

Simplified consultancy contract

The Council of the City of Sydney ABN 22 636 550 790 and [*party name*] ABN [*insert*]

For Sydney New Year's Eve Visual Identity

Reference: 2024/380681

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SIMPLIFIED CONSULTANCY CONTRACT

PARTIES

- (1) The Council of the City of Sydney, the details of which are set out at Item 2 (**City**); and
- (2) The party set out in Item 3 (**Consultant**).

BACKGROUND

- A. The City requires the provision of professional services from a consultant.
- B. The Consultant carries on its own business and has represented to the City that it has the requisite degree of skill and experience in providing the professional services required by the City.
- C. The City wishes to engage the Consultant, and the Consultant has agreed, to provide the Services as and when required on the terms and conditions of this Contract.

OPERATIVE CLAUSES

1 Definitions and interpretation

1.1 Definitions

In this Contract, except where the context otherwise requires:

Business Day means a day other than:

- (a) a Saturday, Sunday or a public holiday in New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

City's Representative means the person named in Item 5, or such other person as the City may notify the Consultant from time to time to be the "City's Representative" for the purposes of this Contract.

Commencement Date means the date set out in Item 1.

Completion Date means the date set out in Item 6(a) or, where the City has extended the Contract Period pursuant to clause 2.4, the date set out in Item 6(b), and which may be amended by clause 3.4.

Contract means this agreement between the City and the Consultant comprising:

- (a) the Operative Clauses (being the clauses under that heading in this document);
- (b) Schedule 1 – Contract Information;
- (c) Schedule 2 – Fee and schedule of rates for variations; and
- (d) Schedule 3 – Schedule of Services.

Contract Period means the period commencing on the Commencement Date and ending on the Completion Date, unless terminated earlier in accordance with clause 14 or extended pursuant to clause 2.4.

Date of the Contract means the date the City executes the Contract.

Deliverables means any documents, materials or information (including notes, designs, drawings, specifications, tools, methodologies, processes, sketches, templates, tables and reports) in any format, electronic or otherwise

which the Consultant is required to provide to the City under this Contract, and includes all draft and final versions.

Fee means the fee set out in Part A of Schedule 2, as may be adjusted in accordance with this Contract.

Further Term means the period commencing on the date immediately after the Completion Date in Item 6(a) and concluding on the Completion Date in Item 6(b).

GST means the same as in the GST Law.

GST Law means the same as "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Documents means:

- (a) the documents and other information described in Item 4; and
- (b) any other information identified by the City, whether before, on or after the Commencement Date, as being for information only.

Insolvency Event means, in relation to the Consultant, where:

- (a) it informs the City in writing or its creditors that it is insolvent or is financially unable to proceed with this Contract;
- (b) it is unable to pay its debts as and when they fall due;
- (c) notice is given of a meeting of its creditors with a view to the corporation entering a deed of company arrangement;
- (d) it enters into a deed of company arrangement with its creditors;
- (e) a controller or administrator is appointed to it;
- (f) a winding-up order is made against it;
- (g) it resolves by special resolution that it should be wound up voluntarily; or
- (h) it suffers an event or circumstance analogous to an event or circumstance set out in paragraphs (a) to (g) above.

Intellectual Property Right means all present and future rights conferred in law in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and information which is confidential for the purposes of clause 13.1, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world, but excluding any Moral Rights.

Legislative Requirements includes acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth or State of New South Wales, licences, permits, requirements of an authority, the Building Code of Australia and all other industry standards, codes, guidelines and policies applicable to the Services.

Item means an Item in Schedule 1.

Moral Rights means moral rights as described under Part IX of the *Copyright Act 1968* (Cth), and any analogous rights that exist anywhere in the world.

Personal Information has the meaning provided to it in the Privacy Laws.

Personnel means a party's officers, employees, agents, contractors, subconsultants and subcontractors.

Pre-Existing Intellectual Property Rights in respect of a party means Intellectual Property Rights owned by that party which are in existence prior to the Commencement Date or which come into existence after the Commencement Date otherwise than in connection with this Contract.

PID Act means the *Public Interest Disclosures Act 2022* (NSW).

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

Services means the services to be provided by the Consultant under this Contract, which are described in the Schedule 3, as may be varied in accordance with clause 8.1.

Substantial Breach means a failure by the City to make a payment to the Consultant that is due and payable pursuant to this Contract and which continues for at least 10 Business Days after the date the Consultant gives the City a notice requiring the failure to be remedied.

WHS Law means the *Work Health and Safety Act 2011* (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- (a) clause and subclause headings must not be used in the interpretation of this Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (c) words importing a gender include every gender;
- (d) a reference to \$ or dollars is to Australian dollars;
- (e) the words "including", "include" and "included" are deemed to be followed by the words "without limitation";
- (f) a reference to legislation or a provision of legislation is to that provision or legislation as amended, re-enacted or replaced from time to time and includes any subordinate legislation or legislative instruments issued under it;

- (g) a reference to a body which ceases to exist is a reference to a body that the parties agree to substitute for the named body or, failing agreement, to a body having substantially the same objects as the named body; and
- (h) where the Consultant comprises of more than one person, each of the persons comprising the Consultant will be jointly and severally liable under this Contract.

1.3 Contra proferentem

This Contract is not to be interpreted against the interests of a party merely because that party proposed this Contract or some provision in it.

1.4 Ambiguity or discrepancy

- (a) If the Consultant becomes aware of any ambiguity or discrepancy in any document forming, or a provision of, this Contract, the Consultant must, within 10 Business Days of becoming aware, give written notice to the City detailing the ambiguity or discrepancy.
- (b) The City must direct the Consultant as to the interpretation to be followed as soon as reasonably practicable after receipt of a notice under clause 1.4(a) or otherwise upon becoming aware of any ambiguity or discrepancy.

2 Engagement of the Consultant

2.1 Key obligations

- (a) The City must pay the Consultant the Fee in accordance with this Contract.
- (b) The Consultant's entitlement to payment under this Contract in respect of the performance of the Services is strictly limited to:
 - (i) the Fee; and
 - (ii) any other payment to be made under an express provision of this Contract, and no other circumstances.
- (c) Without limiting clause 2.1(b), the Consultant acknowledges and agrees that there may be periods of inactivity on the part of the Consultant between stages of the Services as set out in the Schedule of Services or as directed by the City (acting reasonably) from time to time and the Consultant agrees to not make any claim against the City as a result of or in connection with any such inactivity.

2.2 Independent contractor

- (a) The Consultant is engaged as an independent contractor.
- (b) Nothing in this Contract makes the Consultant an employee, agent, partner or joint venturer of the City.

2.3 Conflict of interest

- (a) As at the Date of the Contract, the Consultant is not aware of any matter which may give rise to an actual or perceived conflict of interest

relating to the performance of the Services by the Consultant.

- (b) If, at any time prior to the expiry or earlier termination of this Contract, the Consultant becomes aware of any matter which may give rise to an actual or perceived conflict of interest relating to the performance of the Services by the Consultant, the Consultant must:
 - (i) immediately notify the City of such matters, including making full disclosure of all relevant information relating to the conflict; and
 - (ii) take such steps to resolve or manage such conflict as required by the City.

2.4 Further Term

The City may, at its sole discretion by notice in writing to the Consultant in the six months before the Completion Date, extend the Contract Period for the Further Term. If the City so extends, the Consultant must perform the Services during the Further Term on the same terms.

3 Provision of the Services

3.1 Acknowledgements by Consultant

The Consultant acknowledges and agrees that:

- (a) this Contract applies to all Services, whether they are performed before, on or after the Date of the Contract; and
- (b) if any payments have been made to the Consultant by the City prior to the Date of the Contract with respect to any Services, those payments are deemed to have been made pursuant to this Contract.

3.2 Standard of Services

The Consultant must:

- (a) at all times be suitably qualified and experienced for the performance of the Services;
- (b) perform the Services and provide the Deliverables:
 - (i) in accordance with the terms of this Contract and Legislative Requirements; and
 - (ii) competently and professionally and with the due skill, care and diligence reasonably expected of a professional, qualified and competent consultant experienced in providing services of a similar size, scope and complexity to the Services.

3.3 Timely provision of the Services

The Consultant must:

- (a) commence, progress and provide the Services expeditiously, without delay and in accordance with any directions of the City; and
- (b) if a Completion Date is included in Item 6, complete the Services by the Completion Date.

3.4 Extension of Time

- (a) The Consultant will be entitled to a reasonable extension of time (as determined by the City acting reasonably) to the Completion Date for any delay to the completion of the Services caused by an act or event beyond the reasonable control of the Consultant, including any act or omission of the City.
- (b) The City may, at any time and from time to time, direct an extension of time (which must be in writing) to the Completion Date for any reason in the City's absolute discretion and without being under an obligation to do so.

3.5 Equipment

The Consultant must provide all equipment, tools, facilities, materials, software (including software licences), and consumables necessary to provide the Services and Deliverables.

3.6 Safety and the environment

Without limiting its other obligations under this Contract or otherwise at law (including under the WHS Law), when carrying out the Services, the Consultant must:

- (a) if it becomes aware of the existence or possibility of any work health, safety and environmental issues (including any potential breach of any WHS Laws) in connection with the Services, notify the City immediately (and in any event within 12 hours of such matter arising) of the Consultant becoming so aware;
- (b) if applicable, ensure that all Personnel have undertaken any required induction as directed by the City; and
- (c) as necessary, consult, cooperate and coordinate activities with the City and any other persons who have a common duty under the WHS Law.

3.7 Review of Deliverables

- (a) The City may:
 - (i) review any Deliverable, or any resubmitted Deliverable, prepared and submitted by the Consultant; and
 - (ii) reject any Deliverable if the City, acting reasonably, does not believe that the Deliverable complies with the requirements of this Contract.
- (b) If any Deliverable is rejected, the Consultant must promptly (and in any event within the period specified by the City acting reasonably) resubmit the amended Deliverable to the City.

4 City's Representative

- (a) The City's Representative has authority to act on behalf of the City as its agent and for all purposes in connection with this Contract, except as notified to the Consultant by the City.
- (b) The City's Representative may by written notice to the Consultant, from time to time, appoint individuals to exercise delegated functions of the City's Representative.

- (c) The Consultant must comply with the directions of the City and the City's Representative. Except where the Contract provides otherwise, a direction may be given orally.

5 Consultant's Personnel, Subcontracting and Assignment

- (a) The Consultant must only engage Personnel in the performance of the Services who are appropriately qualified, competent and experienced in the provision of the type of services required under this Contract.
- (b) The Consultant must replace any Personnel involved in the performance of the Services who, in the reasonable opinion of the City, do not fulfil any of the criteria set out in clause 5(a).
- (c) The Consultant may only engage subconsultants or subcontractors with the express prior written approval of the City.
- (d) The Consultant is responsible for acts and omissions of its Personnel as if they were acts and omissions of the Consultant, and the obligations of the Consultant under this Contract are not lessened or otherwise affected by anything done in accordance with this clause 5.
- (e) The Consultant must not assign, transfer or otherwise create an interest in any or all of its rights or benefits under this Contract without obtaining the prior written consent of the City, which may be withheld at the City's absolute discretion.

6 Non-complying Services

6.1 Direction by City

If the City discovers or reasonably believes that any of the Services have not been performed in accordance with this Contract, and without limiting the City's rights elsewhere under this Contract or otherwise at law, the City may:

- (a) at any time give the Consultant a direction specifying the non-complying Services and requiring the Consultant to re-perform the Services which are non-complying; or
- (b) advise the Consultant that the City will accept the non-complying Services and make an appropriate adjustment to the Fee to take account of such non-compliance as reasonably determined by the City.

6.2 Consultant to re-perform

If a direction is given under clause 6.1(a), the Consultant must re-perform the non-complying Services within the time specified in the City's direction at the Consultant's cost.

7 Reports, meetings and audits

7.1 Reports and meetings

The Consultant must consult regularly with the City, provide reports and attend meetings as reasonably directed by the City.

7.2 Availability, audit and access

- (a) Without limiting any of its other obligations under this Contract, the Consultant must keep complete, accurate and up to date records, including books of account, labour time sheets, final accounts and any other documents relevant to the Services.
- (b) At the request of the City, the Consultant must make available within 5 Business Days of such request, one complete set of the records referred to in clause 7.2(a) for inspection and copying by the City or the City's nominee.

8 Variation or suspension of Services

8.1 Directions to vary

- (a) The City may before the Completion Date, by a written document titled "Variation Notice", direct the Consultant to vary the Services (including by way of increase, decrease, omission or change), if the variation is within the general scope of this Contract.
- (b) If the City directs a variation which omits any part of the Services, the City may thereafter carry out this omitted service either itself or by engaging another consultant.
- (c) Any variation to the Services must be performed in accordance with and subject to the terms and conditions of this Contract and is deemed to be incorporated into this Contract.

8.2 Valuation of variations

- (a) Unless otherwise agreed in writing between the City and the Consultant, the value of a variation will be determined by the City using the rates set out in Part B of Schedule 2.
- (b) If Part B of Schedule 2 does not include rates relevant to the variation, rates and prices that in the opinion of the City are reasonable will apply, having regard to the market for services similar to the Services.
- (c) Following valuation of a variation in accordance with this clause 8.2, the City will adjust the Fee accordingly.

8.3 Suspension of Services

- (a) Except as permitted by law or directed by the City, the Consultant must not suspend the performance of any or all of the Services.
- (b) The City may immediately suspend the performance of any or all of the Services at any time and for any reason by giving a direction to that effect to the Consultant.
- (c) Except to the extent permitted by law, the Consultant must resume the performance of the suspended Services as soon as practicable after being directed by the City and, in any event, not later than 5 Business Days after receiving a written direction to do so from the City.
- (d) The City must pay the Consultant any costs and expenses it reasonably incurs, as verified and assessed by the City acting reasonably, as a consequence of a direction to suspend the Services issued by the City under clause 8.3(b).

9 Payment

9.1 Invoices

The Consultant is only entitled to serve an invoice on the City for the performance of Services in accordance with this Contract for amounts then payable:

- (a) on the date, or completion of the applicable event, stated in Item 7, provided however that not more than one invoice may be served on the City in any month; and
- (b) in the form, and containing details, reasonably directed by the City.

9.2 Payment of invoices

- (a) The City will pay correctly rendered invoices, less any amount due from the Consultant to the City under clause 9.3 or otherwise, within 30 days of the date the City receives a correctly rendered invoice.
- (b) Unless otherwise agreed by the City, payment to the Consultant will be made by electronic funds transfer to the Consultant's nominated bank account as notified in writing to the City from time to time.
- (c) Payment of the Fee:
 - (i) is on account only; and
 - (ii) does not constitute any admission that performance by the Consultant is in any respect in accordance with this Contract.

9.3 Set off

The City may set off or deduct at any time from any money payable to the Consultant under this Contract:

- (a) any debt due and payable from the Consultant to the City under this Contract; or
- (b) any other money where the City has a bona-fide claim against the Consultant under this Contract provided that the City has given the Consultant prior written notice of such claim.

9.4 GST

- (a) Terms used in this clause 9.4 which are not defined in the Contract, but which are defined in the GST Law, have the meanings given to them in the GST Law.
- (b) Amounts payable, and consideration to be provided, under any other provision of the Contract exclude GST unless otherwise stated in the Contract.
- (c) If GST is payable on a supply made under or in connection with the Contract (not being a supply the consideration for which is specifically described in the Contract as being inclusive of GST), the recipient of the supply ('**recipient**') must pay to the party making the supply ('**supplier**') an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply.
- (d) The supplier must give a tax invoice to the recipient before the time when the recipient is

required to pay or provide any part of the consideration for the supply. Without limiting the foregoing, where the supplier is the Consultant, the Consultant must, as soon as possible and in any event within 5 Business Days of the date or the event stated in Item 7, provide the City with a valid tax invoice.

- (e) If an adjustment event arises in connection with a supply made under or in connection with the Contract, the supplier must recalculate the GST payable to reflect the adjustment event and give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event. The adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient, as the case requires.
- (f) If any part of a supply is treated as a separate supply for the purposes of the GST Law (including attributing GST payable to tax periods), that part of the supply will be treated as a separate supply for the purposes of this clause 9.4.
- (g) Where a party ('**payer**') must pay to another party ('**payee**') an amount in respect of a cost, expense or loss ('**outgoing**') of the payee, the amount payable is the sum of:
 - (i) the amount of the outgoing less any input tax credit in respect of it to which the payee, or its GST group representative member, is entitled; and
 - (ii) if the amount payable is subject to GST, an amount equal to that GST.

10 Intellectual Property, City's materials and Information Documents

10.1 Pre-Existing Intellectual Property Rights

- (a) Each party will retain all of its Pre-Existing Intellectual Property Rights.
- (b) The City grants the Consultant a non-exclusive, royalty-free and non-transferable licence for the term of this Contract, to use the City's Pre-Existing Intellectual Property Rights for the sole purpose of enabling the Consultant to perform its obligations under this Contract.
- (c) The Consultant grants the City an irrevocable, perpetual, royalty-free, worldwide, non-exclusive licence (with the right to sub-licence) to use, copy, modify, and (subject to clause 13.1(a)(ii)) publish, the Consultant's Pre-Existing Intellectual Property Rights for any purpose in relation to the Services, or to the extent required to use the Deliverables as contemplated by this Contract.

10.2 Intellectual Property Rights in the Deliverables

- (a) The Consultant assigns to the City all Intellectual Property Rights in the Deliverables, whether created before or after the Commencement Date, at the time each Deliverable is created.
- (b) The Consultant acknowledges that the Intellectual Property Rights assigned to the City

under this Contract include the perpetual, worldwide right of the City to edit, alter, delete, publish, reproduce, use, licence, print, distribute, communicate to the public, or otherwise exploit the Deliverables in whole or in part, in any manner and in any media whether now known or hereafter devised.

- (c) The Consultant must:
 - (i) obtain all required rights interests and consents from any of its Personnel and any third parties necessary to comply with clause 10.2(a); and
 - (ii) do all acts and execute all documents necessary or desirable for perfecting the City's title to, and Intellectual Property Rights in, the Deliverables.
- (d) The City grants to the Consultant a non-exclusive, royalty-free and non-transferable licence for the term of this Contract, to use the Deliverables for the sole purpose of the Consultant performing its obligations under this Contract.

10.3 Moral Rights

- (a) The Consultant must ensure that it does not, and its Personnel do not, infringe any Moral Rights in carrying out the Services.
- (b) The Consultant irrevocably waives all Moral Rights it has in the Deliverables and consents to the City and any third party using the Deliverables with the express or implied consent of the City doing or failing to do any act in relation to those works that may, except for this clause, infringe its Moral Rights in the Deliverables including:
 - (i) exercising any of the rights in the Deliverables without identifying the Consultant;
 - (ii) exercising any of the rights in the Deliverables in a manner which incorrectly attributes those Deliverables, or part of them, to someone else; and
 - (iii) editing, deleting from or otherwise altering the Deliverables in any manner.
- (c) The Consultant must procure Moral Rights waiver and from the Consultant's Personnel and any third parties that have any Moral Rights in the Deliverables, on the same terms as set out in clause 10.3(b).

10.4 Use of intellectual property

The Consultant must ensure that in providing the Services:

- (a) it owns or is licenced to use all Intellectual Property Rights (including Pre-Existing Intellectual Property Rights) provided under or in connection with this Contract; and
- (b) the use of the Deliverables as permitted or contemplated under this Contract will not cause the City to incur any liability for infringement of any Intellectual Property Rights or Moral Rights.

10.5 Generative AI

- (a) For the purposes of this clause 10.5, '**Generative AI**' means a machine learning platform, technology, or tool used to generate or create digital content including text, images, audio, video, and code.
- (b) The Consultant must not, and must ensure its Personnel do not, use Generative AI in providing the Services or in the creation or modification of any Deliverables.

10.6 Information Documents

- (a) Information Documents are provided to the Consultant for information only and the Consultant acknowledges that it has:
 - (i) not relied on the contents of any Information Documents; and
 - (ii) made its own enquiries and formed its own view on the issues covered in the Information Documents.
- (b) Neither the City nor the City's Representative is responsible for the accuracy or the contents of, or makes any representation or assumes any duty of care in respect of, the Information Documents.

11 Indemnity and Consultant's limitation of liability

11.1 Indemnity

Without limiting the City's other rights under this Contract or otherwise at law, the Consultant must indemnify the City against any claim, damage, expense, loss, cost (including reasonable legal costs) or liability (including liabilities of the City to third parties) arising out of or in connection with:

- (i) loss of, loss of use of, destruction or damage to real or personal property of the City or any third party, including existing property;
- (ii) breach of confidentiality or privacy;
- (iii) infringement of Intellectual Property Rights or Moral Rights; or
- (iv) injury to, or disease or illness (including mental illness) or death of, persons,
to the extent that, and in proportion to which, such claim, damage, expense, loss, cost or liability arises from:
- (v) a breach by the Consultant of this Contract; or
- (vi) any negligent act or omission of the Consultant or its Personnel in the performance of the Services or otherwise in relation to this Contract.

11.2 Consultant's limitation of liability

- (a) Subject to clause 11.2(b), the Consultant's aggregate liability to the City, whether in contract, tort (including negligence or under any warranty or indemnity) or otherwise at law, arising out of or in connection with this Contract or the performance or non-performance of the Services, is limited to the amount of \$5 million.

- (b) The limitation of liability in clause 11.2(a) will not apply to limit the Consultant's liability to the City in relation to:
 - (i) any fraudulent or criminal conduct or deliberate or intentional breach of this Contract by the Consultant or its Personnel;
 - (ii) any third party claim concerning personal injury, death or property damage; or
 - (iii) infringement by the Consultant or its Personnel of Intellectual Property Rights or Moral Rights.

12 Insurance

12.1 Consultant's insurances

The Consultant must:

- (a) from the date the Consultant commences the Services, hold and maintain the following insurances:
 - (i) public liability insurance that is not less than the amount set out in Item 9 per occurrence;
 - (ii) workers compensation insurance as required by law; and
 - (iii) professional indemnity insurance that is not less than the amount set out in Item 10 per claim and in the aggregate;
- (b) effect the insurances set out in clause 12.1(a) with an insurer licensed by the Australian Prudential Regulatory Authority in Australia or with an investment grade rating from an industry recognised rating agency such as Moody's, Standard & Poor's or A M Best;
- (c) ensure that its subconsultants and subcontractors effect and maintain insurance as stated in clause 12.1(a) as relevant to the Services undertaken by the subconsultants and subcontractors;
- (d) on request, provide the City with a certificate of currency for each policy of insurance that the Consultant is required to hold and maintain under this Contract;
- (e) ensure that the Consultant does not cancel, rescind or fail to renew any required insurance policy without effecting replacement insurance as required by this Contract so as to ensure no gap in cover and inform the City in writing as soon as possible of the identity of the replacement insurer and the terms of that insurance, and providing such evidence as the City reasonably requires that the replacement insurance complies in all relevant respects with the requirements of this Contract.

The obtaining of insurance as required under this clause 12.1 will not in any way limit, reduce or otherwise affect or be affected by any of the obligations, responsibilities and liabilities of the Consultant under any other provision of this Contract or otherwise at law or in equity.

12.2 Period of insurance

The insurance which the Consultant is required to obtain under clause 12.1(a) must be maintained:

- (a) in the case of public liability insurance and workers compensation insurance, until the Completion Date or the earlier termination of this Contract; and
- (b) in the case of professional indemnity insurance, seven (7) years following the Completion Date or the earlier termination of this Contract.

13 Confidentiality, privacy and related matters

13.1 Confidential information

- (a) Subject to clause 13.1(b):
 - (i) the Consultant must:
 - (A) keep confidential the terms of this Contract, any documents produced under this Contract and any information leading to the creation of this Contract; and
 - (B) ensure that each of its Personnel comply with the terms of clause 13.1(a)(i)(A); and
 - (ii) each party must keep confidential all information of the other that is by its nature confidential.
- (b) Neither party is obliged to keep confidential any information disclosed to it by or on behalf of the other party:
 - (i) which is otherwise in the public domain other than by a breach of this Contract by the receiving party;
 - (ii) the disclosure of which is:
 - (A) required by law;
 - (B) made with the prior written consent of the disclosing party;
 - (C) made to a court in the course of proceedings to which the disclosing party is a party; or
 - (D) required by the listing rules of a recognised stock exchange; or
 - (iii) which is disclosed by the receiving party to its legal or other advisers, or to its Personnel in order to comply with its obligations or to exercise its rights under or in connection with this Contract provided that such persons are under an obligation to keep the information confidential.

13.2 Privacy

Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Consultant must (and must procure that its Personnel):

- (a) comply with the Privacy Laws and any other privacy guidelines and requirements that the City notifies the Consultant that it must comply with; and
- (b) immediately notify the City on becoming aware of any unauthorised access, modification, disclosure or use of Personal Information or privacy breach in relation to any Personal Information.

13.3 No publicity

- (a) The Consultant must not use the City's name, trade mark or logo in any advertisement, media release, public statement, promotional materials or announcement relating to this Contract or the Services without the City's prior written approval.
- (b) If the Consultant receives any enquires from the media in relation to this Contract or the Services, the Consultant must promptly refer such enquires to the City.

13.4 Public Access to Government Information

- (a) The Consultant acknowledges and agrees that the City is subject to the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**). The City may disclose information in this Contract (including the entire Contract) on its nominated website established for GIPA Act disclosures. The Consultant irrevocably consents to the City acting in accordance with this clause.
- (b) In accordance with section 121 of the GIPA Act, the Consultant must, upon receipt of a written request by the City, provide the City with immediate access to the following information contained in records held by the Consultant:
 - (i) information that relates directly to the performance of the Services; and
 - (ii) information received by the Consultant from the City to enable it to provide the Services.
- (c) The Consultant must provide copies of any of the information in clause 13.4(b), as requested by the City, at the Consultant's own expense.

14 Termination

14.1 City may terminate for convenience

- (a) The City may terminate this Contract at any time and for any reason, and in its sole discretion, by giving to the Consultant not less than 10 Business Days' prior written notice.
- (b) If this Contract is terminated pursuant to clause 14.1(a), the City must pay the Consultant:
 - (i) any accrued portion of the Fee for Services carried out up to and including the date of termination; and
 - (ii) the Consultant's direct costs and expenses (excluding profit) reasonably and necessarily incurred by reason of the termination except to the extent that such costs and expenses are already payable pursuant to clause 14.1(b)(i).
- (c) Except as set out in clause 14.1(b), the Consultant is not entitled to any payment in connection with the termination of this Contract under this clause 14.1, including for any costs, losses (including loss of profit) or damage.

14.2 Termination for Consultant's breach

- (a) In addition to any other rights that it has under this Contract or at law, the City may terminate this Contract by giving notice in writing to the Consultant if:

- (i) the Consultant breaches any provision of this Contract and that failure or breach:
 - (A) is incapable of remedy; or
 - (B) if it is capable of remedy, continues for 10 Business Days after the date the City gives the Consultant a notice requiring the breach to be remedied;
 - (ii) the Consultant notifies the City of an actual or perceived conflict of interest under clause 2.3 that is unable to be rectified or managed by the Consultant to the reasonable satisfaction of the City;
 - (iii) subject to Parts 5.1, 5.2 and 5.3A of the *Corporations Act 2001* (Cth) and any regulations or Ministerial declarations made thereunder, an Insolvency Event occurs; or
 - (iv) the Consultant breaches clause 7.2.
- (b) The parties agree that any termination in accordance with clause 14.2(a) or clause 14.3 will be treated as if it were termination for repudiation of this Contract by the Consultant.

14.3 Termination for City's breach

In addition to any other rights that it has under this Contract or at law, the Consultant may terminate this Contract by giving notice in writing to the City if the City commits a Substantial Breach.

14.4 Consultant's obligations on termination or completion of the Services

Without limiting the Consultant's obligations elsewhere in this Contract, within 5 Business Days of the completion of the Services or earlier termination of this Contract, the Consultant must:

- (a) deliver to the City, or if directed by the City, destroy all material and information made available by the City to the Consultant; and
- (b) deliver to the City copies of all documents produced by the Consultant in relation to the Services, including all confidential information and Information Documents, except that the Consultant is entitled to retain a copy of such materials, information and documents to the extent that it is required to do so by law or for a legitimate quality assurance purpose.

15 Dispute resolution

15.1 Notice of dispute

- (a) If a dispute between the parties arises out of, or in any way in connection with, the subject matter of this Contract, then either party may, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute.
- (b) Notwithstanding the existence of a dispute, the parties must, subject to clause 14, continue to perform the Contract.

15.2 Negotiation

Within 10 Business Days after receiving a notice of dispute, representatives from the

senior management of the parties set out in Item 8 must undertake genuine negotiations with a view to resolving the dispute.

16 Public Interest Disclosures

- 16.1 This clause applies if the Consultant is engaged to provide services on behalf of the City, including where the Consultant is engaged to exercise a function mentioned in section 81(3) of the PID Act.
- 16.2 In this clause 16, words and expressions which are not defined in this Contract, but which have a defined meaning in the PID Act, have the same meaning as in the PID Act.
- 16.3 The Consultant must ensure that all individuals involved in providing services under this Contract are made aware of the following:
- (a) that those individuals are public officials for the purposes of the PID Act;
 - (b) how to make a voluntary public interest disclosure;
 - (c) the City's public interest disclosure policy available on <https://www.cityofsydney.nsw.gov.au/policies/public-interest-disclosure-policy>; and
 - (d) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Act or law.
- 16.4 The Consultant must notify the City of a voluntary public interest disclosure of which the Consultant becomes aware where either:
- (a) the disclosure relates to the City; or
 - (b) the maker of the disclosure is known to be a public official associated with the City.
- 16.5 The Consultant must notify the City of serious wrongdoing committed, or alleged to be committed, by an individual providing services under this Contract.
- 16.6 The Consultant must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of the City or any other agency (as defined in the PID Act).
- 16.7 The Consultant acknowledges that:
- (a) the City has an obligation to take corrective action under section 66 of the PID Act; and
 - (b) the City has a right to terminate this Contract in response to a finding of serious wrongdoing or other misconduct involving the Consultant or an individual providing services under this Contract.
- 16.8 If the Consultant subcontracts this Contract in whole or in part, the Consultant must ensure that the subcontract contains terms binding the person or body engaged under the subcontract

that are equivalent to the terms binding the Consultant in this clause 16.

17 General

17.1 Governing law

- (a) This Contract is governed by the law in force in New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts in New South Wales.

17.2 Council acting as an Authority

- (a) Nothing in this Contract will fetter, limit or restrict in any way the discharge by the City of its obligations or rights under any legislative requirements or as an authority.
- (b) The Consultant will deal with the City as it would with any other authority with respect to obtaining any permits, approvals or licences.

17.3 Notices

- (a) A notice, consent, direction or other communication under this Contract is only effective if it is in writing and either left at the addressee's address or sent to the addressee by mail or email at the addresses (including email addresses) specified in Items 2 and 3.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered, when it has been received by a representative of the addressee at the addressee's address;
 - (ii) if it is sent by mail, 5 Business Days after it is posted; or
 - (iii) if it is sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

17.4 Liability for expenses

Each party must pay its own expenses incurred in connection with executing this Contract.

17.5 Survival

Clauses 3.2, 7.2, 10, 11, 12 (to the extent it relates to professional indemnity insurance), 13, 14.4, 15 and this clause 16.5 survive the expiry or earlier termination of this Contract, together with any other term which by its nature is intended to do so.

17.6 Exclusion of Part 4 of the *Civil Liability Act 2002 (NSW)*

In determining the rights, obligations and liabilities of the parties in any claim arising in relation to this Contract the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* which would otherwise be applicable is expressly excluded to the maximum extent permitted by law.

17.7 Modern Slavery

- (a) For the purposes of this clause:

- (i) **Act** means the Modern Slavery Act 2018 (Cth);
- (ii) **Modern Slavery** has the meaning given to it in section 4 of the Act;
- (iii) **Modern Slavery Statement** has the meaning given in section 12 of the Act;
- (iv) **Reasonable Steps** includes:
 - (A) obtaining awareness of what modern slavery is, the Act and other relevant legislation and guidance in Australia;
 - (B) undertaking activities to identify and address modern slavery risks in the Consultant's operations (including adherence to Australian labour laws, conducting a modern slavery risk assessment and implementing a modern slavery policy);
 - (C) without limiting paragraph (ii) above, consulting with the Consultant's contractors, sub-contractors and suppliers to identify and mitigate modern slavery risks in its supply chain and labour force, including by implementing policies and procedures that reject the exploitation of migrant workers;
- (v) **Reporting Period** means each financial year.
- (b) The Consultant must take Reasonable Steps (having regard to the size and nature of the Consultant's business) to identify, assess and address modern slavery risks within its operations.
- (c) Where the Consultant is required to comply with the Act, a Modern Slavery Statement must be prepared and forwarded to the City for each Reporting Period that falls within the duration of this Contract.
- (d) The Consultant must notify the City in writing as soon as practicable of any Modern Slavery occurrence or human rights violations detected

within its operations and the remedial action taken (or proposed to be taken), including actions to reduce the risk of further occurrence.

- (e) The Consultant agrees that as a result of such an incident or occurrence referred to in 16.7(d) (regardless of whether the Consultant has reported the incident to the City), the City may impose reasonable conditions on the Consultant as a condition of the Consultant continuing to provide the Services to the City under this Contract.
- (f) Clauses 16.7(b) and 16.7(d) are essential terms of this Contract. Any failure by the Consultant to notify the City and to take appropriate remedial action will give the City the right to terminate the Contract by providing notice in writing, effective immediately.
- (g) The Consultant agrees to provide any information reasonably requested by the City in order for the City to comply with its obligations under the Modern Slavery Act 2018 (NSW).

17.8 Electronic execution

The parties acknowledge and agree that this Contract may be executed electronically, and in counterparts, in accordance with the *Electronic Transactions Act 2000* (NSW).

17.9 Purchase orders

The parties agree that, to the extent that any purchase orders issued by the City in connection with the Services, or any other documents provided by the City in relation to the provision of the Services includes or refers to terms and conditions which differ to this Contract, those terms and conditions will be of no legal effect and will not constitute part of the Contract.

Executed as an agreement:

**Signed for and on behalf of THE COUNCIL)
OF THE CITY OF SYDNEY ABN 22 636 550)
790 by its duly authorised officer in the)
presence of:)**

Signature of witness
Electronic signature of:

Name of witness

Dated signed

Signature of authorised officer
Electronic signature of:

Name of authorised officer

Title of authorised officer
Affixed by me on:

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

|
**SIGNED by [INSERT CONSULTANT)
COMPANY NAME] ACN [INSERT ACN] in)
accordance with section 127(1) Corporations)
Act 2001 (Cth):)**

Signature of director
Electronic signature of:

Name of director
Affixed by me on:

Date signed

Signature of director/secretary
Electronic signature of:

Name of director/secretary
Affixed by me on:

Date signed

Or where the Consultant is a company with a sole director:

SIGNED by **[INSERT CONSULTANT
COMPANY NAME]** ACN **[INSERT ACN]** in
accordance with section 127(1) *Corporations
Act 2001* (Cth):)
)
)
)

Signature of sole director/secretary
who state they are the sole company director
and secretary of the Consultant

Electronic signature of:

Name of director/secretary

Affixed by me on:

Date signed

Schedule 1 - Contract information

Item	Description	Details
1.	Commencement Date (clause 1.1)	[#To be inserted following selection of successful Consultant] <i>If blank, the date the City executes the Contract</i>
2.	City	Name: The Council of the City of Sydney ABN:22 636 550 790 Address: Town Hall House, 456 Kent Street, Sydney NSW 2000 Phone: [#To be inserted following selection of successful Consultant] Email: [#To be inserted following selection of successful Consultant]
3.	Consultant	Name: [#To be inserted following selection of successful Consultant] ABN: [#To be inserted following selection of successful Consultant] Address: [#To be inserted following selection of successful Consultant] Phone: [#To be inserted following selection of successful Consultant] Email: [#To be inserted following selection of successful Consultant]
4.	Information Documents (clauses 1.1 & 10.5)	Insert description of documents
5.	City's Representative (clauses 1.1 & 4)	[#To be inserted following selection of successful Consultant]
6.	Completion Date (clauses 1.1, 2.4 & 3.3)	(a) Term: [#To be inserted following selection of successful Consultant] (b) Further Term: [#To be inserted following selection of successful Consultant or put 'Not Applicable' if no optional extension]
7.	Frequency of invoices (clause 9.1(a))	40% payment upon approval of concept 60% payment upon delivery of assets and packaged artwork <i>If neither option is selected, then option (a) applies.</i>
8.	Representative for senior negotiations (clause 15.2)	City: [#To be inserted following selection of successful Consultant] Consultant: [#To be inserted following selection of successful Consultant]
9.	Public liability Insurance (clause 12.1(a)(i))	\$10 million <i>If blank, \$10 million applies</i>

Item	Description	Details
10.	Level of professional indemnity insurance (clause 12.1(a)(iii))	\$5 million <i>If blank, \$5 million applies</i>

Schedule 2 - Fee and schedule of rates for variations

(Clauses 1.1 and 8.2(a))

Part A - Fee (exclusive of GST) and Fee breakdown

Insert table showing Fee breakdown including for any Services during the Further Term if applicable

[#Fee amounts to be inserted following selection of successful Consultant]

The Consultant acknowledges and agrees that the Fee applies to all Services required to be undertaken under this Contract, whether or not there is a specific breakdown for a particular item in this Part A.

Part B – Schedule of rates for variations

[#To be inserted following selection of successful Consultant]

Note: The daily rate is the maximum amount that can be charged in respect of a person performing the Services in a day commencing at midnight and ending 24 hours later. |

Schedule 3 – Schedule of Services

(Clause 1.1)

Fees cover work including but not limited to consultancy, concept, creative direction, finished art, design development, photography, illustration, production services (excluding printing) and proposal for evolution of the design in future years.

- for supply of style guide and creative assets. To include (but not limited to) colour palette, logo, wordmark and graphic and secondary elements and application of motion for video and digital advertising.
- proposal for evolution of the visual identity in subsequent years
- reviewing items created by City of Sydney designers (year 1 only)
- application across the following formats (specifications to be provided to the successful bidder):
 - Street banner
 - Street digital communications pylon
 - Digital advertising (MREC and leaderboard)
 - Website homepage
 - Event guide (12pp DL flyer)