

METRO TASMANIA PTY LTD
(ACN 081 467 281)

and

[NAME OF CONTRACTOR]
(ACN [ACN])

**CONTRACT FOR THE PROVISION OF AN EMPLOYEE
ASSISTANCE PROGRAM**

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DETAILS

Date of Agreement The _____ day of _____ 2019

Parties Metro and Contractor

Metro

Name Metro Tasmania Pty Ltd
ACN 081 467 281
Address 212 Main Road, Moonah in Tasmania 7009
Metro Representative [insert name]
Phone [insert]
Email [insert]

Contractor

Name [insert]
ACN [insert]
Address [insert]
Contractor Representative [insert]
Fax [insert]
Email [insert]

BACKGROUND

- A Metro has undertaken a competitive tender process in order to select a preferred supplier to provide the Services (**the Request for Tender**).
- B The Contractor provides services of a type similar to the Services in the ordinary course of its business and has provided Metro with a tender dated [insert date] in response to the Request for Tender.
- C Metro wishes to appoint the Contractor to provide the Services for Metro on the terms and conditions contained in this Agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the contrary intention is expressed:

Agreement means this Agreement including all schedules and appendices.

Business Day means a day on which authorised deposit-taking institutions (as defined in the *Banking Act 1959* (Cth)) in Hobart are open for general banking business, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date that the Services are to commence, as set out in Item 1.

Completion Date means the date that the Services are to be completed, as specified in Item 2.

Confidential Information means verbal and written information in any form (including paper, electronic or digital form), which is either:

- (a) disclosed by one party to the other, on the basis that it is confidential;
- (b) not generally known; or
- (c) otherwise confidential under any applicable law;

and specifically includes:

- (d) information relating to or about the business affairs and operations of either party;
- (e) information relating to or about any development, marketing or project of either party;
- (f) information relating to or about the operations of Metro; or
- (g) this Agreement, its subject matter and negotiations pertaining to it.

Contract Fee means the contract fee specified in Item 3.

Contract Material means all material brought, or required to be brought, into existence as part of, or for the purposes of, performing the Services, including documents, information and data stored by any means.

Contractor means the party described as such in the Details and, where the context permits, includes the Contractor's employees (including Specified Personnel), authorised sub-contractors and agents.

Contractor Representative means the representative of the Contractor as set out in the Details.

Corporations Act means the *Corporations Act 2001* (Cth).

Date of Completion means the date that the performance of the Services is completed by the Contractor to the satisfaction of Metro, in its absolute discretion, and notified by Metro to the Contractor in writing.

Details means that part of this Agreement headed "Details".

Further Term means the period of two (2) years commencing on the day after the Completion Date and expiring on the second anniversary of the Completion Date.

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth.) and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in this Agreement.

Initial Term has the meaning given in clause 2.1 (Initial Term).

Insolvency Event means the occurrence of any of the following events in relation to either party:

- (a) a party commits any act which is defined as "an act of bankruptcy" under the *Bankruptcy Act 1966* (Cth), regardless of whether or not the party is an individual;
- (b) a garnishee notice, or a notice under section 120 of the PPSA, is given to:
 - (i) a debtor of that party; or
 - (ii) any other person that otherwise owes or may owe money at any time to that party,in connection with any money that the party is said to owe;
- (c) an application is made to a court for a provisional or final order declaring a party provisionally or finally bankrupt or insolvent;
- (d) a special resolution is passed to wind up the party;
- (e) a party:
 - (i) has a controller (as defined in the Corporations Act) appointed;
 - (ii) is in liquidation or provisional liquidation,
 - (iii) is under administration or wound up; or
 - (iv) has had a receiver appointed to any part of its property;

- (f) a mortgagee, charge or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the party;
- (g) the party applies for, consents to, or acquiesces in the appointment of a trustee or receiver in respect of the party or any of its property;
- (h) the party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act) in respect of any part of the property of the party;
- (i) the party is or states that it is unable to pay its debts when they fall due;
- (j) except to reconstruct or amalgamate while solvent on terms approved by the other party, the party enters into or resolves to enter into a scheme of arrangement, compromise or re-construction with its creditors (or any class of them) or with its members (or any class of them) or proposes a reorganisation, re-arrangement, moratorium or other administration of the party's affairs;
- (k) the party is the subject of an event described in section 459(C)(2)(b) of the Corporations Act; or
- (l) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the party.

Intellectual Property means all copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and know-how and all other intellectual property rights resulting from intellectual activity.

Item means an item in Schedule 1 of this Agreement.

Legislative Requirements means Acts, Ordinances, regulations, by-laws, orders, awards and proclamations whether Commonwealth, State or local.

Metro means the party described as such in the Details and, where the context admits, includes Metro's employees, sub-contractors and agents.

Metro Material means any material provided by, or on behalf of, Metro to the Contractor for the purpose of this Agreement, including documents, equipment, information and data stored by any means.

Metro Representative means the representative of Metro as set out in the Details.

Moral Rights means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed; or

(c) a right of integrity of authorship;

granted to creators under the *Copyright Act 1968* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Proposed Personnel means any personnel proposed by the Contractor to replace any Specified Personnel under clause 5 (Personal Performance).

Services means the services described in Schedule 2.

Specified Personnel means the personnel of the Contractor who will carry out of the Services as set out in Item 6.

Travel Expenses mean the travel expenses to be paid by Metro in accordance with Item 4.

1.2 Interpretation

In this Agreement, unless the contrary intention is expressed:

- (a) a reference to this Agreement includes its schedules, appendices, annexures and attachments, and any variation or replacement of any of it;
- (b) a reference to a statute, ordinance, code or other legislative instrument includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and conversely;
- (d) a reference to a gender includes reference to each other gender;
- (e) a reference to a person includes:
 - (i) an individual, a firm, a body corporate, an unincorporated association or a statutory or responsible authority or other authority, as constituted from time to time; and
 - (ii) the person's executors, administrators, successors and permitted assigns;
- (f) an agreement, representation or warranty by, or for, two or more persons binds, or is for their benefit, together and separately;
- (g) a covenant forbidding a person from doing something, also forbids that person from authorising or allowing another person to do it;
- (h) a reference to anything (including an amount) is a reference to all or any part of it, and a reference to a group of persons is a reference to any one or more of them;

- (i) a reference to a clause, paragraph, schedule, annexure or appendix, is a reference to a clause, paragraph, schedule, annexure or appendix in or to it;
- (j) a reference to “writing” includes a reference to printing, typing, lithography, photography and other methods of representing or reproducing words, figures, diagrams and symbols in a tangible and visible form;
- (k) a reference to a day is to be interpreted as the period of time starting at midnight and ending twenty-four (24) hours later;
- (l) a reference to a month or a year means a calendar month or a calendar year respectively;
- (m) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (n) a term of inclusion is not to be interpreted to be a term of limitation;
- (o) all references to monetary sums in it, or to be made under it, are to Australian currency;
- (p) a reference to the payment of money within a specified time, means the full crediting and clearance of any cheque or electronic transfer into the payee’s account within that time;
- (q) it operates under Tasmanian time;
- (r) if the day on or by which an act, matter or thing is to be done under it is not a Business Day, then that act, matter or thing must be done no later than the next Business Day;
- (s) an uncertainty or ambiguity in the meaning of a provision is not to be interpreted against a party only because that party prepared the provision; and
- (t) headings are included for convenience only, do not form part of it, and are not to be used in its interpretation.

1.3 Parties

A party which is a trustee of a trust is bound in its personal capacity and in its capacity as a trustee.

2 TERM

2.1 Initial Term

This Agreement commences on the Commencement Date, and subject to clauses 2.2 (Further Term) and 15 (Termination), continues until the Completion Date (**the Initial**

Term).

2.2 Further Term

- (a) Subject to clause 2.2(b), Metro may, after consideration of those matters detailed in clause 2.3 (Metro Considerations) extend the Initial Term of this Agreement for a Further Term by notice in writing delivered to the Contractor (**the Extension Notice**) with such notice to be delivered to the Contractor not less than forty-five (45) days prior to the Completion Date.
- (b) An extension of the Initial Term of this Agreement becomes effective when the Extension Notice is received by the Contractor.
- (c) Any extension will be on the same terms and conditions, as set out in this Agreement, with the exception of:
 - (i) this clause 2.2 together with clauses 2.3 and 4.4 being deleted; and
 - (ii) any adjustment in respect of the Contract Fee pursuant to clause 4.4 (Fee for Further Term).

2.3 Metro Considerations

In determining if the Initial Term is to be extended Metro will consider:

- (a) the performance of the Contractor in delivering the Services during the Initial term;
- (b) any adjustment in respect of the Contract Fee proposed by the Contractor pursuant to clause 4.4(a) (Fee for Further Term); and
- (c) such other matters as Metro, in its absolute discretion, deems relevant.

3 CONTRACTOR TO PROVIDE SERVICES

3.1 Obligation of Contractor

The Contractor shall ensure that the Services are provided:

- (a) by employees, contractors, agents or other persons of the Contractor who:
 - (i) are appropriately qualified and licensed to conduct or provide the Services;
 - (ii) are suitably trained, fit, healthy and experienced in rendering the Services; and
 - (iii) have been made aware of (and will comply with) the provisions of this Agreement which apply to them;

- (b) with the due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in providing services similar to the Services;
- (c) from (and including) the Commencement Date to (and including) the Completion Date, or by such other date as Metro may direct by giving notice to the Contractor in writing;
- (d) in accordance with Schedule 2;
- (e) in accordance with all Legislative Requirements applicable to the Services; and
- (f) in accordance with Metro's Code of Conduct and any other reasonable directions.

3.2 Step-in rights

- (a) Without prejudice to any other rights or remedies that Metro may have, if the Contractor fails to perform any part of the Services in accordance with this Agreement, and fails to rectify that non-performance within 5 days of receiving notice to do so from Metro (**Non-Performed Services**), Metro may perform, or have performed, the Non-Performed Services and the Contractor indemnifies Metro from and against all costs incurred by Metro in connection with having the Non-Performed Services performed in accordance with this clause 3.2.
- (b) The Contractor will not be entitled to receive any payment in relation to the Non-Performed Services.

4 PRICING AND PAYMENT

4.1 Fee

Subject to the Contractor complying with its obligations under this Agreement, Metro must pay to the Contractor the Contract Fee, calculated in accordance with the schedule of rates for the Services set out in Schedule 3 (Rates for Services) and as adjusted pursuant to clause 4.4 (Fee for Further Term).

4.2 Travel Expenses

Subject to the Contractor complying with its obligations under this Agreement, Metro must pay to the Contractor the Travel Expenses in accordance with Item 4.

4.3 Fixed Price

Unless adjusted in accordance with clause 4.4 (Fee for Further Term) or] otherwise

expressly agreed by Metro in writing, the Contract Fee is fixed and not subject to rise and fall or any other adjustment, notwithstanding any change in the cost of performing the Services for the Contractor.

4.4 Fee for Further Term

- (a) No later than sixty (60) days prior to the Completion Date the Contractor must notify Metro of any adjustment in respect of the Contract Fee that would apply to the Further Term if Metro exercised its option to extend the Initial Term pursuant to clause 2.2 (Further Term).
- (b) If Metro exercises the option to extend the Initial Term of this Agreement pursuant to clause 2.2 (Further Term) and accepts the adjusted Contract Fee proposed by the Contractor pursuant to clause 4.4(a), then the adjusted Contract Fee will apply as of and from the first day of the Further Term.

4.5 Invoices

- (a) Within 10 Business Days of the end of a calendar month, the Contractor will issue Metro with a tax invoice for the total cost of Services performed by the Contractor in the previous month calculated in accordance with the schedule of rates set out in Schedule 3 (Rates for Services) including any Travel Expenses.
- (b) All payments under this Agreement will be made by Metro in accordance with the timeframe specified in Item 5, subject to:
 - (i) the invoice being a valid tax invoice for the purposes of the GST Act;
 - (ii) the invoice including details of the Services performed (if any), and the associated dates of performance, up to the date of invoice;
 - (iii) where the invoice includes a claim for Travel Expenses, all receipts for Travel Expenses being attached to the invoice;
 - (iv) the invoice setting out a separate amount for GST; and
 - (v) Metro being satisfied that the Contractor has complied with all of its obligations under this Agreement.

5 PERSONAL PERFORMANCE

5.1 Specified Personnel

The Services must be personally undertaken only by the Specified Personnel.

5.2 Change in Specified Personnel

- (a) The Contractor must advise Metro in writing as soon as the Contractor becomes aware of any of the Specified Personnel being unavailable to carry out the Services.
- (b) If clause 5.2(a) (Change in Specified Personnel) applies, the Contractor must:
 - (i) notify Metro of any Proposed Personnel;
 - (ii) if requested by Metro, provide Metro with a resume and/or curriculum vitae for each Proposed Personnel; and
 - (iii) obtain Metro's consent in relation to any Proposed Personnel;prior to appointing any Proposed Personnel to carry out any part of the Services.
- (c) Once Metro gives consent under clause 5.2(b)(iii) (Change in Specified Personnel), the Contractor must appoint any Proposed Personnel that Metro has consented to for performance of the Services.
- (d) The Contractor must continue to follow the process in clause 5.2(b) (Change in Specified Personnel) until any Proposed Personnel required are acceptable to Metro and appointed by the Contractor.
- (e) Any replacement of Specified Personnel by the Contractor, or provision of Proposed Personnel to Metro, under this clause 5.2 will be performed by the Contractor at its cost.

5.3 Contractor's Specified Personnel

The Contractor must ensure that each of its Specified Personnel:

- (a) are appropriately qualified and licensed to conduct the Services; and
- (b) are aware of the terms and conditions of this Agreement, and perform the Services in accordance with this Agreement.

5.4 Responsibility of Contractor

- (a) The Contractor is fully responsible for the performance of the Services under this Agreement and will not be relieved from that responsibility due to:
 - (i) acceptance by Metro of the Specified Personnel; or
 - (ii) payment by Metro under this Agreement.
- (b) The Contractor agrees to supervise the performance of each of the Specified Personnel and will ensure that such personnel comply at all times with the obligations of the Contractor under this Agreement.

6 WORKPLACE HEALTH AND SAFETY

6.1 Access to Site

Metro will provide to the Contractor access to any site owned, leased or otherwise controlled by Metro (**Site**) as is reasonably necessary for the Contractor to carry out the Services but subject to:

- (a) the requirements contained in clauses 6.2 (Workplace health and safety obligations) and 9 (Insurance);
- (b) the Services performed on the Site must be performed within Metro's normal working hours notified by Metro to the Contractor;
- (c) Services performed on the Site must be performed in accordance with any requirements specified in Schedule 2; and
- (d) the Contractor must make good any damage caused to the Site by the Contractor or its employees, agents or subcontractors.

6.2 Workplace health and safety obligations

The Contractor:

- (a) acknowledges and agrees that during the Term (whether or not the performance of the Services requires the Contractor to enter the Site), the Contractor must, and must ensure that all of the Specified Personnel, comply with all applicable Legislative Requirements in relation to workplace health and safety at all times while on the Site or performing the Services;
- (b) must provide to Metro all things necessary to enable Metro to meet its obligations under any applicable workplace health and safety Legislative Requirements;
- (c) agrees that the Contractor has received from Metro all relevant information held by Metro that may reasonably be required by the Contractor to discharge the duties imposed on the Contractor by any applicable workplace health and safety Legislative Requirements;
- (d) must notify Metro in writing where there is a conflict under the workplace health and safety Legislative Requirements and any other requirements under this Agreement and must consult, cooperate and coordinate with Metro or other applicable duty holders to find an appropriate resolution;
- (e) must provide to Metro, when required by Metro, evidence satisfactory to Metro of the Contractor's compliance with any applicable Legislative Requirements;
- (f) must, as far as is reasonably practicable, consult, cooperate and coordinate

its activities with Metro or any other applicable duty holders, in all work, health and safety matters connected, arising out of, or associated with providing the Services and this Agreement;

- (g) must promptly notify Metro of any security breaches, accident, property or environmental damage or notifiable incident pursuant to any applicable Legislative Requirements in relation to workplace health and safety, which occur during the course of performing the Services; and
- (h) must not do anything which may place Metro in breach of any applicable workplace health and safety Legislative Requirements and other Legislative Requirements.

7 LIAISON AND REPORTING

The Contractor must liaise with, and report to the Metro Representative, or to the Metro Representative's replacement if at any time Metro notifies the Contractor of such replacement, as and when the Metro Representative or their replacement reasonably requires during the Term.

8 INDEMNITIES

8.1 Contractor indemnifies Metro

The Contractor is liable for and indemnifies Metro against all loss (including legal costs and expenses on a solicitor/own client basis), liability (including for any loss or damage to property, injury or death to any person) and claims by any person, arising directly or indirectly from or in connection with any one or more of the following:

- (a) the performance of the Services;
- (b) the breach of any provision of this Agreement by the Contractor;
- (c) the breach of any Legislative Requirements by the Contractor; or
- (d) the negligence of the Contractor in relation to performance of the Services, except to the extent that any loss, liability or claim is caused by the negligence or default of Metro.

8.2 Nature of indemnities

The indemnities in clause 8.1 (Contractor indemnifies Metro):

- (a) are continuing obligations of the Contractor, separate and independent from any other obligations; and

- (b) survive the expiry or termination (for any reason) of this Agreement.

9 INSURANCE

9.1 Contractor to insure

The Contractor must take out and maintain for the Term of this Agreement (and in the case of professional indemnity insurance, for the Term of this Agreement and a period of six (6) years after the Date of Completion) the following insurance policies:

- (a) public liability insurance for at least the amount specified in Item 7 (with Metro noted as an interested party);
- (b) professional indemnity insurance for at least the amount specified in Item 8 (with Metro noted as an interested party);
- (c) workers' compensation insurance as required by law; and
- (d) any other insurance which Metro (acting reasonably) may require.

9.2 Contractor to notify Metro

The Contractor must notify Metro in writing as soon as practicable:

- (a) if an insurance policy referred to in clause 9.1 (Contractor to insure) lapses, is cancelled or is materially altered; or
- (b) if the Contractor claims, or becomes entitled to claim, under such an insurance policy for something related to delivering the Services.

9.3 Evidence of insurance

The Contractor must provide to Metro a certificate of currency for each insurance policy required under clause 9.1 (Contractor to insure):

- (a) before the Contractor starts to carry out the Services; and
- (b) on Metro's request.

9.4 Metro may insure

If the Contractor fails to comply with any of its obligations under this clause 9, Metro may do everything necessary to comply with such obligations and recover, upon demand, all expenses incurred in doing so, from the Contractor.

9.5 Contractor not to prejudice insurance

- (a) The Contractor must not do anything or allow anything to be done, in respect of this Agreement, which may affect Metro's rights under any insurance policy or which may increase any insurance premium payable by Metro.

- (b) If the Contractor does anything which increases the amount of any insurance premium payable by Metro, then the Contractor must, upon demand, pay Metro the amount by which Metro's premium has been increased.

10 CONTRACT MATERIAL

10.1 Ownership

- (a) Ownership of, and all Intellectual Property rights in, any Contract Material vests in Metro on creation.
- (b) The Contractor will do all acts and execute all documentation (and require its employees and contractors to do all acts and execute all documentation) required to vest title in the Contract Material in Metro.

10.2 Existing Material

Clause 10.1 (Ownership) does not affect the ownership or Intellectual Property rights in any material (**Existing Material**) developed by the Contractor prior to the creation of this Agreement or independently of the performance of the Services under this Agreement.

10.3 Licence

- (a) Metro grants to the Contractor a non-exclusive, royalty-free licence for the Term to use the Contract Material only for the purposes of performing its obligations under this Agreement.
- (b) The Contractor grants to Metro a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-licence) to use any Existing Material in conjunction with the Contract Material.

10.4 Warranty

The Contractor warrants that:

- (a) the supply of the Services to Metro and the licence granted by the Contractor pursuant to clause 10.3(b) (Licence) does not infringe the Intellectual Property rights (including Moral Rights) of any party; and
- (b) it is entitled, and will be entitled at all relevant times, to deal with the Intellectual Property rights as required under this clause 10.

10.5 Contractor must return Contract Material

On the expiration or earlier termination of this Agreement, the Contractor must (at the Contractor's cost) immediately deliver all Contract Material in its possession or control to Metro and if necessary, transfer any Intellectual Property forming part of that

material to Metro.

11 METRO MATERIAL

11.1 Metro Material remains property of Metro

Metro Material remains the property of Metro throughout the Term, and on the expiration or earlier termination of this Agreement, the Contractor must immediately return any Metro Material given to the Contractor, or in the Contractor's possession, to Metro. The Contractor must pay the cost of delivery for such return.

11.2 Third party rights in Metro Material

Metro must inform the Contractor of any Metro Material in which third parties hold the Intellectual Property and any conditions or limitations attaching to the use of that material. The Contractor must use Metro Material only under the conditions and limitations to which it is subject.

11.3 Contractor must keep Metro Material safe

The Contractor is responsible for the safe keeping and maintenance of Metro Material throughout the Term.

12 CONFIDENTIALITY

12.1 Confidential Information

Both parties undertake, in respect of any Confidential Information:

- (a) not to disclose such information to any person, subject to clause 12.2 (Disclosure) without the prior written consent of the disclosing party, unless and until:
 - (i) such information becomes generally available to the public in printed publications in general circulation in Australia, through no action, default or other breach by the recipient party; or
 - (ii) the recipient party is required by law to make disclosure, and then only to such extent;
- (b) to keep such documents and any other material containing or incorporating any Confidential Information, in safe custody;
- (c) not to make copies or take extracts of any Confidential Information;
- (d) to immediately return to the disclosing party, all Confidential Information, upon the termination of this Agreement; and

- (e) to delete or erase any Confidential Information stored by the recipient party in any computer, electronic, or other information retrieval system, records or database, if requested by the disclosing party.

12.2 Disclosure

Each party may, notwithstanding clause 12.1 (Confidential Information), disclose Confidential Information to such of its representatives who may need such information and only to the extent so needed, to enable such party to fulfil its obligations under this Agreement.

12.3 Advertising and Announcement

The Contractor may not, without the prior written consent of Metro, advertise or announce or allow to be advertised or announced, that the Services have been or will be supplied or rendered to Metro.

12.4 Contractor's employees to comply

The Contractor must ensure that all of its employees, agents and sub-contractors who have access to Confidential Material, are aware of, and comply with, the obligations under this clause 12.

12.5 Privacy obligations preserved

Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cth).

12.6 Survival

This clause 12 survives the termination (for any reason) or expiry of this Agreement.

13 ACCESS

At all reasonable times, the Contractor must:

- (a) give to Metro or to any person authorised by Metro, access to any premises where the Services are being undertaken; and
- (b) allow those persons to inspect the performance of the Services and any Metro Material, Contract Material or other material relevant to the Services.

14 NEGATION OF EMPLOYMENT AND AGENCY

14.1 No representation by Contractor, sub-contractors etc

The Contractor:

- (a) must not represent itself; and

- (b) must ensure that its sub-contractors, employees and agents do not represent themselves;

as being sub-contractors, employees or agents of Metro.

14.2 Contractor remains independent contractor

Despite any degree of direction, control or supervision that Metro directly or indirectly exercises over or in respect of the Contractor, or the Contractor's employees, agents or sub-contractors in the discharge of duties, obligations, and covenants under this Agreement, the Contractor is taken to be and remains an independent contractor of Metro.

15 TERMINATION

15.1 Suspension

Metro may by notice to the Contractor suspend the provision of the Services and payment for Services under this Agreement if:

- (a) the Contractor has failed to complete any Services within the timeframes specified by Metro to the Contractor during the course of the Agreement; or
- (b) the Contractor is otherwise in default under this Agreement

and such non-compliance is not remedied by the Contractor within 14 days after Metro gives the Contractor notice to remedy it.

The rights of Metro under this clause 15.1 are without prejudice to Metro's rights to take action under clause 15.3 (Default).

15.2 Reinstatement

Metro will only reinstate the Services if Metro is satisfied (in its discretion) that the Contractor has taken action to rectify the cause of the suspension under clause 15.1 (Suspension).

15.3 Default

Either party (the **Non-Defaulting Party**) may terminate this Agreement by giving the other party (the **Defaulting Party**) notice if:

- (a) the Defaulting Party repudiates its obligations under this Agreement;
- (b) the Defaulting Party does not comply with an obligation under this Agreement and, in the Non-Defaulting Party's reasonable opinion:
 - (i) the non-compliance can be remedied, but the Defaulting Party does not remedy it within fourteen (14) days after the Non-Defaulting Party

- gives the Defaulting Party notice to remedy it; or
- (ii) the non-compliance cannot be remedied; or
- (c) an Insolvency Event occurs in respect of the Defaulting Party.

15.4 Indemnity

If this Agreement is terminated under clause 15.3 (Default):

- (a) the Defaulting Party indemnifies the Non-Defaulting Party against any liability or loss arising and any cost incurred (whether before or after termination of this Agreement) in connection with the Defaulting Party's breach of this Agreement and the termination of this Agreement; and
- (b) the Non-Defaulting Party must take reasonable steps to mitigate its loss.

15.5 Reimbursement

Where, before termination of this Agreement under clause 15.3 (Default), Metro has made any payment to the Contractor in advance, the total amount of that advance payment must be repaid by the Contractor to Metro on termination and, if not repaid, is recoverable by Metro from the Contractor as a debt.

15.6 Rights not prejudiced

If this Agreement is terminated under clause 15.3 (Default):

- (a) the parties are relieved from future performance of this Agreement, without prejudice to any right of action that has accrued prior to the date of termination; and
- (b) rights to recover damages are not affected by the termination.

15.7 Metro may terminate without showing cause after notice

Metro may terminate this Agreement without showing cause, by giving ten (10) Business Days' written notice to the Contractor.

15.8 Termination without cause

If Metro terminates this Agreement under clause 15.7 (Metro may terminate without showing cause after notice) then Metro must pay the Contractor within a reasonable time:

- (a) for Services rendered before the effective date of termination; and
- (b) if the Contractor is not then in breach of this Agreement, a fair and just proportion of other liabilities or expenses that the Contractor:
 - (i) has reasonably and properly incurred to provide the Services; and

- (ii) cannot otherwise recover or avoid.

Metro is not liable to make any other payment for terminating under clause 15.7 (Metro may terminate without showing cause after notice).

15.9 Contractor to reserve a right of termination in sub-contracts

The Contractor must in each sub-contract or order placed with any sub-contractor for the purposes of this Agreement, reserve a right of termination to take account of Metro's right of termination under clause 15.7 (Metro may terminate without showing cause after notice).

15.10 Discontinuing services upon termination

Upon receipt of a notice to terminate this Agreement under clause 15.7 (Metro may terminate without showing cause after notice) the Contractor must:

- (a) stop work as specified by that notice; and
- (b) take all reasonable steps to minimise loss resulting from the termination and to protect Metro Material and Contract Material.]

16 WAIVER AND VARIATION

- (a) No failure by a party to exercise, nor any delay in exercising, a right, power or remedy operates as a waiver.
- (b) A single or partial exercise of a right, power or remedy does not preclude any other, or further, exercise of that, or any other right, power or remedy.
- (c) A waiver is neither valid nor binding on the party granting it, unless made in writing signed by the party to be bound by the waiver.
- (d) An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

17 GOVERNING LAW AND JURISDICTION

17.1 Law of Tasmania

The law of Tasmania governs this Agreement, and the parties submit to the jurisdiction of the Courts of Tasmania.

17.2 Proceedings issued under or about this Agreement

Any proceedings issued against Metro under, or about, this Agreement, must be instituted either:

- (a) in a Tasmanian court; or

- (b) in the Federal Court, from the Tasmanian Registry of that court.

18 RESOLUTION OF DISPUTES

18.1 Notice

If a party has a dispute or complaint against the other, that party (**Notifying Party**) must notify the other party in one of the ways described in clause 21 (Notices). The Notifying Party must ensure that the notice contains specific detail identifying the nature of the dispute or complaint.

18.2 Best endeavours to resolve

Both parties within 21 days of the delivery of a dispute notice will meet and use their best endeavours to resolve the dispute or complaint to the mutual satisfaction of both parties as soon as possible.

18.3 Arbitration

- (a) If the parties are not able to reach a resolution of the dispute or complaint within a reasonable period of time (in any event being no more than 21 days after the date of receipt of the notice of the dispute or complaint), then the dispute or complaint must be submitted for arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Fast Track Arbitration Rules (**Referral of Dispute**).
- (b) The parties must consult with a view to selecting a single arbitrator but in the event they are unable to agree on the appointment of a single arbitrator within 10 days of the Referral of Dispute, the matter will be referred to an arbitrator to be appointed by the President (or their nominee) for the time being of the Law Society of Tasmania.
- (c) The decision of the arbitrator must be final and conclusive and binding on the parties and the parties must sign all documents and do all things necessary to give effect to the decision of the arbitrator.
- (d) Each party must bear their own costs of and incidental to the arbitration, except where stipulated to the contrary by the arbitrator.
- (e) For disputes or complaints which involve a claim for less than \$50,000.00, arbitration will take place by way of written submissions supported by relevant documents alone unless both parties agree otherwise.

18.4 Exceptions

Nothing in this clause 18 prevents:

- (a) either party from seeking urgent interlocutory relief;
- (b) Metro from seeking recovery for any claim that Metro reasonably considers to be a monetary claim,

from a Court of competent jurisdiction or by such other manner as is appropriate in the circumstances; or

- (c) Metro from exercising its rights to suspend or terminate this document under clause 15 (Termination).

18.5 Continuing obligations

The parties agree to continue to perform their obligations under this document, notwithstanding the existence of a dispute or complaint.

18.6 Survival

This clause 18 survives the expiry or termination (for any reason) of this Agreement.

19 SUB-CONTRACTING AND ASSIGNMENT

19.1 Contractor not to sub-contract or assign

Without Metro's prior written consent, the Contractor must not subcontract, assign, part with or be relieved from, any rights, powers or obligations arising under this Agreement.

19.2 Contractor remains responsible

Unless Metro agrees otherwise in writing, the Contractor remains responsible for the performance of the Services despite that the Contractor has sub-contracted or assigned the performance of any part of the Services.

19.3 Sub-contractors must have insurance

If Metro gives written consent under clause 19.1 (Contractor not to sub-contract or assign), then the Contractor must ensure that all sub-contractors have in place, and keep current, before carrying on any part of the Services, the same insurances as the Contractor is required to have in place under clause 9.1 (Contractor to insure).

19.4 No further sub-contracting

No sub-contractor of the Contractor may further subcontract any of the Services.

20 CONFLICT OF INTEREST

The Contractor warrants that as at the date of this Agreement, no conflict, or risk of conflict, of interest exists, or is likely to arise, in the performance of the Services and that if, during

the Term, a conflict, or risk of conflict, of interest arises, then the Contractor will notify Metro immediately in writing of that conflict, or risk of conflict, of interest.

21 NOTICES

21.1 How to give a notice

A notice or other communication to be given or made under this Agreement must be in writing and addressed to the recipient party at their address, or to their email address or fax number (as the case may require) outlined in the Details.

21.2 How to serve a notice

A notice or other communication is taken to have been duly served:

- (a) in the case of hand delivery - when delivered;
- (b) if sent by prepaid post - on the third Business Day after the date of posting;
- (c) if sent by facsimile transmission (if the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) - upon completion of sending if completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9.00 am. on the next Business Day in that place; or
- (d) if sent by email – at the time the email message is sent, unless:
 - (i) the sender receives and automated email notification that the email transmission has failed or has been delayed within twelve (12) hours of sending the notice; or
 - (ii) the sender receives automated email notification to the effect that the recipient is not likely to receive the notice until a later date, which will then become the deemed date of receipt.

However, if the intended recipient has notified a changed postal address, changed email address or changed fax number, then the communication must be to that postal address or fax number.

21.3 Sufficiency of notice

A notice or other communication to be given or made under this Agreement is sufficient if:

- (a) in the case of Metro, it is under the hand of Metro or its agents or solicitors; and
- (b) in the case of the Contractor, it is under the hand of the Contractor or its agent

or solicitors.

21.4 Signatures

A printed or copied signature is sufficient when sending a demand, written consent or other communication by facsimile transmission or by attachment to an email.

22 SEVERANCE

22.1 Reading down, severance

- (a) If a provision of this Agreement or its application to a person or circumstance is or becomes void, invalid, illegal or unenforceable, then so far as possible, the provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable.
- (b) If a provision, or part of it, cannot be so read down, then the provision, or part of it, will be taken to be void and severable and the remaining provisions of this Agreement will not be affected or impaired in any way.

22.2 Altering the basic nature of this Agreement

Clause 22.1 (Reading down, severance) has no effect if the severance alters the basic nature of this Agreement, or is contrary to public policy.

23 METRO'S RIGHTS

An express statement of a right of Metro under this Agreement is without prejudice to any other right of Metro expressly stated in this Agreement or arising at law.

24 INCONSISTENCY

If something in a schedule or an attachment to this Agreement is inconsistent with a clause of this Agreement, then the latter prevails.

25 GOODS AND SERVICES TAX

25.1 GST Exclusive

Unless otherwise stated in this Agreement, all amounts payable by one party to another party under this Agreement are exclusive of GST.

25.2 Liability for GST

Subject to any other provision of this Agreement expressing a contrary intention, if GST is imposed on a supply made under it, then the party paying for the supply must

pay the amount of the GST to the party making the supply, at the same time as, and in addition to, the amount payable for the supply.

25.3 Tax invoice

A party making a taxable supply under this Agreement must give the recipient a tax invoice for the taxable supply when that supply is made.

26 ENTIRE AGREEMENT

26.1 Entire agreement

The covenants, warranties, agreements and provisions contained in this Agreement comprise the entire agreement between the parties about its subject matter.

26.2 Nothing to be implied

No other covenant, warranty, disclaimer, agreement or provision is to be implied into this Agreement or to arise between the parties as a collateral or other agreement because of a promise, representation, warranty or undertaking given or made by or on behalf of one party to another before or after it was signed. All parties expressly deny and disclaim the existence of any such implication, or collateral or other agreement.

26.3 Contractor's terms

The Contractor's standard or usual terms and conditions of supply are expressly excluded with the effect that this Agreement exclusively applies and constitutes the entire agreement between the parties.

27 CONTINUING OBLIGATIONS

The termination or expiration of this Agreement does not act to extinguish a debt, obligation or liability of either of the parties which has accrued under this Agreement and in particular the provisions, rights and obligations described in the following clauses will survive and continue to apply:

- (a) 8 (Indemnities),
- (b) 9 (Insurance) (to the extent that it relates to professional indemnity cover),
- (c) 12 (Confidentiality),
- (d) 15 (Termination),
- (e) 18 (Resolution of disputes),
- (f) 20 (Conflict of interest), and

- (g) 25 (Goods and Services Tax).

28 COUNTERPARTS

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts will be taken to constitute one agreement.
- (c) The parties agree that if necessary, they may exchange faxed copies of counterparts, and those faxed copies will be taken to constitute one agreement. The parties must exchange executed originals as soon as possible afterwards.

29 PERSONAL INFORMATION PROTECTION

29.1 Application of clause

This clause 29 applies only if the Contractor deals with Personal Information in the course of delivering the Services.

29.2 Personal Information Custodian

If the Contractor is a Personal Information Custodian then the Contractor must:

- (a) notify Metro immediately if the Contractor becomes aware of a breach, or possible breach, of the *Personal Information Protection Act 2004* (Tas) (“PIP Act”); and
- (b) ensure that the Contractor’s employees, agents and sub-contractors who are required to deal with Personal Information in the course of delivering the Services are aware of, and comply with, the Contractor’s obligations under this clause.

29.3 Breach of PIP Act

A breach of the PIP Act by the Contractor is a breach of this Agreement that entitles Metro to terminate it under clause 15.3 (Default).

29.4 Terms defined in PIP Act

In this clause, “Personal Information” and “Personal Information Custodian” have the same meanings as in the PIP Act.

SIGNING PAGE

No legally binding relationship will exist between Metro and the Contractor unless and until this Agreement has been executed between the parties.

EXECUTED as an Agreement

EXECUTED by **METRO TASMANIA PTY LTD**)
(ACN 081 467 281) pursuant to section 127 of the)
Corporations Act 2001 by:

.....
Director Signature

.....
Director Full Name (print)

.....
*Director/*Secretary Signature

.....
*Director/*Secretary Full Name (print)

(* please strike out inapplicable *if Sole Director/Secretary write 'Sole')

EXECUTED by **[CONTRACTOR] (ACN [ACN])** pursuant)
to section 127 of the Corporations Act 2001 by:)

.....
Director Signature

.....
Director Full Name (print)

.....
*Director/*Secretary Signature

.....
*Director/*Secretary Full Name (print)

(* please strike out inapplicable *if Sole Director/Secretary write 'Sole')

SCHEDULE 1

Item 1	<u>COMMENCEMENT DATE</u> Clauses 1.1 (Definitions) and 1.3 (Term)	1 May 2019
Item 2	<u>COMPLETION DATE</u> Clauses 1.1 (Definitions) and 1.3 (Term)	30 April 2022
Item 3	<u>CONTRACT FEE</u> Clause 4.1 (Fee)	Fee calculated in accordance with the schedule of rates for the Services set out in Schedule 3 (Rates for Services).
Item 4	<u>TRAVEL EXPENSES</u> Clauses 1.1 (Definitions) and 4.2 (Travel Expenses)	[Note: insert type/s of Travel Expenses and amounts which will be covered by Metro (if any).]
Item 5	<u>TIMEFRAME FOR PAYMENT</u> Clause 4.5 (Invoices)	Thirty (30) days after the receipt by Metro of a valid tax invoice for payment in accordance with clause 4.5 (Invoices).
Item 6	<u>SPECIFIED PERSONNEL</u> Clauses 1.1 (Definitions) and 5.1 (Specified Personnel)	[Note: insert names of specific personnel of the Contractor who are to carry out the Services]
Item 7	<u>PUBLIC LIABILITY INSURANCE</u> Clause 9.1(a) (Contractor to insure)	TEN MILLION DOLLARS (\$10,000,000.00) for each individual claim or series of claims arising out of a single occurrence, or for such other sum as Metro reasonably determines and notifies to the Contractor in writing.
Item 8	<u>PROFESSIONAL INDEMNITY INSURANCE</u> Clause 9.1(b) (Contractor to insure)	TEN MILLION DOLLARS (\$10,000,000.00) for any one claim or series of claims arising out of a single occurrence or for such other sum as Metro reasonably determines and notifies to the Contractor in writing.

SCHEDULE 2

Services

The Services to be provided by the Contractor are as follows:

[insert – reflective of the RFT Specifications and the Contractor’s Tender]

DRAFT

SCHEDULE 3

Rates for Services

[Insert the schedule of rates for the Services]

DRAFT