

**Part D Conditions of Contract**  
**Professional Services Agreement**  
**Conditions of Contract**

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**1. Definitions**

In this Agreement, unless expressed or implied to the contrary:

**Advertising Assets** means advertising panels and advertising material within such panels (and associated fittings and devices reasonably required to affix or secure such advertising assets) in or on the Street Furniture which are provided, installed, displayed and operated by the Consultant in accordance with clause 9.5. Advertising Assets also include the Council's designs, artworks or other promotional material in which Council has IP Rights which are displayed by the Consultant at the request of Council in performing the Services;

**Approval** means:

- (a) an approval, consent, declaration, exemption, accreditation, notarisation, licence, permit, certificate, waiver or other authorisation, however described, required by any law; and
- (b) in relation to anything that could be prohibited or restricted by law if a statutory authority acts in any way within a specified period, the expiry of that period without that action being taken,

including any variation, modification, renewal or amendment with any statutory authority;

**Agreement** means the agreement between the Consultant and the Council for the provision of the Services and includes:

- (a) the Conditions of Contract;
- (b) the Contract Particulars; and
- (c) all schedules, appendices and attachments to the Agreement;

but does not include the Quotation, except to the extent that it, or any part of it, is reproduced in the Agreement itself, or the Council expressly agrees in writing.

**Author** means any director or subcontractor of the Consultant who may have or acquire Moral Rights in a work or works created as part of the performance of the Services;

**Business Day** means a day other than a Saturday, Sunday, public holiday in Sydney, or 27, 28, 29, 30 or 31 December;

**Commencement Date** means the date specified in Item 2;

**Confidential Information** means all information and materials, in any form concerning the Council, the Services, this Agreement or which the Council indicates to be confidential;

**Council Supplied Equipment** means the equipment (if any) specified in Item 10, to be supplied by the Council in accordance with clause 9;

**Council's Representative** means the person identified in Contract Particulars, or as otherwise notified by Council from time to time.

**Expiry Date** means the earlier of:

- (a) the date specified in Item 3 of the Contract Particulars;
- (b) the date that the Services are completed in accordance with this Agreement;
- (c) the date that this Agreement is terminated in accordance with clause 16 of the Conditions of Contract;

**Fees** means the fees, costs, expenses and disbursements payable by a party in accordance with clause 12 and as set out in Item 4 of the Contract Particulars, as adjusted in accordance with clause 14 of the Conditions of Contract;

**Insolvency Event** means, in relation to a person, any of the following:

- (a) the person, being an individual, becomes bankrupt;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;

- (e) the holder of any Security Interest takes possession of any assets of the person or exercises any power of sale;
- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being made; and
- (g) any event that is analogous or has a substantially similar effect to any of the events specified in this definition.

**IP Rights** means all statutory and other proprietary rights (whether registered or unregistered) in respect of inventions, innovations, patents, utility models, designs, circuit layouts, copyrights (including future copyrights), confidential information, trade secrets, know-how, trademarks and all other rights in respect of intellectual property;

**Item** means an item in the Contract Particulars to this Agreement;

**Legal Requirements** means all laws (including Acts, regulations, codes and standards) relevant to the Services and the requirements of all authorities or persons having jurisdiction over or in respect of any part of the Site or the Advertising Assets or the Services;

**Loss** includes any cost, loss, liability, damage or expense, howsoever arising;

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a);

**Services** means the Services specified and described in Item 7 of the Contract Particulars and the Scope and/or Specification;

**Site** means the site described in Item 1 of the Contract Particulars (if any);

**Street Furniture** means Council's bus shelters and bus stop seats and any Council owned advertising panels which are situated in Council's Local Government Area and shown in Appendix 1 to Part B Scope of Works in the Expression of Interest issued 15.2.2021 and also includes any Street Furniture added or replaced during the Term but does not include any Street Furniture removed during the Term, in Council's absolute discretion;

**Subcontractors** means subcontractors, subconsultants, agents and employees of the Consultant;

**Term** means the period of operation of this Agreement as specified in clause **Error! Reference source not found.** of the Conditions of Contract; and

**Working Hours** means the period of time specified in Item 8 of the Contract Particulars.

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## 2. Term of Agreement

- 2.1 Subject to clause **Error! Reference source not found.** of the Conditions of Contract, this Agreement commences on the Commencement Date and expires on the Expiry Date, whereupon the relationship between the Council and the Consultant will terminate without any notice or other action required by either party.
- 2.2 At any time before the Expiry Date specified in Item 3, the Council may deliver a notice to the Consultant requiring an extension to the Term for a period set out in the notice which must not be more than 2 years. The Consultant acknowledges and agrees that the Council's decision to deliver such a notice is in Council's absolute discretion and that such decision will be primarily based on the Consultant's performance of the Services during the initial Term. The parties agree to negotiate the terms and conditions associated with any such extension to the Term in good faith and the parties acknowledge and agree that the terms and conditions which will apply during the extension of the Term will be substantially similar to the terms and conditions set out in the Conditions of Contract.
- 2.3 Notwithstanding a failure to extend the Term under clause **Error! Reference source not found.** of the Conditions of Contract, any Services supplied by the Consultant to the Council after the Expiry Date specified in Item 3 will be governed by the terms of this Agreement.

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## 3. Nature of Relationship

- 3.1. The parties expressly acknowledge and agree that:
  - 3.1.1. no relationship of employment or partnership is created between the Council and the Consultant or between the Council and any of the subcontractors;
  - 3.1.2. each employee of the Consultant is and is intended to be and remain an employee of the Consultant and not of the Council;
  - 3.1.3. the Consultant stands as an independent contractor for the supply of Services to the Council; and

- 3.1.4. it is the express intention of the parties that any relationship of partnership or employment between the Council and the Consultant or between the Council and any employee of the Consultant is denied.
  - 3.2. The Consultant warrants that it is capable of supplying, and will supply, the services of its employees as the primary means of carrying out the Services, in addition to any subcontractors which the Consultant may engage under clause **Error! Reference source not found.**
  - 3.3. The Consultant acknowledges and agrees that:
    - 3.3.1. the Council is not and will not at any time be construed as the employer of the Consultant or of any of the Consultant's employees or of any other subcontractors engaged by the Consultant, for the purposes of any Act, local law, regulation, order or ruling;
    - 3.3.2. the Consultant alone is responsible and liable for the making of any payments in respect of superannuation, payroll or any other tax, WorkCover levy or any similar payments in relation to any of its employees or any other subcontractor; and
    - 3.3.3. under no circumstances will these obligations be with the Council, which the Consultant agrees to indemnify and keep indemnified for any such payments.
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#### 4. Subcontractors and dealings with Agreement

- 4.1. The Consultant:
    - 4.1.1. must not sell, assign, novate, transfer, delegate, licence or otherwise deal with, encumber or create a Security Interest over, any of its rights or interests under this Agreement, without the prior written approval of the Council;
    - 4.1.2. may only engage subcontractors, for the purpose of carrying out the Services, with the prior written approval of the Council, which approval may be conditional;
    - 4.1.3. remains fully responsible, and will not be relieved from any liability, for the Services notwithstanding that the Consultant has subcontracted the performance of any part of the Services;
    - 4.1.4. will be vicariously liable to the Council for all acts, omissions and defaults of its subcontractors (and those of the employees and agents of its subcontractors) relating to, or in any way connected with, the Services; and
    - 4.1.5. warrants that all subcontractors are competent and have the necessary skills to carry out the Services.
  - 4.2. The Council may at any time give reasonable notice to the Consultant requiring that the Consultant cease to permit a particular subcontractor to continue to be engaged in carrying out the Services. Upon receipt of such a notice, the Consultant must make alternative arrangements for the provision of the services previously supplied by that subcontractor in performing the Services.
  - 4.3. The Council may assign, novate, transfer, charge or otherwise deal with its interest in, any of its rights, benefits or obligations arising out of, or in connection with, this Agreement to any person without the need to obtain the consent of the Consultant. The Consultant must, on the request of the Council, do everything necessary to give effect to any such assignment, novation, transfer, charge or other dealing, including by executing a deed of novation in a form required by the Council acting reasonably.
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#### 5. Consultant's Primary Obligations

- 5.1. The Consultant must, on behalf of itself and its subcontractors, ensure that:
  - 5.1.1. it and its subcontractors carry out and complete the Services with the standard of professional skill, care and diligence to be expected of a qualified, competent, professional consultant experienced in performing services of a similar nature and complexity to the Services, and to the reasonable satisfaction of the Council;
  - 5.1.2. it and its subcontractors promptly commence and thereafter perform the Services in a proactive, diligent and expeditious manner, and use their best endeavours to ensure that the Services are completed within any time frames required by the Council;
  - 5.1.3. it supplies such other approved subcontractors to carry out the Services for the Working Hours and during such other hours as are reasonably required by the Council to satisfactorily perform the Services;
  - 5.1.4. it reports to the Council as required, including supplying competent and knowledgeable employees to report to any meetings;
  - 5.1.5. it and its subcontractors promote the aims and objectives of the Council in performing the Services;
  - 5.1.6. it and its subcontractors perform the Services in accordance with this Agreement and in accordance with all Legal Requirements; and
  - 5.1.7. it and its subcontractors comply with any relevant policies of the Council as in force from time to time. These policies are available on Council's website and include public domain policies relevant to Council's heritage, accessibility, visual clutter and context and include the policies referred to in the Respondent's Declaration submitted in response to Council's Expression of Interest.
- 5.2. Without limiting clause **Error! Reference source not found.** in carrying out the Services the Consultant must, at its sole cost:
  - 5.2.1. apply for and obtain all Approvals required to carry out the Services;
  - 5.2.2. give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Agreement obligations;

- 5.2.3. promptly give the Council copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the carrying out of the Services issue to the Consultant; and
- 5.2.4. immediately upon becoming aware itself or by notice from Council remove Advertising Assets where any Approval expires, is revoked or otherwise is no longer valid or where Advertising Assets are in breach of Legal Requirements (including those Legal Requirements as set out in clause 5.5) or where Council receives complaint(s) in relation to those Advertising Assets.
- 5.3. The Council acknowledges that the Consultant may engage in other business activities during the term of this Agreement in carrying on the Consultant's business, but they must not do so in a manner which conflicts with the interests of the Council or their ability to perform the Services to the reasonable satisfaction of the Council.
- 5.4. If there is any risk of a conflict of interest occurring, the Consultant must immediately notify the Council and obtain its written consent to engage or continue in the business or engagement which is creating the conflict of interest.
- 5.5. For the purposes of clause 5.1.6, performance of the Services in accordance with all Legal Requirements includes but is not limited to, compliance with and obtaining all relevant required Approvals pursuant to the following:
- 5.5.1 the State Environmental Planning Policy (SEPP) 64—Advertising and Signage and any relevant Guidelines issued in relation to this Policy;
- 5.5.2 any other relevant Council or other Authority Development Control Plan or Planning Instrument relevant to the Services;
- 5.5.3 the Roads Act 1993 (NSW) and any relevant road safety guidelines issued by Transport for NSW in relation to this legislation;
- 5.5.4 the Australian Consumer Law (Cth) and the Fair Trading Act 1987 (NSW);
- 5.5.5 all relevant Codes, Policies and Guidelines published by the Outdoor Media Association (OMA) from time to time including but not limited to Code of Ethics, Advertising Content Policy, Alcohol Advertising Policy, Digital Signage Policy, Environment and Sustainability Policy, National Health and Wellbeing Policy, Placement Policy and Political Advertising Policy; and
- 5.5.6 all relevant Codes, Policies and Guidelines published by the Australian Association of National Advertisers (AANA).
- 5.6 Before commencing the Services and whenever requested by the Council, the Consultant must produce evidence to the satisfaction and approval of the Council that it has satisfied all of its Approval obligations in relation to the Services and/or the Advertising Assets under this Agreement.

## 6. Documents Generally

If the Consultant discovers any ambiguity or discrepancy in or between any of the documents comprising this Agreement, it must promptly advise the Council's Representative in writing, who must then give a direction that must be followed by the parties.

## 7. Council Supplied Documents

- 7.1. All documents supplied to the Consultant by or on behalf of the Council (including those listed in Item 9) remain the property of the Council and must be returned on demand and must not be used for any purpose other than the completion of the Services.
- 7.2. The Consultant agrees that:
- 7.2.1. the Council does not warrant or assume any duty of care for the accuracy, adequacy or completeness of any information (including Information Documents set out in Item 14) the Council or anyone on its behalf made available to the Consultant;
- 7.2.2. regardless of whether an Information Document is referenced in or attached to this Agreement:
- (A) Information Documents do not form part of this Agreement; and
- (B) the Council is not liable upon any claim by the Consultant arising out of:
- (aa) the Consultant's purported reliance upon any Information Document; or
- (bb) a failure by the Council to provide any information; and
- (C) it enters into this Agreement based on its own investigations and information.

## 8. Site Conditions

- 8.1. The Consultant warrants that, prior to the Commencement Date, it:
- 8.1.1. examined and was given reasonable opportunity to undertake tests and investigations relating to the Site and the Council Supplied Equipment, their condition, marketing exposure and potential and their surroundings;
- 8.1.2. is aware, and has made adequate allowance, that from time to time during the Term that Street Furniture may not be available or suitable for provision of the Services when the Street Furniture is being replaced, maintained and/or repaired by the Council or when it

is damaged or removed for reasons outside of Council's control such as by accidental and intentional damage by third parties or by the action or intervention of statutory and/or other authorities;

8.1.3. aware, and has made adequate allowance, that the Fees payable to Council for the Site and the Council Supplied Equipment from time to time are determined by Council in accordance with Council's classification of the Site as Platinum, Premium or Economy (according to passing traffic volumes) and that these Sites may be during the Term in Council's absolute discretion; and

8.1.4. has made adequate allowance for the time and cost of complying with this Agreement.

8.2. The Council does not provide any warranties or representations:

8.2.1 as to the fitness for purpose of the Street Furniture for the provision of the Services by the Consultant;

8.2.2 that the quantity, design, classification and/or locations of Street Furniture will remain fixed for the Term and the Consultant acknowledges and agrees that the Council reserves the right to vary the quantity, design, classification and/or location of Street Furniture at any time during the Term;

8.2.3 as to the ability or suitability of the Street Furniture to generate revenue from the Advertising Assets and the Services otherwise provided by the Consultant;

8.2.4 or as to the quantity of Council advertising that Council will require the Consultant to provide Services in relation to.

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## 9. Council Supplied Equipment, Licence of Street Furniture and Advertising Assets

9.1. At all times during the Term the Council retains all right, title and interest in, and remains the absolute legal and beneficial owner of, the Street Furniture or any other Council Supplied Equipment. Save as expressly provided in this Agreement, the Consultant has no rights over the Street Furniture or any other Council Supplied Equipment.

9.2. The Council grants an exclusive licence to the Consultant (at the Consultant's cost and in consideration of the Licence Fee) to:

9.2.1 supply and install Advertising Assets in or on the Street Furniture for the Term;

9.2.2 display and operate Advertising Assets in or on the Street Furniture for the Term;

9.2.3 undertake repairs and maintenance of the Advertising Assets as reasonably required from time to time for the Term. The removal of graffiti on or about Advertising Assets and the removal or replacement of damaged or unapproved Advertising Assets is also covered by the licence and is also at the Consultant's cost;

9.2.4 detach or remove the Advertising Assets from the Street Furniture during the Term and within one month of expiry or termination of the Term; and

9.2.5 otherwise use the Street Furniture as is reasonably required for the Consultant to provide the Services under this Agreement for the Term and with minimal disruption and inconvenience to other users of the Street Furniture.

9.3 The licence granted by the Council to the Consultant pursuant to clause 9.2 may be revoked by expiry of the Term or lawful termination of this Agreement.

9.4 In consideration of the Council granting the above licence to the Consultant, the Consultant will pay the Council the Licence Fee for the Term.

9.5 The Advertising Assets must:

9.5.1 comply with the Scope of Works;

9.5.2 be designed to be capable of detachment or removal from the Street Furniture without causing damage to the Street Furniture and will be designed to ensure that the Street Furniture remains functional after such detachment or removal;

9.5.3 be attached to the Street Furniture so that whilst passengers remaining sheltered within the structure the Advertising Asset does not obstruct the vision between waiting passengers and an approaching bus or other vehicle;

9.5.4 not obscure or interfere with the view of a road hazard, intersection, driveway or oncoming vehicle or other vehicle or person at a marked foot crossing or any other obstruction which should be visible to drivers and other road users;

9.5.5 to the extent that the Advertising Assets or any part thereof require any power, battery or other energy to operate and/or function, the Consultant must ensure that the Advertising Access have access to such power source provided at the cost of the Consultant and that such power source is safe and meets all Legal Requirements and relevant Australian Standards and industry standards; and

9.5.6 otherwise comply with all Legal Requirements including those Legal Requirements further specified in clause 5.5.

9.6 During the Term the Consultant will retain all right, title and interest in, and remains the absolute legal and beneficial owner of, all Advertising Assets supplied for the Services. During the Term risk in the Advertising Assets and in that part of the Street Furniture to which the Advertising Assets are affixed or secured remains with the Consultant.

9.7 Within one month of the expiry or termination of this Agreement, all Advertising Assets are to be detached or removed by the Consultant at the Consultant's cost. The Consultant will be liable for any damage caused to, or any loss of functionality arising from, the detachment or removal of Advertising Assets from the Street Furniture by the Consultant or its subcontractors.

- 9.8 Subject to clause 9.9 Council agrees to repair and maintain the Street Furniture (excluding the Advertising Assets) in a serviceable condition during the Term of this Agreement having regard to the condition of the Street Furniture as at the Commencement Date and with allowance for fair wear and tear.
- 9.9 Notwithstanding clause 9.8 the Consultant acknowledges and agrees that it will be responsible at its cost for the repair and maintenance of any Council owned advertising panels that form part of the Street Furniture during the Term. This obligation is to repair and maintain any Council owned advertising panels that form part of the Street Furniture during the Term in a serviceable condition having regard to the condition of the Council owned advertising panels as at the Commencement Date and with allowance for fair wear and tear.
- 9.10 Other than those matters referred to above in this clause, the Consultant is responsible for meeting its own technological and vehicular needs as required to complete the Services.
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## 10. Work Health and Safety

- 10.1. The Consultant is responsible for all aspects of health and safety in the performance of the Services and must at its own cost:
- 10.1.1. comply with and procure that its subcontractors comply with the *Work Health and Safety Act 2011*(NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- 10.1.2. comply with and procure that its subcontractors comply with all directions, policies and procedures of the Council and its nominees relating to the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).
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## 11. IP Rights and Moral Rights

- 11.1. Each party retains its own IP Rights.
- 11.2. To the extent that the performance of the Services by the Consultant involves the display of the Council's designs, artworks or other promotional material in which Council has IP Rights, the Council grants to the Consultant a royalty free, non-transferable, revocable, non-exclusive licence to use such IP Rights only to the extent necessary for the performance of the Services.
- 11.3. In providing the Services including the publication of the Advertising Assets, the Consultant represents and is taken to represent to the Council that:
- 11.3.1. any use, disclosure, reproduction, transmission, exhibition, communication, adaption, publication or otherwise the exercise of rights in relation to the Advertising Material in whatever form by or on behalf of the Council, the Consultant or its subcontractors will not infringe the Moral Rights of any Author and is consented to by all relevant Authors; and
- 11.3.2. each Author possessed of Moral Rights arising in relation to or connection with the relevant Advertising Material agrees that its Moral Rights are not and will not be infringed by, and consents to, acts or omissions of the Council, Consultant or its subcontractors which would otherwise constitute an infringement under Part IX of the *Copyright Act 1968* (Cth) (including where identification of the relevant Author is not made).
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## 12. Fees

- 12.1 The Fees payable by the parties to this Agreement are each exclusive of GST and consist of the following:
- 12.1.1 Licence Fees payable by the Consultant to the Council in consideration of the exclusive licence granted by Council to the Consultant in clause 9 to use Council's Street Furniture and any associated Council Supplied Equipment for the purpose of providing the Services and utilising the Advertising Assets ("**the Licence Fees**"); and
- 12.1.2 Advertising Fees payable by Council to the Consultant when the Consultant provides the Services to Council on the Council Supplied Equipment. This Fee is payable in consideration of the Consultant printing artwork for advertising designed by Council, installing and maintaining it and otherwise providing the Services in relation to it on Street Furniture ("**the Council Advertising Fees**").
- 12.2 The Licence Fees payable by the Consultant and the Council Advertising Fees payable by Council depend on:
- 12.2.1 whether the Site or location of Street Furniture is classified by Council as Platinum, Premium or Economy; and
- 12.2.2 whether the Street Furniture being licenced is the bus shelter or the bus seat.
- 12.3 The Licence Fees payable by the Consultant to the Council remain the same regardless of whether the Council is liable to pay the Consultant Council Advertising Fees in respect of any Services provided by the Consultant to Council.
- 12.4 As at the Commencement Date the Licence Fees payable are as set out in Item 4 of the Contract Particulars.
- 12.5 As at the Commencement Date the Council Advertising Fees payable are as set out in Item 4 of the Contract Particulars.
- 12.6 Except for adjustments expressly provided for by this Agreement, the parties agree that the respective Fees above constitute the total amount payable by each party to the other for the exclusive licence and/or performance of the Services and that each Fee is inclusive of all costs and expenses incurred or which may be incurred by the relevant party in granting the exclusive licence and/or performing the Services as the case may be and otherwise complying with the party's respective obligations arising out of or in connection with this Agreement.

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## 13. Payment

### 13.1. Licence Fees

13.1.1 The Licence Fees are payable by the Consultant to the Council quarterly in arrears during the Term, being 30 September, 31 December, 31 March and 30 June of each year of the Term or part thereof.

13.1.2 The Council shall issue a tax invoice within 28 days of the end of the relevant quarter for the Licence Fees payable by the Consultant during the previous quarter or part thereof as set out in Item 11. The tax invoice will include:

- (A) sufficient detail of the calculation of the Licence Fees charged including the quantity, location and classification of Council Supplied Equipment licenced and the applicable and the applicable current rates calculated in accordance with Item 4 of the Contract Particulars and the relevant Schedule of Rates;
- (B) detail of any other money due to the Council pursuant to this Agreement; and
- (C) such other details as may reasonably be required as determined by the Council's Representative.

13.1.3 The Consultant must pay the Council the amount set out as payable by the Consultant to the Council within 15 Business Days of the Consultant's or the Consultant's Representative's receipt (whichever is the earlier) of the relevant tax invoice.

### 13.2. Council Advertising Fees

13.2.1 The Council Advertising Fees are payable by the Council to the Consultant quarterly in arrears during the Term, being 30 September, 31 December, 31 March and 30 June of each year of the Term or part thereof.

13.2.2 The Consultant shall issue a tax invoice within 28 days of the end of the relevant quarter for the Council Advertising Fees payable by the Council during the previous quarter or part thereof as set out in Item 11. The tax invoice will include:

- (A) sufficient detail of the calculation of the Council Advertising Fees charged including the particulars of the Services provided and the applicable current rates calculated in accordance with Item 4 of the Contract Particulars and the relevant Schedule of Rates;
- (B) detail of any other money due to the Consultant pursuant to this Agreement;
- (C) a signed Subcontractor's Statement, in the form of Attachment 1; and
- (D) such other details as may reasonably be required as determined by the Council's Representative.

13.2.3 Subject to clause 13.2.2 (compliance with which is a condition precedent to payment), the Council must pay the Consultant the amount set out as payable by the Council to the Consultant (if any) in the tax invoice after exercising any set off under clause 13.3, within 15 Business Days of the Council's receipt of the relevant tax invoice. However, if there is a dispute about a Consultant's invoice, or whether a refund or other amount is payable, the Council may withhold the amount in dispute without penalty until the resolution of the dispute.

13.3 If the Council has a claim to money against the Consultant arising out of this Agreement or on any other legal or equitable basis, the Council may set off the money against any sum the Consultant is or may be entitled to in connection with this Agreement.

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## 14. Changes to Fees

14.1. In this clause:

14.1.1. **Anniversary Date** means the date that is five (5) years from the Commencement Date and each date that is 12 months thereafter for the duration of the Term of this Agreement;

14.1.2. **Commencement Date** means the date of this Agreement;

14.1.3. **CPI** means the Consumer Price Index - Australia or if this index is not available or is discontinued or suspended, another index that the Council reasonably determines represents the rise in the cost of living in Sydney;

14.1.4. **Current CPI** means the CPI last published before the relevant Anniversary Date;

14.1.5. **Fee** means the Licence Fees; and

14.1.6. **Previous CPI** means the CPI last published before the later of:

- (1) the Commencement Date; and
- (2) the date when the Fee was last adjusted.

14.2. The Licence Fees remain fixed for the first 5 year period from the Commencement Date. Thereafter clause 14.3 applies.

14.3. On each Anniversary Date, the Licence Fees payable by the Consultant to the Council for the year commencing on that Anniversary Date (**Reviewed Fee**) are calculated as follows.

$$\text{Licence Fees} \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

14.4 The Council Advertising Fees remain fixed for the Term of this Agreement.

14.5 Notwithstanding clauses 14.3 and 14.4, either party may at any time after the first Anniversary Date and during the currency of this Agreement give the other party one month's written notice that it requires a review of the way that Fees are changed under this clause where that party reasonably considers that there have been any material changes to the Legal Requirements or any other factors outside their reasonable control that materially alters or varies the method or cost of providing the Services.

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## 15. Variations

15.1. In this clause 15:

15.1.1. Variation means a variation to the Services, including an increase, addition, decrease, omission or change to the scope of the Services; and

15.1.2. Variation Direction has the meaning given to that term in clause **Error! Reference source not found.**

15.2. The Council may at any time direct the Consultant to perform a Variation by written notice headed 'Variation Direction'. The Consultant must not perform a Variation other than pursuant to a Variation Direction. Variations the subject of a Variation Direction will be valued in accordance with clause **Error! Reference source not found.**

15.3. No Variation or Variations, including an omission of any part of the Services, will invalidate or constitute a repudiation of this Agreement. The Council may perform or procure another person to perform any part of the Services deleted or omitted by a Variation Direction.

15.4. Subject to subclause **Error! Reference source not found.**, the Consultant is not entitled to make any claim arising out of or in connection with a new, or a change in any, Legal Requirement.

15.5. A valuation of a Variation the subject of a Variation Direction is to be made by increasing or decreasing (as the case may be) the relevant Fees by the amount determined by the Council using the following order of precedence:

15.5.1. prior agreement;

15.5.2. rates or prices in this Agreement (if any) to the extent the Council considers that it is reasonable to use them; and

15.5.3. reasonable rates or prices.

15.6. Without limiting clause **Error! Reference source not found.**, the Council may determine to increase or decrease (as the case may be) the relevant Fees if:

15.6.1. there is a new or changed Legal Requirement; and

15.6.2. the new or changed Legal Requirement directly affects the performance and delivery of the Services; and

15.6.3. for a change in the relevant Fees, the Consultant has taken all reasonable steps to mitigate losses arising from the new or changed Legal Requirement.

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## 16. Termination

16.1. The Council may terminate this Agreement immediately without being liable to compensate the Consultant (subject only to payment for Services relevant to Council's Advertising Fees then completed), if:

16.1.1. the Consultant is unable, for any reason, to perform the Services for a period of 4 consecutive weeks;

16.1.2. an Insolvency Event occurs in respect of the Consultant;

16.1.3. the Consultant is found guilty of any criminal offence other than an offence which in the reasonable opinion of the Council does not affect the Consultant's ability to carry out and complete the Services properly;

16.1.4. the Consultant breaches a clause of this Agreement and, if the breach is capable of being rectified, fails to rectify that breach within 10 Business Days after receiving written notice from the Council to rectify that breach; or

16.1.5. there is any serious failure or neglect on the part of the Consultant or any subcontractor in carrying out the Services, any act of serious misconduct or any other serious or persistent breach of any of the terms of this Agreement.

16.2 Where Council terminates this Agreement in accordance with clause 16.1:

16.2.1 the Consultant must pay the Council the Licence Fees that the Consultant would have been liable to pay the Council as if the Agreement continued until the Expiry Date (or until the expiry of any renewed Term if relevant) within 15 Business Days of the effective termination date.



For the purposes of calculating the Licence Fees that the Consultant would have been liable to pay the Council as if the Agreement continued, the Council will calculate such amount based on the Licence Fees invoiced to the Consultant in the most recent quarterly tax invoice; and

16.2.2 the Council is not liable to pay the Consultant any Council Advertising Fees that may become or are payable after the effective termination date.

16.3 In addition to the rights of the Council under clause **Error! Reference source not found.**, Council may terminate this Agreement for convenience at any time by providing at least 45 Business Day's prior written notice to the Consultant.

16.4 If this Agreement is terminated under clause 16.3, the Council must pay the Consultant the part of the Council Advertising Fees incurred up to the effective termination date which are unpaid and if relevant an additional one month's Council Advertising Fees to compensate the Consultant for any Council advertising that would have continued for more than one month after the effective termination date.

16.5 The amount to which the Consultant is entitled under clause 16.4 will be a limitation upon the Council's liability to the Consultant arising out of, or in connection with, the termination of this Agreement under clause 16.3, and the Consultant may not make a claim against the Council arising out of or in any way connected with the termination of this Agreement under clause 16.3 other than for the amount payable under clause 16.4.

16.6 The termination of this Agreement does not affect any claim that either party may have against the other in respect of any acts or omissions occurring prior to termination.

16.7 Upon termination, the Consultant must make available to the Council all files, records, reports and information (including all electronic files) held by the Consultant or its subcontractors in respect of the Services.

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## 17. Suspension

17.1. The Council may suspend the performance of the Services or part of the Services by issuing a written notice to the Consultant. The Consultant must immediately comply with such notice and suspend the progress of the whole or part of the Services for such time as is specified in the notice, or if no time is stated, for such time as the Council directs.

17.2. The Consultant must recommence the Services in accordance with any further written notice issued by the Council to the Consultant.

17.3. The Consultant is not entitled to make any claim arising out of or in connection with a suspension under this clause 17, but may seek an extension of time for delivery of the Services if relevant to the performance of its obligations under this Agreement.

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## 18. Confidentiality and GIPA

18.1. The Consultant acknowledges that:

18.1.1. the Confidential Information is secret, confidential and valuable to the Council;

18.1.2. it owes an obligation of confidence to the Council in relation to the Confidential Information; and

18.1.3. the Confidential Information is provided to the Consultant for use by it in the carrying out of the Services in accordance with this Agreement (Permitted Purpose) only.

18.2. The Consultant must:

18.2.1. keep the Confidential Information confidential and must not disclose the Confidential information except to a person that needs to know the Confidential Information for the Permitted Purpose;

18.2.2. ensure that each of its subcontractors complies with the terms of clause **Error! Reference source not found.**; and

18.2.3. not make, cause or permit to be made, any statement or release any information about the Services to the media without the Council's prior written consent.

18.3. The Consultant may use the Confidential Information only to the extent necessary for the Permitted Purpose and may make records (including copies) incorporating the Confidential Information in any form or media, but only to the extent necessary for the Permitted Purpose.

18.4. The Consultant's obligation of confidence under this clause 18 does not apply to any part of the Confidential Information if that part of the Confidential Information:

18.4.1. was known to the Consultant before it was disclosed by the Council, and this is proved by written records made at the time it was known to the Consultant;

18.4.2. is in or enters the public domain, other than as a result of a breach of the terms of this clause;

18.4.3. was given to the Consultant (without restriction as to its use or disclosure by it) by a third party legally entitled to possess the Confidential Information and provide it to them; or

18.4.4. was required to be disclosed by law, but only in accordance with and to the extent of that requirement.

18.5. Notwithstanding any other provisions of this Agreement, the Consultant acknowledges and agrees that under the *Government Information (Public Access) Act 2009* (NSW) the Council may be required to publicly disclose information about this Agreement. As at the date of this Agreement, none of the disclosure obligations require the disclosure of:

- 18.5.1. the commercial-in-confidence provisions of a contract;
  - 18.5.2. any matter that could reasonably be expected to affect public safety or security; or
  - 18.5.3. information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009* (NSW).
- 18.6. The Consultant may at any time nominate any items that it considers are confidential and why, so as to assist the Council in determining what items to disclose.
- 

## 19. Insurance

- 19.1. Before commencing the Services the Consultant must effect all insurances required to be effected under any Legal Requirement together with the following insurance policies

**Note:** The below insurance terms are applicable only where stated as a requirement in accordance with the Contract Particulars Table

- 19.1.1. a public and product liability insurance policy which:
    - A. covers the liability of the Consultant, its subcontractors (if any) and the Council to third parties for loss of or damage to property and the death of or injury to any person;
    - B. covers the Consultant's liability to the Council and the Council's liability to the Consultant for loss of or damage to property and the death of or injury to any person;
    - C. is for an amount not less than the amount specified in **Error! Reference source not found.** of the Contract Particulars and with no limitation on the amount of claims that can be made in any policy period;
    - D. has an excess of not more than the amount specified in **Error! Reference source not found.** of the Contract Particulars; and
    - E. must be maintained for the duration of the Services;
  - 19.1.2. a workers compensation insurance policy to cover liability arising out of death of or injury to persons employed by the Consultant, including liability at statute and at common law and which must be maintained for the duration of the Services.
  - 19.1.3. A personal accident and illness insurance where the Consultant has no employees, the Consultant must insure for personal accident and illness insurance under a policy that provides:
    - A. weekly benefits for at least 75% of weekly income;
    - B. death and capital benefits of at least \$250,000, and
    - C. minimum benefit period of 24 months.
  - 19.1.4. Motor Vehicle Insurance as set out in Item 6 of the Contract Particulars to cover accidental damage, fire and theft for the sum of the full market value of the vehicle under a policy that provides:
    - A. insurance against injury to a third party or parties under the compulsory third party insurance policy as required by the NSW Motor Accidents Act 1988, and
    - B. insurance against loss of or damage to any property whatsoever caused by the use of the vehicle when being driven by the Consultant, its employees or any person not employed by the Consultant. Such Policy of insurance shall have a limit of indemnity of not less than \$20,000,000 and shall be extended to include CTP Gap Coverage Endorsement cover and shall note the interest of the Principal as an insured.
  - 19.2. The Consultant must ensure that each of its subcontractors are similarly insured.
  - 19.3. Each policy must be taken out with a reputable insurer and on terms approved by the Council (acting reasonably).
  - 19.4. Before commencing the Services and whenever requested by the Council, the Consultant must produce evidence to the satisfaction and approval of the Council that it has satisfied all of its insurance obligations under this Agreement.
  - 19.5. Insurance does not limit the Consultant's liability under the Agreement or otherwise.
- 

## 20. Indemnity

- 20.1. The Consultant must indemnify the Council from and against any claim or Loss suffered or incurred by the Council arising out of or in connection with:
- 20.1.1. any breach of this Agreement by the Consultant or negligence of the Consultant or its subcontractors; or
  - 20.1.2. personal injury or death or loss of, or damage to, property arising out of, or as a consequence of, the performance of the Services or any other act or omission of the Consultant or its subcontractors.

20.2. The Consultant's liability to indemnify the Council under this clause 20 will be reduced proportionately to the extent that a wrongful or negligent act or omission of the Council or its employees, agents or other contractors contributed to the claim or Loss.

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## 21. Notices

- 21.1. Subject to clause **Error! Reference source not found.**, all notices to be given to or demands to be made upon any party to this Agreement must be given in writing and may be delivered in person, by leaving at the party's address, by email to the party's email address, or by posting it by prepaid mail addressed to the party at the party's address.
- 21.2. The address and email address of each party will be set out on the execution page of the Professional Services Agreement (or as notified by a party to the other parties in accordance with this clause). Any party may change its address or email address by giving notice to the other parties.
- 21.3. Subject to clause 21.4, a notice or other communication is deemed delivered:
- 21.3.1. if served personally or left at the person's address, upon delivery;
  - 21.3.2. if posted within Australia to an Australian address:
    - (A) using regular prepaid post or registered post, 6 Business Days after posting;
    - (B) using priority prepaid post or priority registered post, 4 Business Days after posting; and
    - (C) using express post, 2 Business Days after posting,
    - (D) and in any other case, 10 Business Days after posting;
  - 21.3.3. if delivered by electronic mail, subject to clause **Error! Reference source not found.**, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
  - 21.3.4. if received:
    - (A) on a day which is not a business day in the place to which the notice is sent; or
    - (B) is received later than 4:00 pm (local time),  
at 9.00am on the next business day.
- 

## 22. GST

- 22.1. In this clause:
- 22.1.1. words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
  - 22.1.2. GST means GST within the meaning of the GST Law and includes penalties and interest; and
  - 22.1.3. GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 22.2. Except as otherwise provided in clause 22, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 22.3. If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 22.4, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this Agreement).
- 22.4. The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 22.3.
- 22.5. If this Agreement requires a party to pay (including a payment under an indemnity), reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:
- 22.5.1. the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and
  - 22.5.2. if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.
- 22.6. If an adjustment event occurs in relation to a taxable supply under this Agreement:
- 22.6.1. the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and
  - 22.6.2. any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

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## 23. Interpretation

- 23.1. In this Agreement, unless expressed to the contrary:
- 23.1.1. the singular includes the plural and vice versa;
  - 23.1.2. 'includes' is not a word of limitation;
  - 23.1.3. where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - 23.1.4. headings and sub-headings do not affect interpretation; and
  - 23.1.5. no rule of construction applies to the disadvantage of the party preparing this Agreement;
  - 23.1.6. a gender includes all other genders;
  - 23.1.7. legislation includes legislation as amended, re-enacted or replaced from time to time;
  - 23.1.8. writing includes writing in digital form;
  - 23.1.9. 'this Agreement' is to this Agreement as amended from time to time;
  - 23.1.10. a reference to a clause in the Terms and Conditions is a reference to a clause in or to the Terms and Conditions;
  - 23.1.11. 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
  - 23.1.12. a reference to a person includes a firm, partnership, joint venture, association, corporation or other body corporate; and
  - 23.1.13. any body (Original Body) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

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## 24. General

- 24.1. This Agreement may only be varied by a document executed by the parties.
- 24.2. This Agreement may be executed in counterparts, all of which taken together constitute one document.
- 24.3. This Agreement is governed by the law applying in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 24.4. This Agreement constitutes the entire agreement between the parties and supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) prior to entering into this Agreement.
- 24.5. If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.
- 24.6. Any provision of this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required by this clause, part or all of the clause of this Agreement that is unlawful or unenforceable will be severed from this Agreement and the remaining provisions continue in force.
- 24.7. The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Agreement.
- 24.8. Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.
- 24.9. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 24.10. The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion of the transactions contemplated by this Agreement.
- 24.11. If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
- 24.12. Nothing in this Agreement fetters or limits the statutory capacities or statutory discretions of the Council acting as a public or local authority.
- 24.13. Clauses 1, **Error! Reference source not found.**, 11, **Error! Reference source not found.**, 16, **Error! Reference source not found.**, 18, 19, 20, 22, 23 and this clause 24 survive the expiry or termination of this Agreement.
- 24.14. To the full extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising in connection with this Agreement or the Services, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort (including negligence) or otherwise.

## Contract Particulars

1.	<b>Site</b> (Clause <b>Error! Reference source not found.</b> , Conditions of Contract)	The various locations of Street Furniture situated in Council's Local Government Area which are shown together with Council's classification of the location as Platinum, Premium or Economy (according to passing traffic volumes) in Appendix 1 to Part B Scope of Works in the Expression of Interest issued 15.2.2021. These locations may be increased or decreased or reclassified during the Term in Council's absolute discretion.
2.	<b>Commencement Date</b> (Clause <b>Error! Reference source not found.</b> , Conditions of Contract)	2021
3.	<b>Expiry Date</b> (Clause <b>Error! Reference source not found.</b> , Conditions of Contract)	2026, being a five (5) year Term.
4.	<b>Fees</b> (Clause <b>Error! Reference source not found.2.</b> , Conditions of Contract)	Licence Fees are as set out in the Schedule of Rates and as adjusted in accordance with clause 14.  Council Advertising Fees as set out in the Schedule of Rates and if relevant, as adjusted in accordance with clause 14.
5.	<b>Public and product liability Insurance</b> (Clause 19.1.1, Conditions of Contract)	The amount of public and product liability insurance cover in respect of any one occurrence must not be less than <b>\$20 Million</b> .  The excess on a public and product liability insurance policy must not be greater than <b>\$500,000.00</b> .
6.	<b>Motor Vehicle Insurance</b> (Clause 19.1.4, Conditions of Contract)	The type, amount of and cover of motor vehicle insurance must meet the requirements of clause 19.1.4 of the Conditions of Contract.
7.	<b>Services</b> (Clause <b>Error! Reference source not found.</b> , Conditions of Contract)	Services are more fully described in the Scope of Works but in summary consist of:  (a) Advertising Asset supply and operation. The Consultant shall fully fund all arrangements relating to Advertising Assets and their operation and recover these costs from a share of the advertising media management and sales;  (b) Advertising media management and sales. The Service Provider will hold the associated exclusive rights for the display of Advertising Assets on a selected inventory of the Street Furniture, shall collect all Advertising Sales revenue and pay Council an agreed fee every quarter. Council reserves the right to amend the inventory and classification list of Street Furniture at any time during the Term.

8.	<b>Working Hours</b> (Clause <b>Error!</b> <b>Reference source not found.</b> , Conditions of Contract)	
9.	<b>Council Supplied Documents</b> (Clause 7, Conditions of Contract)	EOI 2021/1E – Out-Of-Home (OOH) Media Advertising Services - Package
10.	<b>Council Supplied Equipment</b> (Clause 9, Conditions of Contract)	Street Furniture and 43 Council owned advertising panels, excluding the Advertising Assets.
11.	<b>Time for submission of Payment Claims</b> (Clause 3, Conditions of Contract)	Within 28 days of the end of the quarter during which the Services in respect of which the Licence Fees (clause 13.1.2) or the Council Advertising Fees (clause 13.2.2) were provided until the Contract Expiry Date.
12.	<b>Council's nominated Contract Representative</b> (Clause <b>Error!</b> <b>Reference source not found.</b> , Conditions of Contract)	Name: Renee Houston  Title: Business Support Officer - Communications & Corporate Strategy  Address for Notice: 126-138 Main Road, Speers Point, NSW 2284  Phone: 0436 643130  Email: <a href="mailto:reenehouston@lakemac.nsw.gov.au">reenehouston@lakemac.nsw.gov.au</a>
13.	<b>Consultant's nominated Contract Representative</b>	To be inserted on award  Name:  Title:  Address for Notice:  Phone:  Email:
14.	<b>Information Documents</b>	Nil

Attachment 1 – Subcontractor’s Statement

Figure: Form of Written Statement



**SUBCONTRACTOR’S STATEMENT**  
**REGARDING WORKER’S COMPENSATION, PAYROLL TAX AND**  
**REMUNERATION (Note1 – see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR’S STATEMENT** (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ..... ABN: .....  
*(Business name)*

of .....  
*(Address of subcontractor)*

has entered into a contract with ..... ABN:.....  
*(Business name of principal contractor)* **(Note 2)**

Contract number/identifier ..... **(Note 3)**

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, **(Note 4)**

subject of the payment claim dated: ...../...../..... **(Note 5)**

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature ..... Full name.....

(g) Position/Title ..... Date ...../...../.....

*NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).