

Request for Quotation

Summary of Requirement	
Council Name	Uralla Shire Council
Project Name	Internal audit of Council's power usage, billing, and opportunities for improvement
Summary of Requirement	Council requires an internal audit to identify any opportunities to improve Council's power usage efficiency and make recommendations for future power strategies.
Delivery Date	14 October 2022
Project Duration	19 September – 31 October 2022
RFQ Closing Date	2/09/2022
RFQ Closing Time	5pm AEST
Lodgement Instructions	Via email to council@uralla.nsw.gov.au
Contract Person	Chris Weber
Contact Details	0417 740 574

Description of Requirement											
Purpose of procurement	<p>To conduct an internal audit to identify any opportunities to improve Council's power usage efficiency and make recommendations for future power strategies.</p> <p>In recent years Council has installed multiple solar power systems across multiple sites. Various billing arrangements are in place. Council wants to be sustainable both environmentally and financially.</p>										
Expected benefits to Council	Increased environmental and financial sustainability.										
Scope of Requirements	<ul style="list-style-type: none"> • Desk-top audit existing council properties for solar system effectiveness and power supply billing optimisation, including administrative efficiency. • Prepare report articulating: <ol style="list-style-type: none"> 1. Energy usage by location 2. Opportunities for demand optimisation (load shifting, efficiency or better on-site generation) 3. Make recommendations including: <ul style="list-style-type: none"> - Optimum billing plans - Optimum systems use - Future strategies including opportunities for: <ul style="list-style-type: none"> ▪ a virtual power network (VPN), and/or ▪ virtual power plant (VPN). 										
Proposed Requirements Schedule	<table border="1"> <thead> <tr> <th>Key Deliverables</th> <th>Milestone Dates</th> </tr> </thead> <tbody> <tr> <td>Start-up meeting – confirmation of information required for audit</td> <td>19/9/2022</td> </tr> <tr> <td>Draft report</td> <td>14/10/2022</td> </tr> <tr> <td>Final report</td> <td>31/10/2022</td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>	Key Deliverables	Milestone Dates	Start-up meeting – confirmation of information required for audit	19/9/2022	Draft report	14/10/2022	Final report	31/10/2022		
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	Start-up meeting – confirmation of information required for audit	19/9/2022									
	Draft report	14/10/2022									
Final report	31/10/2022										
Respondent's responsibilities	Review of data, assessment, report and recommendations.										
Location of Work	Remote										
Special requirements	<p>Council will provide:</p> <ol style="list-style-type: none"> 1. Letter of authority 2. Asset and retailer listing 3. Purchase Order 										

Technical Evaluation Criteria		
Criterion 1	Relevant subject matter expertise and experience - company	10%
Criterion 2	Relevant subject matter expertise and experience – consultant undertaking the work	20%
Criterion 3	Peer review / quality assurance process	10%
Criterion 4	Proposed work methodology	20%
Criterion 5	Local supplier	5%
Criterion 6	Cost	35%

Commercial Evaluation Criteria		
Summary of Cost	Cost Breakdown	
	Desktop audit	\$
	Report energy usage by location	\$
	Report opportunities for demand optimization	\$
	Report recommendations for optimisation and strategies for improvement	\$
	Total – Lump Sum (fixed price), excluding GST	\$
Relevant subject matter expertise and experience - company		
Relevant subject matter expertise and experience – consultant undertaking the work		
Relevant subject matter expertise and experience – consultant undertaking the work		
Proposed work methodology		
Additional Options	<Provide costs associated with additions/options/ value-added innovations or alternatives proposed in Technical Submission (if any).>	
Discounts/Incentives		
Product availability /delivery conditions	Acknowledge time frames Acknowledge Council's standard terms and conditions - attached.	
Other supply details		
Warranty/Guarantee offered		
Insurance	<input checked="" type="checkbox"/> Public Liability	<input checked="" type="checkbox"/> Professional Indemnity <input type="checkbox"/> Workers Compensation
Rates for Variations	<Rates / pricing for any variations instructed to the Scope of Work.>	

Respondent Information	
Company Name	
ABN	
Business Address	
Phone	
Email	
Website	
Respondent's Name	

Contact Details	
Respondent Statement	
<i>"I certify that this offer is made without prior understanding, agreement or connection with any corporation, firm or person submitting an offer for the same materials, supplies, or equipment, and is in all respect fair and without collusion or fraud. I agree to abide by all conditions of this offer and certify that I am authorised to sign this offer for the respondent."</i>	
Respondent's Authorised Representative Name	
Date	<i>Date</i>
Quotation Total (GST Incl)	
Respondent's Authorised Representative Signature	

CONDITIONS OF CONTRACT

This **Contract** is made on __/__/2022

Parties	
Between	Uralla Shire Council ABN 55 868 272 018 of 32 Salisbury Street Uralla NSW 2358 (Principal)
And	 (Contractor)

RECITALS

- A. The Principal issued a Request for Quotation in relation to the Requirements.
- B. The Contractor lodged the Quotation with the Principal.
- C. The Principal has accepted the Quotation.
- D. This document records the terms upon which the Requirements will be satisfied by the Contractor.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Contract, unless contrary to or inconsistent with the context:

Background IP means in relation to a party all Intellectual Property rights owned by or licensed to that party at the Commencement Date of the Contract and which are necessary or desirable for the provision of the Services.

Business Day means a day which is not a Saturday, a Sunday, nor a public holiday in New South Wales;

Commencement Date means the date specified in Item 2 of Schedule 1;

Communication Standard has the meaning given in clause 7.2(a);

Confidential Information means the terms of this Contract and all know-how, technical and financial information, Deliverables, and any other commercially valuable or sensitive information in whatever form, including customer lists, products or past, existing or future business operations, administration or strategic plans, trade secrets, technical knowledge, concepts, ideas, samples, devices, models and any other materials or information of whatever description, which the Principal regards as confidential, proprietary or of a commercially sensitive nature that may be in the possession of the Principal's employees or management. The following are exceptions to such information:

- (a) Information which is lawfully in the public domain prior to disclosure by the Principal;
- (b) Information which enters the public domain otherwise than as a result of an unauthorised disclosure;

- (c) Information which is or becomes lawfully available to the Contractor from a third party who has the lawful power to disclose such information to the Contractor on a non-confidential basis; and
- (d) Information which is rightfully known by the Contractor (as shown by its written record) prior to the date of disclosure.

Contract means this agreement between the Principal and the Contractor, including Special Conditions (if any), annexures, exhibits, appendices, schedules and other documents incorporated by reference and forming part of this Contract;

Contractor's Representative means the person set out in Item 5 of Schedule 1 or any approved replacement notified to the Principal from time to time;

Deliverables means all deliverables which are to be provided to the Principal under the Contract, and are identified as "deliverables" in the Quotation Documents;

Early Settlement Discount means the early payment discount (if any) described in Item 9 of Schedule 1;

Financial Year means the period from 1 July to 30 June and, if the Commencement Date is later than 1 July, will include such lesser period from the Commencement Date to 30 June;

Goods and/or Services means the goods and/or services to be provided by the Contractor as described in the Quotation documents;

Initial Term has the meaning given in Item 3 of Schedule 1;

Intellectual Property means statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, know-how, plant varieties, registered and unregistered trademarks, registered and unregistered designs, circuit layouts, and rights to maintain the confidentiality of information, but does not include Moral Rights that are not transferable.

Moral Rights means any moral rights including the rights described in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time) being "droit moral" or other analogous rights arising under a statute (including the *Copyright Act 1968* (Cth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

Payment Claim has the meaning give in clause 5.4(a);

Personnel mean, in respect of a party, its officers, employees, agents and (in respect of the Contractor) approved subcontractors;

Principal's Representative means the person set out in item 5 of Schedule 1 (or such person's authorised delegate) or any other person so appointed by the Principal as notified to the Contractor from time to time;

Quotation has the meaning given in Item 1 of Schedule 1;

Quotation Documents mean the Request for Quotation, the Quotation and any other document incorporated by reference and forming part of those documents;

Quotation Price means the rate(s) or price(s) Quotation by the Contractor in the Quotation to provide the Goods and/or Services; and

Renewal Term has the meaning given in Item 4 of Schedule 1;

Request for Quotation has the meaning give in Item 1 of Schedule 1;

Specifications mean the specifications in respect of the Goods and/or Services, as set out in the Quotation Documents;

Special Conditions mean those terms and conditions contained in Item 10 of Schedule 1 (if any) (which modify and take precedence over the terms in the body of this Contract);

Term means the Initial Term and any Renewal Term.

1.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) The **singular** includes the plural and vice versa;
- (b) Where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- (c) A reference to a **party** includes the Principal and the Contractor and in each case includes the party's successors and permitted assigns;
- (d) A reference to a **person** includes a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (e) A reference to this **Contract** includes any variation, novation, replacement, or supplement to any of them from time to time;
- (f) A reference to a **part, clause, exhibit, appendix** or **schedule** is a reference to a part of, clause of, exhibit, appendix or schedule to this Contract;
- (g) A reference to any **legislation** or to any provision of any legislation includes any modifications or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (h) A reference to **conduct** includes any omissions, representation, statement or undertaking, whether or not in writing;
- (i) Specifying anything in this Contract with the words **including, includes** or **for example** or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (j) No **rule of construction** applies to the disadvantage of a party because that party was responsible for the preparation of a document; and
- (k) A reference to **any thing** (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them.

2 TERM AND RENEWAL

- (a) This Contract commences on the Commencement Date and, subject to earlier termination by either Party under this Contract or at law, will remain in force for the Term.
- (b) The Principal may at its sole discretion renew this Contract for a Renewal Term by giving the Contractor written notice one month prior to the expiry of the then current term.

3 SPECIAL CONDITIONS

- (a) If this Contract contains any Special Conditions, the terms in the body of this Contract are modified by those Special Conditions.
- (b) In the event of any inconsistency between the Special Conditions and the terms in the body of this Contract, the provisions in the Special Conditions will prevail to the extent of any inconsistency.

4 GOODS AND/OR SERVICES

4.1 PROVISION OF GOODS AND/OR SERVICES

The Contractor must provide the Goods and/or Services to the Principal in accordance with this Contract.

4.2 DELIVERY

- (a) The Contractor must deliver the Goods and/or Services to the Principal at the place(s) specified in the Quotation Documents or as subsequently advised to the Contractor by the Principal in writing.

- (b) Risk in any Goods passes to the Principal upon physical delivery to the Principal (or its nominee). Property to the Goods passes to the Principal upon the earlier of physical delivery to the Principal (or its nominee) or payment for those Goods, unless payment is bona fide in dispute in which case property passes upon physical delivery to the Principal (or its nominee).

4.3 PERSONNEL AND RESOURCES

(a) The Contractor will:

- i. ensure its Personnel are suitably qualified to provide the Goods and/or Services;
- ii. allocate sufficient Personnel and resources to the Goods and/or Services; and
- iii. ensure its Personnel are aware of and comply with the Contractor's obligations under this Contract.

(b) The Contractor will, at all times, be liable and responsible for the behaviour and actions of its Personnel.

(c) If directed by the Principal, the Contractor will immediately remove from involvement in delivering the Goods and/or Services, any Personnel who, in the reasonable opinion of the Principal, should be removed by reason of his/her misconduct or inefficiency and replace such Personnel with a suitable replacement.

4.4 CO-OPERATION, INFORMATION AND ASSISTANCE

The Contractor will:

- (a) Cooperate with the Principal in all matters relating to the Goods and/or Services;
- (b) Not interfere with the Principal's activities or the activities of any other person at the place for delivery of the Goods and/or Services;
- (c) Provide all such reasonable information and assistance as the Principal requires in connection with any statutory, local Government, work, health and safety or any environment investigation or requirement in connection with the supply of the Goods and/or Services.

5 QUOTATION PRICE AND PAYMENT

5.1 QUOTATION PRICE

The Quotation Price must remain fixed for a minimum period of 12 months from the Commencement Date.

5.2 PAYMENT

The Principal will, subject to the terms and conditions of this Contract, pay to the Contractor the amounts due for payment from time to time in accordance with an accepted Payment Claim.

5.3 PAYMENT CLAIMS

- (a) The Contractor shall make a written claim for payment at the frequency specified in Item 10 of Schedule 1.
- (b) A Payment Claim must include details of the Goods and/or Services for which payment is claimed and any additional information the Principal may reasonably require from time to time for the purposes of assessing the Payment Claim.

5.4 ASSESSMENT OF PAYMENT CLAIMS

- (a) The Principal will assess a Payment Claim within 10 Business Days of receipt from the Contractor and notify the Contractor whether it accepts or rejects the Payment Claim.
- (b) The Principal may reject a Payment Claim which it reasonably considers is not in accordance with this Contract in which case it must notify the Contractor of any reasons for rejection of a Payment Claim and the action the Contractor must take to render the Payment Claim correctly.

- (c) If the Principal accepts a Payment Claim, it will pay in accordance with this Contract subject to the Early Settlement Discount (if applicable).

5.5 GOODS & SERVICES TAX

- (a) In this clause 5.6:
- i. **GST** and **GST Act** have the meanings given in the *A New Tax System (Goods and Services) Act 1999 (Cth)* and
 - ii. the expressions **input tax credit, supply, tax invoice, recipient** and **taxable supply** have the meanings given to those expressions in the GST Act.
- (b) Unless otherwise expressly stated, all amounts stated to be payable in this Contract are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of an additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Contract, subject to the provision of a tax invoice.
- (d) If this Contract requires a party to pay for, reimburse or contribute to any expense, loss, indemnity or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
- i. The amount of the reimbursable expense less the input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
 - ii. If the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

6 REPORTING AND RECORDS

6.1 RECORDS

The Contractor will maintain complete and accurate records in relation to the Goods and/or Services provided to the Principal in accordance with good business practice and applicable laws and regulations.

6.2 REPORTS

- (a) The Contractor must submit reports at the frequency, and containing the information, as specified in Item 11 of Schedule 1.
- (b) Reports must be provided no later than the time specified in Item 11 of Schedule 1.

6.3 ADDITIONAL INFORMATION

Upon reasonable notice from time to time, the Principal may request that the Contractor supplement its reports by providing the Principal any other information relevant to the provision of the Goods and/or Services.

6.4 RIGHT OF INSPECTION

The Principal, or its duly authorised representatives, after giving reasonable notice, will have the right during business hours:

- (a) To inspect and take copies of the accounts and records of the Contractor relating to the Goods and/or Services; and
- (b) To enter upon the premises of the Contractor to inspect the circumstances of the supply of the Goods and/or Services.

6.5 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA ACT)

- (a) In addition to the Contractor's reporting and record keeping obligations under this clause 6, the Contractor must, within 7 days of receiving a written request from the Principal, immediately provide from the records held or controlled by the Contractor:
- i. Information that relates directly to the provision of the Goods and/or Services;
 - ii. Information collected by the Contractor from members of the public to whom it provides, or offers to provide, the Goods and/or Services; and
 - iii. Information received by the Contractor from the Principal to enable it to provide the Goods and/or Services.
- (b) For the purposes of sub-clause 6.5(a), the Contractor need not provide information:
- i. That discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - ii. That the Contractor is prohibited from disclosing to the Principal by provision made by or under any Statute, whether of any State or Territory, or of the Commonwealth; or
 - iii. That, if disclosed to the Principal, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Principal whether at present or in the future.
- (c) Any failure by the Contractor to comply with any request by the Principal under this clause 6.5 will be considered a breach of an essential term of this Contract.
- (d) The Principal will take all reasonably practicable steps in accordance with section 54 of the GIPA Act to consult with the Contractor before providing any person with access to information relating to this Contract, in response to any access application under the GIPA Act, if it appears that:
- i. The information:
 - a. Includes personal information about the Contractor or its employees; or
 - b. Concerns the Contractor's business, commercial, professional, or financial interests.
 - ii. The Contractor may reasonable be expected to have concerns about disclosure of the information; and
 - iii. Those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (e) The Contractor will ensure that the Principal has access in accordance with this clause 6.5 to such information held or controlled by the Contractor's sub-contractors in respect of the Goods and/or Services.

7 COMMUNICATION STANDARD, REVIEW MEETINGS AND MONITORING AND EVALUATION

7.1 DESIGNATED REPRESENTATIVES

- (a) The Contractor and Principal must both nominate a person as their representative.
- (b) The Contractor must notify the Principal within 5 Business Days of any change to its representative. If the Principal, acting reasonably, objects to the Contractor's replacement representative, the Contractor must use its best endeavours to promptly find a replacement who is satisfactory to the Principal.

7.2 REVIEW MEETINGS

The Principal and the Contractor agree to meet at least at the frequency specified in Item 12 of Schedule 1 in order to discuss provision of the Goods and/or Services to the Principal and this Contract generally. The Principal's Representative and the Contractor's Representative must be present at all review meetings.

7.3 MONITORING AND EVALUATION

- (a) The Principal will monitor the Contractor's performance during the Term, considering:
- i. Timeliness of provision of Goods and/or Services;
 - ii. Regular reporting;

- iii. Compliance with any KPIs and Specifications;
 - iv. Inspections undertaken by the Principal; and
 - v. Communication protocols.
- (b) If the Contractor, in the Principal's reasonable opinion, is not performing in accordance with its obligations under this Contract, the Principal may notify the Contractor that it is unsatisfied with the Contractor's performance. Within 10 Business Days from the date of service of that notice, the Contractor's Representative and the Principal's Representative will meet and together:
- i. Review the Contractor's performance against the requirements of this Contract; and
 - ii. Draft a plan of corrective action to enable the Contractor to rectify the areas of non-performance.
- (c) If:
- i. The Contractor is unwilling or unable (without reasonable excuse) to meet with the Principal's Representative within 10 Business Days of the date of service of the notice referred to in subclause 7.3(b) above; or
 - ii. The Contractor's Representative and the Principal's Representative fail within 10 Business Days of the first date of meeting to agree upon a plan of corrective action to enable the Contractor to rectify the areas of non-performance; or
 - iii. The Contractor fails to undertake the agreed corrective action to the reasonable satisfaction of the Principal within 30 days of agreement on the plan or other such time as is specified in the plan;

then the Principal may terminate the Contract with immediate effect by serving notice of termination on the Contractor.

8 CONFIDENTIALITY

8.1 PROTECTION OF CONFIDENTIAL INFORMATION

The Contractor must:

- (a) Take all reasonable steps to keep the Confidential Information confidential at all times;
- (b) Only use the Confidential Information to the extent necessary for compliance with this Contract; and
- (c) Only disclose the Confidential Information to those of its Personnel who need to know such information for the purposes of providing the Goods and/or Services. The Contractor must inform such Personnel of the confidential nature of the Confidential Information and ascertain that such Personnel agreed to strictly abide by the terms of this clause 8.1.

The Contractor acknowledges and agrees that it will be responsible for any breach of this clause 8.1 by any of its Personnel and any such breach shall be deemed to be a breach of this Contract by the Contractor.

8.2 DISCLOSURES REQUIRED BY LAW

The Contractor may disclose Confidential Information if legally compelled to do so by any judicial or administrative body having authority to compel such disclosure in connection with any action or investigation. The Contractor must take all reasonably available legal measures to avoid such disclosure before doing so, and must notify the Principal as soon as practicable after such disclosure is sought or ordered, so that the Principal may seek an appropriate protective order or other remedy.

8.3 RETURN OF CONFIDENTIAL INFORMATION

The Contractor must deliver to the Principal or destroy, at the Principal's option, all documents and other materials in any medium in its possession or under its control which contain or refer to any Confidential Information on the earlier of demand by the Principal, expiry or termination of this Contract for any reason,

or the time such documents and other materials are no longer required to provide the Goods and/or Services.

8.4 MEDIA RELEASES AND PUBLIC ANNOUNCEMENTS

The Contractor may not use the Principal's name in any press release, advertising or other promotional material without the prior written consent of the Principal.

9 PRIVACY

Each party will comply with the Australian Privacy Principles (APPs) under the *Privacy Act 1998* (Cth) and all applicable State legislation relating to the collection, holding, use and disclosure of personal information.

10 WARRANTIES

The Contractor warrants that:

- (a) It has the necessary skills, experience, qualifications, resources, capacity and know-how to provide the Goods and/or Services in accordance with this Contract;
- (b) Any Goods will be of acceptable quality and fit for any purpose specified in writing in the Quotation Documents; and
- (c) The Deliverables arise from the original work of the Contractor, and upon delivery or creation the Principal will obtain absolute and unencumbered legal and beneficial ownership of the Deliverables and all Intellectual Property rights in the Deliverables.

11 INDEMNITY

- (a) The Contractor releases and indemnifies the Principal, their employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Contractor and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential loss) arising out of:
 - i. A breach of the Contractor's warranties or obligations contained in this Contract; or
 - ii. The death of or personal injury to persons or property damage arising out of or in connection with the Goods and/or Services; or
 - iii. The failure of any Personnel of the Contractor to use reasonable care in carrying out the Contractor's obligations under this Contract;
 - iv. The breach of Intellectual Property rights of any person arising out of or in connection with the Goods and/or Services.

and from and against all damages, reasonable costs and expenses incurred in defending or settling any such claim, proceeding or demand.

- (b) The Contractor's liability under the indemnity in clause 11(a) will be reduced proportionately to the extent that any act or omission involving fault on the part of the Principal or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

12 INSURANCE

12.1 EFFECT AND MAINTAIN INSURANCE

- (a) The Contractor must, at its cost, take out and maintain for the Term and, with respect to professional indemnity insurance, for 7 years thereafter, with an insurer authorised under the *Insurance Act 1973* (Cth) to carry on insurance business in Australia (**Authorised Insurer**) except for workers' compensation insurance where a license compliant with applicable law may apply, the following policies or insurance in relation to the Goods and/or Services provided:

- i. A comprehensive public and products liability policy to cover all sums which it may become legally liable to pay as compensation consequent upon:
 - a. Death or, or bodily injury (including disease or illness) to, any person; and
 - b. Loss of, or damage to, property;
arising out of or in connection with the Goods and/or Services. The limit of liability provided by this policy for each and every event must be not less than the amount specified in Item 6 of Schedule 1;
 - ii. Workers compensation insurance for all employees, regardless of full, casual or part-time employment;
 - iii. Comprehensive or unlimited third party property insurance (as applicable) for registered vehicles, equipment and plant;
 - iv. Professional indemnity insurance; and
 - v. Other insurances on such terms as required by law or as reasonably required by the Principal;
- (b) The effecting of insurance does not limit the liabilities or obligations of the Contractor under this Contract.

12.2 GENERAL INSURANCE REQUIREMENTS

All insurances required under this clause 12:

- (a) **(exclusions)**: must not contain any unusual condition, exclusion, endorsement or alteration not usually included in policies of the relevant class provided by Authorised Insurers to a reasonably and commercially prudent contractor in respect of goods and/or services the same as or similar to the Goods and/or Services, in light of all relevant circumstances, including the Contractor's obligations under this Contract, unless it is first approved in writing by the Principal;
- (b) **(named insured)**: in the case of public liability insurance referred to in clause 12.1(a)i must name the Principal as named insured for its respective rights, interests and liabilities;
- (c) **(waiver and cross liability clause)**: which name more than one insured must include a waiver and cross liability clause in which the insurer agrees:
 - i. To waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
 - ii. That the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - iii. That any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance;
- (d) **(prior notice)**: in the case of public liability insurance referred to in clause 12.1(a)i must contain a term which requires the insurer to give the Principal 20 Business Days notice prior to:
 - i. The insurer giving the Contractor a notice of cancellation;
 - ii. The insurer cancelling the policy on the Contractor;
 - iii. The Contractor allowing the policy to expire; or
 - iv. The insurer giving either party any other notice in respect of the policy;

12.3 GENERAL INSURANCE OBLIGATIONS

The Contractor must

- (a) Not do or permit, or omit to do, anything which prejudices any insurance policy or recovery;
- (b) Rectify anything which might, if not rectified, prejudice any insurance policy or recovery;
- (c) Reinstate any insurance policy if it lapses
- (d) Not cancel, vary or allow any insurance to lapse without the prior written consent of the Principal;
- (e) Ensure that the insurance policy wordings are governed by and construed in accordance with the law in force in the relevant jurisdiction;

- (f) Immediately notify the Principal of any fact or circumstance or change in circumstances which may prejudice an insurance policy or recover;
- (g) Fully and promptly disclose every matter known to it, being a matter that:
 - i. It knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
 - ii. A reasonable person in the circumstances could be expected to know to be a matter so relevant,

to insurers (and any persons action on their behalf) relating to the insurance policies (whether held solely or jointly with others) in all respects, including where failure to do so would violate or invalidate the relevant policy;

- (h) Diligently pursue recovery of claims made under the insurance policies; and
- (i) Comply at all times with the terms of each insurance policy.

12.4 SUBCONTRACTORS TO EFFECT AND MAINTAIN INSURANCE

The Contractor must ensure that all subcontractors engaged in connection with this Contract, before commencing delivery under their respective, are either:

- (a) Covered by the insurances that the Contractor is required to maintain in accordance with this clause 12 or such other amounts and periods as the Principal may determine or which the Quotation Documents may require; or
- (b) Effect and maintain policies of insurance of the same types and for amounts and periods set out in this clause 12 or such other amounts and periods as the Principal (acting reasonably) may determine or which the Quotation Documents may require.

Nothing in this clause relieves the Contractor from its obligation to ensure that the Contractor's public liability and professional indemnity insurance indemnify the Contractor for liability arising from the conduct of its subcontractors.

12.5 EVIDENCE OF CURRENCY

Within 5 Business Days of a request from the Principal, the Contractor must provide written evidence satisfactory to the Principal that it is (or its subcontractors are) maintaining the insurances required by this clause 12.

12.6 POTENTIAL CLAIMS

If any event occurs which may give rise to a claim involving the Principal under any policy of insurance described in clause 12 then the Contractor must:

- (a) Notify the Principal as soon as is reasonably practicable but in any event within 5 Business Days of the occurrence of that event; and
- (b) Ensure that the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

12.7 FAILURE TO INSURE

Without limiting any other rights or entitlements the Principal may have, until such time as the Contractor complies with its obligations under this clause 12, the Principal may withhold any payment otherwise due to the Contractor under this Contract.

13 TERMINATION

13.1 TERMINATION BY PRINCIPAL

The Principal may terminate this Contract immediately by giving written notice to the Contractor if:

- (a) The Principal is entitled to terminate this Contract under clause 7.4(c) or clause 15(c); or
- (b) The Contractor is convicted of any offence which, in the opinion of the Principal, is relevant to the discharge of its obligations under this Contract.

13.2 TERMINATION FOR CAUSE

- (a) In addition to the Principal's rights under clause 13.1, the Principal may terminate this Contract immediately by giving written notice to the Contractor if the Contractor:
 - i. Fails to provide the services within the agreed timeframe and/or in accordance with the specifications;
 - ii. Fails to rectify any serious breaches within 30 days of receiving a notice in writing from Council's Representative which specifies the relevant breach;
 - iii. Assigns the rights under, or subcontracts the whole or part of the Contract without the written consent of Council;
 - iv. Becomes bankrupt, goes into liquidation, enters into an arrangement or composition with its creditors or if a receiver or manager is appointed in respect of the Contract.

13.3 EFFECT OF TERMINATION

- (a) Without limiting any other rights or entitlements the Principal may have, if the Principal terminates this Contract under clause 13.1 or clause 13.2:
 - i. Any losses that have been incurred by the Principal may be recoverable from the Contractor;
 - ii. The Principal may recover from the Contractor any sums paid for undelivered Goods and/or Services;
 - iii. The Principal may engage an alternative supplies to fulfil its immediate requirements; and
 - iv. The Principal will not be liable to pay compensation in any way for termination of this Contract.

13.4 SURVIVAL OF PROVISIONS

Expiry or termination of this Contract does not affect any right of a party that has accrued prior to the expiry or termination or the provisions of clauses 6.1 (Records), 6.4 (Right of Inspection), 6.5 (Government Information (Public Access) Act 2009 (GIPA Act), 8 (Confidentiality), 9 (Privacy), 10 (Warranties), 11 (Indemnity), 12 (Insurance), 16 (Dispute Resolution), and 17 (General).

14 WORK HEALTH & SAFETY AND ENVIRONMENT

- (a) The Contractor must comply with:
 - i. The *Work Health and Safety Act 2011* (NSW);
 - ii. The *Protection of the Environment Operations Act 1997* (NSW); and
 - iii. All other applicable Commonwealth, State or Territory statutory or regulatory requirements concerning the health and safety of its Personnel and the protection of the environment.
- (b) Without limiting any other provision of this Contract, the Contractor must:
 - i. Comply, and ensure that its Personnel comply, with all health and safety rules and regulations and environmental, security, quality and other directions or procedures applying at each location where the Goods and/or Services are provided. The Principal reserves the right to refuse or limit the Contractor's Personnel access to the Principal's premises;
 - ii. Notify the Principal as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Goods and/or Services and provide related reports and statements as requested by the Principal; and

- iii. Before the date on which the Goods and/or Services are to start, obtain and at all times maintain, all necessary licenses and consents.
- (c) The Principal is committed to the protection of the built and natural environment. The Contractor must effect adequate controls to ensure protection of the environment through the development of management plans, training of staff, and the provision of suitable emergency equipment and supplies. Information, such as contingency plans, relating to these controls need to be available for the Principal's review during the Term.

15 CONFLICT OF INTEREST

- (a) The Contractor warrants that, to the best of its knowledge, as at the Commencement Date, neither the Contractor nor any of its Personnel have, or are likely to have, a conflict of interest in the performance of the Contractor's obligations under this Contract.
- (b) The Contractor must during the Term:
 - i. Take all reasonable measures to ensure that it or its Personnel do not engage in any activity or obtain any interest which is in conflict with the Contractor's ability to provide the Goods and/or Services for the Principal in good faith and objectively; and
 - ii. Immediately give written notice to the Principal of any circumstances or relationships that will constitute a conflict or potential conflict of interest.
- (c) On receiving a notice from the Contractor under clause 16(b)ii or if it is shown that the Contractor failed to disclose as Part of its Quotation any conflict of interest or potential conflict of interest, the Principal may, at its absolute discretion, terminate this Contract immediately by giving written notice to the Contractor.

16 DISPUTE RESOLUTION

16.1 PARTIES TO USE ALTERNATIVE PROCESSES

If a dispute arises out of or related to this Contract no party may commence court or arbitration proceedings (other than proceedings for urgent interlocutory relief) unless it has complied with this clause 16.

16.2 GOOD FAITH NEGOTIATION

A party claiming that a dispute has arisen under or in relation to this Contract, must give written notice to the other party specifying the nature of the dispute. On receipt of that notice by the other party the parties' representatives must endeavour in good faith to resolve the dispute expeditiously and failing agreement within 5 Business Days must use informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed to by them.

16.3 COMPULSORY PROCESSES

If the parties do not agree within 5 Business Days of receipt of the notice referred to in clause 16.2 as to the dispute resolution technique and procedures to be adopted, the timetable for all steps in those procedures, and the selection of compensation of the independent person required for such a technique, then the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

17 GENERAL

17.1 ENTIRE AGREEMENT

This Contract contains the entire agreement between the relevant parties with respect to its subject matter. They set out the only conduct relied on by the relevant parties and supersede all earlier conduct by the relevant parties with respect to its subject matter. Any terms that may be subsequently presented by the

Contractor to the Principal in respect of the supply of the Goods and/or Services (on an invoice or otherwise) do not form part of this Contract, unless specifically agreed by the parties in writing.

17.2 VARIATION

Any variation of this Contract must be in writing and signed by the parties thereto, unless this Contract expressly provides otherwise.

17.3 ASSIGNMENT

- (a) The Contractor's obligations under this Contract are personal and the Contractor must not assign any of its rights or obligations under this Contract without the Principal's prior written consent;
- (b) The Principal may assign its rights or obligations under this Contract provided it gives written notice to the Contractor as soon as practicable afterwards.

17.4 NO SUB-CONTRACTING

The Contractor must not sub-contract the performance of any of its obligations under this Contract unless permitted under Item 7 of Schedule 1 or the Principal has given its prior written consent.

17.5 NO PARTNERSHIP OR AGENCY

This Contract does not constitute any party the agent of the other or imply that the parties intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of the other.

17.6 NOTICES

Any notice under this Contract may be served by hand delivery or by being forwarded by prepaid post to the attention of the representative of a party to the address set out in Item 5 of Schedule 1 of this Contract or to such other address as may be notified in writing by the party from time to time and in the case of service by post is deemed to have been received within four days after posting (7 days if sent to or from a place outside of Australia). Notices may be served by facsimile transmission or email and are valid if in fact received, as demonstrated by a valid transmission report or notification of delivery to the recipient's computer.

17.7 FURTHER ASSURANCES

Each party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to the transactions contemplated by this Contract.

17.8 SEVERABILITY

If any provision of this Contract (or part of any provision) is found by a court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision of part-provision shall to the extent required, be deemed not to form part of this Contract, and the validity and enforceability of the other provisions of this Contract shall not be affected.

17.9 WAIVER

No delay or indulgence by a party in enforcing this Contract will prejudice or restrict the rights of that party, nor will a waiver of those rights operate as a waiver of a subsequent breach.

17.10 COSTS

Each party is to bear its own costs arising out of the negotiation, preparation, execution and (subject to other provisions of Contract) performance of this Contract.

17.11 COUNTERPARTS

This Contract may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement. An executed counterpart may be delivered by facsimile or other electronic means.

17.12 SIGNATORIES

The signatories to this Contract warrant that they have authority to enter into this Contract, respectively, on behalf of the party they are stated to represent.

17.13 GOVERNING LAW

This Contract is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of that State.

18 FORCE MAJEURE

18.1 FOR THE PURPOSES OF THE CONTRACT, THE TERM FORCE MAJEURE MEANS:

- (a) War and other hostilities (whether war be declared or not), invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo;
 - (b) Rebellion, revolution, insurrection, military or usurped power or civil war;
 - (c) Riot, commotion or disorder except where solely restricted to employees of the Contractor or its subcontractor;
 - (d) Earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to be, the party claiming the force majeure;
 - (e) A general industrial dispute not limited to the employees of the Contractor or the employees of any of its subcontractors.
- If either party considers that any circumstances of Force Majeure has occurred which may substantially alter the performance of its obligation then he shall forthwith notify the other in writing to the effect giving full details of the circumstances giving rise to the Force Majeure event.
 - Neither party shall be considered to be in default of its obligations under the Contract to the extent that it can establish that the performance of such obligations is prevented by any circumstances of Force Majeure which arise after the Commencement Date of the Contract and which is not foreseeable at the Commencement Date of the Contract.
 - If the performance of the obligations of either Party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period of less than 30 days then during that period the contract shall be considered as suspended. Upon the ending of the Force Majeure event the contractual obligations of the Parties shall be reinstated with such reasonable modification to take account of the consequences of the Force Majeure event as agreed by the Parties. Notwithstanding such suspension, the Contractor shall use his best endeavours to assist Council in the performance of the Contract.
 - If the performance of such obligations of either Party under the Contract is so prevented by circumstances of Force Majeure and shall be so prevented for a period of 30 days or more then the Contract may be terminated by mutual consent and, subject to clause 18(f) neither party shall be liable to the other as a result of such termination.
 - If the Contract is so terminated then subject to the transfer to Council of the benefit referred to in 18(g), Council shall pay to the Contractor such reasonable sum as may be agreed between the Parties in respect of costs incurred and commitments already entered into by the Contractor at the date of the Force Majeure notice, less the amount of any payments already made to the Contractor at the date of the Force Majeure notice. If the amount of such advance payments made to the Contractor exceeds the sum due to the Contractor under this sub-clause then the Contractor shall repay the balance to Council.

- The Contractor shall transfer to Council the benefit of all work done by him or his subcontractors in the performance of the Contract up to the date of the Force Majeure notice.

19 INTELLECTUAL PROPERTY

19.1 BACKGROUND IP

- (a) Each party acknowledges that all Background IP remains the sole property of its owner and that it acquires no right, title, or interest in or to the Background IP of any other party by virtue of this Contract, other than as expressly set out in this Contract.
- (b) Each party grants to each other party (as required) a royalty-free, non-exclusive, non-transferable license during the term of this Contract to use the Background IP owned by it for the sole purpose of providing the Goods and/or Services.

19.2 DELIVERABLES

- (a) All Intellectual Property rights in the Deliverables vests in and is hereby assigned to the Principal upon its creation. Upon request, the Contractor must at its cost sign all documents (including assignment deeds) and do all things (including requiring its Personnel to sign documents) as may be necessary to vest, confirm, perfect and record ownership by the Principal in accordance with this clause 19.
- (b) The Contractor must promptly and fully disclose to the Principal all Intellectual Property rights in the Deliverables on completion of the Goods and/or Services or earlier termination of the Contract.
- (c) The Contractor grants to the Principal a royalty-free, non-exclusive, perpetual, irrevocable license to its Background IP to permit the Principal to use the Deliverables (including its right to sublicense) and to exercise the ownership rights conferred on the Principal by this clause 19.
- (d) The Contractor must not, whether directly or indirectly or through any third party, take any action or assist any other person to take any action which may challenge the validity or ownership of the Confidential Information or the Intellectual Property rights in the Deliverables.
- (e) The Contractor must on request by the Principal obtain from its relevant Personnel written, unconditional and irrevocable consents to any act or omission that would otherwise infringe any Moral Rights they may have in the Deliverables, other than the Moral Rights prohibiting false attribution of works. Copies of the consents must be provided to the Principal within 10 days of request.