



**GOVERNMENT ARCHITECT'S
STRATEGY AND DESIGN
PREQUALIFICATION SCHEME**

**Standard Form of Agreement
Terms and conditions**

Annexure A

Government Architect
New South Wales
L3, 320 Pitt Street
Sydney NSW 2000
GPO Box 39
Sydney NSW 2001

government.architect
@planning.nsw.gov.au
T +61(02)9860 1450

governmentarchitect.nsw.gov.au



Standard Form of Agreement – Terms and Conditions

OPERATIVE CLAUSES

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires:

'Agreement' means this document and any annexures and schedules.

"Agreement Details" means the document setting out the details of the agreement between the parties.

'Confidential Information' means any information and all other knowledge at any time disclosed (whether in writing or orally) to the Service Provider by the Principal, or acquired by the Service Provider in performing the Services which:

- a) is by its nature confidential;
- b) is designated, or marked, or stipulated as confidential;
- c) the Service Provider knows or ought to know is confidential; and includes but is in no way limited to
 - i) the Contract Material;
 - ii) the Principal's Material;
 - iii) any material which relates to the affairs of a third party; but does not include information which:
- d) must be disclosed to perform the Services;
- e) is or becomes public knowledge other than by breach of this Agreement;
- f) is in the lawful possession of the Service Provider without restriction in relation to disclosure before the date of receipt of the information from the Principal or a third party; or
- g) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority.

'Contract Material' means the New Contract Material and the Existing Contract Material.

- **'Existing Contract Material'** means:

- a) any Material which exists at the date of this Agreement; and
- b) any Service Provider's Material,

which is incorporated with the New Contract Material.

- **'New Contract Material'** means any Material created, written or otherwise brought into existence by the Service Provider in the course of performing this Agreement in which subsists newly created Intellectual Property rights but for the avoidance of doubt does not include the Service Provider's Material.

'Fee' or **'Fees'** means the fee or fees described in the Agreement Details.

'GST' has the meaning given to this term in the GST Law.

'GST Law' means *A New Tax System (Goods & Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation.

'Intellectual Property' means all the rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of intellectual property.

'Material' includes but is not limited to documents, information and data stored by any means.

'Moral Rights' means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the commencement date of this Agreement or which may come into existence on or after the commencement date.

'Personal Information' means information or an opinion (including information or an opinion forming part of a database) whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Principal's Material means any Material supplied by the Principal to the Service Provider by whatever means in relation to this Agreement.

'Service Provider's Material' means any methodologies, tools, models, processes, knowledge of business principles, and analytical concepts, that have been created, written or otherwise brought into existence by the Service Provider after the date of this Agreement, otherwise than in the course of performing this Agreement.

'Service Provider' includes the officers, employees, agents and sub-contractors of the Service Provider.

'Service Provider's Proposal' means the document submitted by the Service Provider to the Principal for the purposes of this Agreement which applies to the services work to be completed and fees for executing the Services, a copy of which is annexed to the Agreement Details.

'Services' means the services set out in the Agreement Details and any incidental or related services requested in writing by the Principal.

'Supply' has the meaning given to it in the GST Law.

1.2 Except where the context otherwise requires, a reference in this Agreement to:

- a) the singular number includes a reference to a plural number and vice versa;
- b) a gender includes a reference to the other genders and each of them;
- c) any person or company shall mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
- d) any organisations, associations, societies, groups or bodies shall, in the event of them ceasing to exist or being reconstituted, renamed or replaced or if the powers or functions of any of them are transferred to any other entity, body or group, refer respectively to any such entity, body or group, established or constituted in lieu thereof or succeeding to similar powers or functions;
- e) statutes, regulations, ordinances or by-laws shall be deemed for all purposes to be extended to include a reference to all statutes,

regulations, ordinances or by-laws amending, consolidating or replacing same from time to time; and

- f) a business day means any day which is not a Saturday, Sunday or public holiday in the State of New South Wales
- g) money currency or dollars is taken to mean Australian dollars

- 1.3** Where any covenant, condition, agreement, warranty or other provision of this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.

2. ENGAGEMENT

The Principal engages the Service Provider to provide the Services in accordance with this Agreement. The Service Provider shall commence the Services on the date set out in the Agreement Details or on such date as may be agreed in writing between the parties.

3. CONFLICT OF INTEREST AND DISCLOSURE OF CURRENT ENGAGEMENTS BY NSW GOVERNMENT AGENCIES

- 3.1** The Service Provider undertakes that at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services. The Service Provider must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest.
- 3.2** On receipt of a notice under clause 3.1, the Principal may:
- a) approve the Service Provider continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict; or
 - b) where in the Principal's reasonable view the conflict of interest cannot be appropriately managed, exercise its rights of termination under this Agreement.
- 3.3** The Service Provider warrants that it has given full disclosure to the Principal of all current and recent engagements by Government agencies to provide services as a probity auditor and undertakes to inform the Principal of any new engagement by a Government agency for probity auditor services during the Term of this Agreement.
- 3.4** The Service Provider providing services as a probity auditor undertakes that

it will not during the Term of this Agreement enter into any agreement, arrangement or understanding to provide consultancy services to the Principal.

4. SERVICE PROVIDER'S OBLIGATIONS

4.1 Professional Standard of Care

The Service Provider must perform the Services in a diligent manner and to the standard of skill and care expected of a Service Provider qualified, competent and experienced in the provision of services of the nature of those set out in the Agreement Details.

4.2 Knowledge of Requirements of the Principal

The Service Provider must use all reasonable efforts to inform itself of the detailed requirements of the Principal and must regularly consult with the Principal during the performance of the Services.

4.3 Personnel

- a) The Service Provider must ensure that all personnel utilised by it in connection with the Services are appropriately qualified, competent and experienced in the provision of services of the nature of the Services.
- b) The Service Provider must use only the persons named in the Service Provider's Proposal, or alternates agreed to in writing by the Principal (which agreement may be given or withheld in the Principal's absolute discretion), to provide the Services.
- c) The Service Provider's responsibility for the performance of the Services and for the standard of performance by its personnel is not altered in any way by this clause 4.3 or by anything done in accordance with this clause 4.3

4.4 Discrepancies in Information

If the Service Provider considers that any information, documents and other particulars made available to it by any person on behalf of the Principal are inadequate or contain errors or ambiguities, the Service Provider must give written notice to the Principal detailing the errors or ambiguities as soon as practicable.

Rectification of errors or ambiguities shall be the responsibility of the person supplying the information or documents, but the Principal shall use reasonable endeavours to procure such rectification.

4.5 Program

The Service Provider must, if required by the Principal as set out in the Agreement Details:

- a) within 7 days of the date of this Agreement submit, for the approval of the Principal, a program for the performance and completion of the Services;
- b) submit a revised program as soon as practicable after any circumstance renders such revision necessary or after any request by the Principal to do so;
- c) perform the Services expeditiously and in accordance with the most recent program approved by the Principal; and
- d) report on progress against the program monthly or at such other interval as requested in writing by the Principal.

4.6 Reports and Deliverables

The Service Provider must provide the reports and deliverables, containing the information, in the format and on the dates as may be specified in the Agreement Details.

4.7 Change in the scope or timing of the Services

As soon as practicable after becoming aware of any matter which is likely to change or which has changed the scope or timing of the Services, the Service Provider must give notice to the Principal detailing the circumstances, extent or likely extent and implications of the change.

4.8 Principal's Materials

The Service Provider must protect and keep safe and secure all Principal's Materials provided to the Service Provider.

4.9 Service Provider's Relationship with the Principal

The Service Provider must liaise, co-operate and confer with the Principal or any other person nominated by the Principal. The Service Provider must not act outside the scope of the authority conferred on it by this Agreement and must not purport to bind the Principal in any way or hold itself out as having any authority to do so, except as specifically authorised pursuant to this Agreement.

4.10 Confidentiality

- a) The Service Provider:
 - i) must not disclose any Confidential Information to any person without the prior written consent of the Principal; and
 - ii) must take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use and access.
- b) The Service Provider agrees to use the Confidential Information solely for the purposes of the Services and for no other purpose.
- c) Notwithstanding clause 4.10(a), the Service Provider may disclose Confidential Information to its officers, employees, agents and permitted sub- contractors (“permitted recipient”) where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- d) Before disclosing the Confidential Information to a permitted recipient, the Service Provider will ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that he, she or it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement. The Principal may, at its sole discretion and at any time, require the Service Provider to arrange for a permitted recipient to execute a deed (in such form as may be required by the Principal) relating to the non-disclosure and use of the Confidential Information and the Service Provider will promptly arrange for such deed to be executed and provided to the Principal.
- e) The Confidential Information must not be copied or reproduced by the Service Provider and/or the permitted recipient without the express prior written permission of the Principal, except for such copies as may be reasonably required to accomplish the purpose for which the Confidential Information was provided pursuant to this Agreement.

4.11 Privacy and Disclosure of Personal Information

Where the Service Provider has access to Personal Information in order to fulfill its obligations under this Agreement, it must:

- a) where the Service Provider is responsible for holding the Personal

Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;

- b) not use Personal Information other than for the purposes of the Agreement, unless:
 - i) required or authorised by law; or
 - ii) authorised in writing by the individual to whom the Personal Information relates but only to the extent authorised;
- c) not disclose Personal Information without the prior written agreement of the Principal or the prior written agreement of the individual to whom the Personal Information relates, unless required or authorised by law;
- d) ensure that only authorised personnel have access to Personal Information;
- e) immediately notify the Principal if:
 - i) the individual to whom the Personal Information relates authorises the Service Provider's to use his/her Personal Information for other purposes;
 - ii) the individual to whom the Personal Information relates consents to the Service Provider's disclosing of his/her Personal Information; and/or
 - iii) it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
- f) make its officers, employees, agents and sub-contractors aware of the Service Provider's obligations under this clause including, when requested by the Principal, requiring those officers, employees, agents and sub-contractors to promptly sign a suitable privacy deed relating to Personal Information. The Service Provider will promptly arrange for such deed to be executed and provided to the Principal;
- g) comply with such other privacy and security measures as the Principal reasonably advises the Service Provider in writing from time to time; and
- h) immediately notify the Principal upon becoming aware of any breach of clause 4.11.

4.12 Compliance with Law & Government Guidelines

The Service Provider must, to the extent the same are relevant to this Agreement and/or the performance of the Services, comply with all laws, regulation, privacy principles, codes of practice, Australian and/or ISO standards and any NSW Government policies, guidelines and code of conduct communicated by the Principal to the Service Provider during the continuance of the Agreement.

4.13 Service Provider's Representative

The person named in the Agreement Details as having conduct of this engagement on behalf of the Service Provider, or such other person as nominated by the Service Provider and approved by the Principal, will be responsible to the Principal for all aspects of the Services and has the legal power to bind the Service Provider in respect of any matters arising in connection with the Services.

4.14 Advice or assistance from others, including Legal Counsel

The Service Provider may obtain advice or assistance from others, including legal counsel, in connection with the Services, but such advice and assistance will be at the Service Provider's cost unless the Service Provider has obtained the prior written consent of the Principal to obtain it.

4.15 Subcontracting and Assignment

- a) The Service Provider must not assign or subcontract any part of the Services without the prior written approval of the Principal, which approval may be given or withheld in the Principal's absolute discretion. The Principal may, in giving its approval, impose such conditions as it sees fit.
- b) An approval given by the Principal permitting the Service Provider to assign or subcontract any portion of the Services does not relieve the Service Provider from any of its obligations and liabilities pursuant to this Agreement.
- c) Prior to any sub-contractor or any employee or agent of the sub-contractor commencing work in respect of the Services, the Service Provider will obtain from that person, and provide to the Principal, a written assignment from the person to the Principal of the Intellectual Property created as a result of the person performing that work.

- d) The Principal will have no contractual relationship with and undertakes no obligations to any person to whom any part of the Services are subcontracted.

4.16 Fitness for Purpose

The Service Provider acknowledges and agrees that the Principal relies upon the skill and knowledge of the Service Provider in providing the Services. The Service Provider must ensure that all work, documents and other deliverables produced by it are reasonably suitable in all respects for the purposes required by this Agreement.

4.17 Access to Service Provider's Premises

The Service Provider must, at all reasonable times and upon reasonable notice, permit the Principal access to the Service Provider's premises in order for the Principal to inspect, discuss and assess the Contract Material and any other material obtained by the Service Provider from any person in connection with the Services.

4.18 Insurances

- a) The Service Provider shall, and shall ensure that any sub-contractors will, arrange and maintain with a reputable insurance company for the term of the contract:
 - i) a public liability policy of insurance to the value of at least \$10 million in respect of each claim;
 - ii) workers' compensation insurance as required by all relevant laws of Australia relating to workers' compensation; and
 - iii) if applicable, a professional indemnity insurance policy:
 - A. if the Service Provider is a member of an approved scheme under the Standards Act (1994), insurance to the value of the amount prescribed under that scheme; or
 - B. if the Service Provider is not a member of an approved scheme under the Professional Standards Act, insurance to the value of at least \$10 million in respect of each claim.
- b) Professional indemnity insurance may be required in some circumstances. Engaging agencies will establish the risk standing for a particular engagement and specify the professional indemnity

insurance requirements accordingly.

- c) Where the Principal considers that additional insurance may be necessary to cover liabilities that may arise during the performance of Services, the Principal and the Service Provider shall consult about these matters, including, in particular, about the level of cover required.
- d) The Service Provider shall, on request from time to time by the Principal, produce to the Principal, satisfactory evidence of insurance.
- e) The insurances referred to in this clause shall be effective from the start date of this Agreement and shall be maintained for the period of the Agreement provided however, where applicable, professional indemnity insurances shall, unless the Principal otherwise agrees in writing, be continued to be maintained for a period of one year following the expiration or earlier termination of this Agreement.

4.19 Records

a) Keeping of Records

The Service Provider must, during the period of this Agreement, keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to this Agreement and maintain the same for a period of 7 years.

b) Access

The Service Provider must, within a reasonable time of any request by the Principal, give the Principal access to, or verified copies of, any information which may be reasonably required to enable any claim by the Service Provider to payment to be substantiated and verified by the Principal.

5. PRINCIPAL'S OBLIGATIONS

5.1 Provide Information

The Principal will, as soon as practicable, make available to the Service Provider all relevant material and particulars within the Principal's possession or control, give all necessary

instructions and answer any queries made by the Service Provider relating to the Principal's requirements in connection with this Agreement.

5.2 Principal's Representative

The person named in the Agreement Details as Principal's Representative, or any alternate person the Principal nominates in writing, will act as the Principal's Representative and will have authority to act on behalf of the Principal for all purposes in connection with this Agreement.

5.3 Payment

- a) In consideration of the provision of the Services in accordance with this Agreement, the Principal will pay the Service Provider the Fees specified in the Agreement Details.
- b) Payment of any part of the Fees does not constitute an acceptance by the Principal of the Services and does not amount to a waiver of any right or action which the Principal may have at any time against the Service Provider.
- c) If the Service Provider has obtained the Principal's prior written approval to incur or pay any costs, expenses, fees or charges, the Principal will reimburse the Service Provider for those costs, expenses, fees or charges.
- d) Subject to clause 5.3(e), the Principal will make a payment within 28 days following the rendering of a tax invoice by the Service Provider, but if the Principal has, within a reasonable period of time after receiving a tax invoice, requested access to information under clause 4.19 (b), the time for payment will be extended by the number of days elapsing between the date of the Principal's request for access and the date when access is granted.
- e) The Principal will not be obliged to make any payment to the Service Provider under this Agreement until the Service Provider has submitted proof of insurance in accordance with clause 4.18.

6. CLAIMS FOR PAYMENT

The Service Provider may render to the Principal a tax invoice during each month of the term of this Agreement.

Any payment claim will be for the Services performed (and for approved reimbursable expenses, if any, incurred) during the previous month.

7. GOODS AND SERVICES TAX

7.1 To the extent that a party to this Agreement (“GST Supplier”) is or becomes liable to pay GST in connection with any Supply made under this Agreement and the amount of any such GST is not included in the amount payable under this Agreement:

- a) the GST Supplier may add to the price of the Supply an amount equal to the GST payable on the Supply (“GST Amount”); and
- b) the other party will pay the GST Supplier the price for the Supply in accordance with this Agreement plus the GST Amount.

7.2 If, for any reason, the GST Supplier's GST liability in respect of a particular Supply is different from the amount of GST paid by the other party:

- a) the GST Supplier must immediately repay to the other party the amount of any excess paid by the other party above the GST Supplier's GST liability; or
- b) the other party must pay the deficiency in the amount previously paid by the other party to the GST Supplier for that Supply, as appropriate.

7.3 Each party warrants that at the time any supply is made under this agreement on which GST is imposed, that party is or will be registered under the GST Law.

7.4 Any invoice rendered by a party to this agreement in connection with a Supply under this Agreement which seeks to recover an amount of GST payable by that party must conform to the requirements for a tax invoice (as that term is defined in the GST Law).

8. VARIATIONS

8.1 Instruction

The Principal may, on the recommendation of the Service Provider or otherwise, instruct the Service Provider in writing to vary the Services and the Service Provider must comply with any such instruction.

8.2 Consequences of Variation or Proposed Variation

- a) Before instructing a variation, the Principal may request the Service Provider to provide a written estimate of the time and cost effects of the proposed variation. A written estimate so requested must be provided by the Service Provider within a reasonable time nominated by the Principal.
- b) If a variation is instructed and no request has been made by the Principal under clause 8.2(a), the Service Provider must, as soon as practicable after the variation is instructed, provide the Principal with a written estimate of the time and cost effects of the variation.

9. INTELLECTUAL PROPERTY

9.1 New Contract Material

Copyright (including future copyright) in all New Contract Material, vests in the Principal or is otherwise hereby assigned by the Service Provider to the Principal.

Title to, and Intellectual Property rights in, all New Contract Material (other than copyright) shall, on creation, vest or otherwise be assigned or transferred to the Principal, without the need for further assurance.

9.2 Existing Contract Material

This Agreement does not affect the Intellectual Property rights in Existing Contract Material, but the Service Provider hereby grants, and ensures that relevant third parties grant to the Principal, without additional cost, a non-exclusive, irrevocable, transferable licence:

- a) to use, reproduce, communicate to the public and adapt for its own purposes; and
- b) where so specified in this Agreement, to perform any other act with respect to copyright and to manufacture, sell, hire or otherwise exploit,

all those Intellectual Property rights, but only as part of the Contract Material and any developments of that material.

9.3 Perfection of rights

The Service Provider must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement dealing with Intellectual Property rights.

9.4 Moral Rights

The Service Provider must hold, or obtain, consents from all authors of Contract Material to its use and adaptation by the Service Provider or the Principal, without restriction and without any requirement to attribute the Contract Material to its authors.

9.5 Limitations on the use by the Service Provider of the Contract Material

The Service Provider must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement unless it has obtained the prior written approval of the Principal to do otherwise. Any such approval may be given on any terms or conditions the Principal considers appropriate.

10. INDEMNITY

10.1 The Service Provider agrees to indemnify and keep indemnified the Principal and its officers, employees and agents (“those indemnified”) against any liability or loss (including reasonable legal costs and expenses), incurred or suffered by any of those indemnified where such liability or loss is incurred by reason of or in connection with:

- a) any infringement or alleged infringement of any Intellectual Property rights (including Moral Rights) arising out of the supply or use of the Services or any Contract Material provided under this Agreement; and/or
- b) any unlawful, wrongful, willful or negligent act or omission of the Service Provider or its personnel in connection with this Agreement.

10.2 The Service Provider’s liability to indemnify those indemnified under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, willful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

10.3 The indemnity contained in this clause 10 is a continuing obligation of the Service Provider separate and independent of any other responsibility of the Service Provider and will continue beyond the period of this Agreement.

- 10.4** The Principal may, in its absolute discretion, agree to cap the Service Provider's liability under clause 10 of this Agreement to a monetary amount. Any cap on liability must be specified in the Agreement Details.

11. TERMINATION

11.1 Completion of the Services

This Agreement will terminate upon the Principal giving a notice to the Service Provider that it considers that the Services have been fully performed or that it does not require further performance of the Services by the Service Provider.

11.2 Termination by the Principal for insolvency or default by the Service Provider

- a) If the Service Provider:
- i) becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors, or is placed into liquidation or provisional liquidation, or placed under official management or receivership;
 - ii) fails to carry out the Services with due diligence and competence;
 - iii) without reasonable cause suspends the carrying out of the Services;
 - iv) commits a substantial breach of this Agreement; or
 - v) in the opinion of the Principal has a conflict of interest in performing the Services; then
- b) the Principal may, without prejudice to its right to terminate this Agreement under clause 11.1:
- i) in the case of the circumstance specified in clause 11.2(a)(i), forthwith terminate this Agreement by notice to the Service Provider; or
 - ii) in the case of any other circumstance specified in clause 11.2(a) give notice to the Service Provider specifying the circumstance and requiring the Service Provider to remedy it; and
 - iii) if the Service Provider fails to remedy the

circumstance within a period specified by the Principal under clause 11.2
(b) (ii), terminate this Agreement by a further notice to the Service Provider.

11.3 Termination by the Service Provider

a) If the Principal:

i) fails to pay the Service Provider in accordance with this Agreement; or

ii) commits a substantial breach of this Agreement,

then the Service Provider may give notice to the Principal specifying the failure or breach and requiring the Principal to remedy the failure or breach.

b) If the Principal fails to remedy the breach within a period of not less than fourteen (14) days, the Service Provider may at any time thereafter, terminate this Agreement by giving written notice of termination to the Principal.

11.4 Effect of Termination

Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of either party. The Principal may following termination enter into a contract with any person to complete provision of the Services.

11.5 Adjustment of the Fee on Termination

Upon termination of this Agreement, the Principal will pay the Service Provider for the Services performed by the Service Provider up to the date of termination but in the case of termination under clause 11.2, such payment shall take into account any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered by the Principal as a consequence of breach of this Agreement by the Service Provider. The Principal may offset any money due against any money payable by the Service Provider to the Principal and recover any short-fall from the Service Provider as a debt due and payable.

11.6 Further Services after Termination

If the Principal requests the Service Provider to provide further services or undertake any additional work of a minor, incidental or ancillary nature in connection with the Services after termination pursuant to clause 11.1, and the Service Provider agrees to perform the work, then notwithstanding such termination, all such work or services shall be deemed to be part of the Services and subject to the terms of this Agreement.

12. CONSEQUENCES OF TERMINATION

12.1 Without limiting the Principal's rights in relation to this Agreement, if the Principal pre-paid any amounts to the Service Provider for Services to be performed which at the date of termination have not been performed and this Agreement is terminated for any reason:

- a) the Service Provider must refund to the Principal such prepaid amounts, within seven (7) days of termination of this Agreement; and
- b) the Principal may recover in an appropriate court the balance of any prepaid amount not refunded as a debt due and payable by the Service Provider to the Principal.

12.2 The Service Provider must, except to the extent approved by the Principal in writing, deliver to the Principal, within 7 days of termination or expiry of this Agreement:

- a) all Confidential Information of the Principal;
- b) all Contract Material and Principal's Material; and
- c) all copies of (a) and (b) above.

The provision dealing with the return of Materials upon termination or expiry of this Agreement does not prevent the Service Provider from keeping a bona fide copy of the Contract Material for its records, subject to the confidentiality and privacy requirements contained in this Agreement.

12.3 The Service Provider must for a minimum period of seven (7) years following the expiration or termination of this Agreement, keep the operational records and project data relating to the provision of the Services securely and in a form and manner as to facilitate access and inspection under this Agreement.

12.4 Clauses in this Agreement dealing with access to records, licences and

consents, confidentiality, intellectual property, insurance, consequences of termination, dispute resolution, and any other provision of this Agreement which by its nature should survive termination shall survive termination, expiry or repudiation of this Agreement.

13. DISPUTE RESOLUTION

13.1 For any dispute arising under this Agreement:

- a) both parties will try in good faith to settle the dispute by negotiation;
- b) if unresolved, the party claiming that there is a dispute will give the other party a notice setting out the details of the dispute;
- c) within five (5) consecutive Business Days, each party may (if applicable) nominate a senior representative not having prior direct involvement in the dispute. The senior representatives will try in good faith to settle the dispute by negotiation.
- d) failing settlement within a further 10 Business Days;
 - i) where the Service Provider is a small business (being an Australian or New Zealand-based firm that has an annual turnover of under \$2 million in the latest financial year) the parties will be required to commence alternative dispute resolution through the office of the NSW Small Business Commissioner. The dispute should not be subject to proceedings before a court until the Small Business Commissioner has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute. The Commissioner's certificate will be structured to inform the Court whether the parties participated in the dispute process, if a party did not participate or if the matter was only partly resolved through the process;
 - ii) where the Service Provider is not a small business, and failing settlement within a further 10 Business Days, the parties agree to appoint a mediator from the Australian Commercial Disputes Centre (ACDC) to conduct a mediation to resolve the dispute. The parties agree that the dispute will not be subject to proceedings before a court until the mediator appointed by the parties has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute. The mediator's certificate will be

structured to inform the Court whether the parties participated in the dispute process, if a party did not participate or if the matter was only partly resolved through the process

13.2 The parties will each bear their own costs for dispute resolution. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Client not to do so) continue performance under the Agreement.

13.3 The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

14. NOTICES

a) Any notice given under this Agreement:

- i) must be in writing addressed to the intended recipient at the address shown for the parties in the Agreement Details or the address last notified by the intended recipient to the sender;
- ii) must be signed by an authorised officer of the sender;
- iii) will be taken to have been delivered:
 - A. in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
 - B. in the case of delivery by post - within three business days of posting;
 - C. in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient and
 - D. in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.

b) If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent, or occurs later than 4.00pm (local time) on any day, it will be taken to have occurred at the commencement of business on the next business day in that place.

15. CONTRA PROFERENTEM

In the interpretation of this Agreement, no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward the Agreement or any part of it.

16. JURISDICTION

This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales

Standard Form of Agreement

GUIDENOTE

Where the Service Provider is a company, the full legal entity name of the company should be used.

Where the Service Provider is an unincorporated partnership, the partnership name can be used. The Rules of Court in each Australian jurisdiction now state that a partnership can be sued in the firm's name.

A business (trading) name is not a legal entity and must not, by itself, be used as the name for the Service Provider.

The name(s) of the owner(s) of the business name should be inserted as follows:
“**[insert name of first owner]** of **[insert address of first owner]**, **[insert name of second owner]** of **[insert address of second owner]** and **[insert name of third owner]** and **[insert address of third owner]** trading under the business name **[insert business name]**”

Where the Service Provider is a ‘consortium’ of legal entities, the names of each separate legal entity should be used.

Parties to the engagement may sign the Agreement Details at the base of this document.

| | |
|-----------------------------|---|
| Principal | {{insert department /agency/business enterprise (if business enterprise is not a legal entity)}} acting for and on behalf of the Crown in right of the State of New South Wales] or {{insert name of statutory authority, statutory corporation or business enterprise (if business enterprise is a separate legal entity)}} of |
| Service Provider | insert name of Service Provider [of [insert address] ABN [] |
| Service Provider's Proposal | Attached : Yes |
| Item 1: | Services (clause 1.1) |
| Item 2: | Fees (clause 5.3) |
| Item 3: | Commencement Date (clause 2) |
| Item 4: | Program (clause 4.5(a)) Program for performance and completion of the Services is [required] / [not required]. |
| Item 5: | Reports & Deliverables (clause 4.6) |
| Item 6: | Service Provider's Representative (clause 4.13) |
| Item 7: | Principal's Representative (clause 5.2) |
| Item 8: | Notic |
| | Service |
| Item 9 | Insurance Conditions identified by the |

Agreement Details Acceptance:

| | |
|--|-------------------|
| Organisation Name (Principal): | |
| Contact Name: | Date: |
| Phone: | Signature: |
| Email: | |
| Organisation Name (Service Provider): | |
| Contact Name: | Date: |
| Phone: | Signature: |
| Email: | |

SERVICE PROVIDERS PROPOSAL

Attach a copy of the Service Provider's Proposal as Annexure "A"

SCHEDULE 1 – APPLICATION SUMMARY

All applications must be submitted online via the “Service Provider Application Form” link on the NSW Procurement website at tenders.nsw.gov.au.

A summary of the Application Form can be viewed via the above link and applications can be submitted by clicking “Submit Application”.

Applications submitted by email will not be accepted.

Enquiries are to be directed to the GANSW

The Contact Officer: GAprequalscheme@planning.nsw.gov.au

SCHEDULE 2 – SERVICE PROVIDER PERFORMANCE REPORT

Under the Scheme Conditions, all engaging agencies are required to submit a Service Provider Performance Report for each engagement where the consultancy services where:

- the total value of the relevant engagement is more than \$250,000 (including GST); or
- the performance of, and the services provided by, the Service Provider are considered by the agency to be unsatisfactory.

The reports are due at the completion date of the engagement or whenever a critical aspect of performance is unsatisfactory. For further guidance on the requirement, agencies can refer to the Guidelines for Agencies.

Completed performance reports should be e-mailed to:

The Contact Officer: GAprequalscheme@planning.nsw.gov.au

Performance Report – Project Details

| | | |
|---|--------------|--|
| Service Provider's Organisation Name: | | |
| Service Provider's Contact Person: | Name | |
| | Title | |
| | Email | |
| | Phone | |
| Engagement Name/No. | | |
| Engagement Description | | |
| Engagement Start Date: | | |
| Engagement Completion Date: | | |
| Total fee for this Engagement (including GST): | \$ | |

Performance Report - Service Provider:

| U = Unsatisfactory M = Marginal A = Acceptable G = Good S = Superior | N/A | U | M | A | G | S |
|---|-----|---|---|----|---|---|
| As the client who paid for this service, did the Service Provider meet your expectations? | | | | | | |
| Requirements Demonstrated their understanding of your needs and requirements for the project | | | | | | |
| Time Management Kept the project on time, to achieve milestones in the time planned and to overcome delays and reporting on time | | | | | | |
| Cost Met agreed budget. Actual cost did not exceed cost estimate without prior agreement | | | | | | |
| Personnel Managed and provided suitable staff including skill, experience and numbers for the project | | | | | | |
| Cooperative Relationships Developed and maintained co-operative relationships between key stakeholders. Demonstrated a commitment to resolving issues | | | | | | |
| Communications Provided an appropriate level of reporting and feedback throughout the project | | | | | | |
| Quality Outcomes Services completed to the agreed standards. Delivered the finished as per agreed quality standards | | | | | | |
| Overall Standard of Service Met the brief, budget, provide value for money, with no over servicing or under servicing | | | | | | |
| Recommendation Would you recommend the Service Provider for similar type of work? | YES | | | NO | | |

Performance Report - Agency Representative Contact Details:

| | |
|-------------------|--|
| Name: | |
| Signature: | |
| Title: | |
| Date: | |
| Tel No: | |
| Mobile No: | |
| E-mail: | |