date:</p>
<p>OR</p> <p>.....</p> <p>Signature of Sole Director and Sole Company Secretary</p>	



.....
Name of Sole Director and Sole Company Secretary
(print)

Date:

OR

Signed for **insert company name** by an authorised representative in the presence of:

.....
Signature of witness

.....
Name of witness

Date:

.....
Signature of authorised representative

.....
Name of authorised representative

.....
Position of authorised representative (print)

Date:

If the Contractor is an individual, the document must be executed as follows:

Signed by **insert name** in the presence of:

.....
Signature of witness

.....
Name of witness (print)

Date:

.....
Contractor

Date:



If the Contractor is a Discretionary Trust, the document must be executed as follows:

Executed by insert names of Trustees as Trustees for the insert names of Trust	
<p>.....</p> <p>Signature of Trustee</p> <p>.....</p> <p>Name of Trustee</p>	<p>.....</p> <p>Signature of Trustee</p> <p>.....</p> <p>Name of Trustee</p>

If the Contractor is a partnership, the document must be executed as follows:
(Add extra execution clauses for additional partners as necessary)

Partner 1:

Signed by insert name in the presence of:	
<p>.....</p> <p>Signature of witness</p> <p>.....</p> <p>Name of witness</p>	<p>.....</p> <p>Signature of partner</p> <p>Date:</p>

Partner 2:

Signed by insert name in the presence of:	
<p>.....</p> <p>Signature of witness</p> <p>.....</p> <p>Name of witness</p>	<p>.....</p> <p>Signature of partner</p> <p>Date:</p>



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