



# **REQUEST FOR TENDER (RFT)**

**FOR THE PROVISION OF  
ASIA REGIONAL DIGITAL MARKETING  
SERVICES**

**FOR**

**Australian Catholic University Limited  
ABN 15 050 192 660**

**RFT No. – ACU-RFT-037**

**Closing Date – 22 October 2024**

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## REQUEST FOR TENDER FOR THE PROVISION OF SERVICES

### SECTION A - INTRODUCTION AND CONDITIONS OF TENDERING

Your tender is invited for the provision of the Services detailed in this Request for Tender.

#### **A1. Background to the Request for Tender**

ACU's Global Engagement unit has specific responsibility for the recruitment, admission, and ongoing support of international students at ACU in addition to managing global partnership collaboration, international network coordination and inbound and outbound exchange and study abroad programs. Global Engagement has institutional leadership for managing and supporting achievement of the university's global goals, plans and aspirations across the three key institutional activities of teaching, research and engagement.

The Global Engagement team is geographically diverse, with staff located across various ACU campuses in Australia and in key overseas markets.

The successful agency could be based onshore in Australia, or offshore in a country in Asia, as long as the agency can accommodate to support ACU during core Australian business hours, and has an assigned day-to-day contact point and/or project manager who is fluent in English to liaise with the ACU team.

#### **A2. Preface**

In alignment with *ACU Vision 2033*'s focus on international student recruitment and diversification, ACU is seeking a qualified digital marketing agency. We require a partner with demonstrably successful experience in supporting higher education institutions to recommend digital marketing strategies and execute paid campaigns, with a particular focus on Asian markets.

In order to achieve our ambitious student recruitment goals and attract a wider pool of qualified international students, we require expertise in managing key channels like Zalo, Meta, Google, Little Red Book and WeChat.

We require an agency with proven cross-cultural digital marketing proficiency. This expertise should encompass tailoring strategies for diverse audiences across Asia, along with a strong understanding of key digital marketing trends impacting both the markets we target and the university sector. While local language expertise is not mandatory, agencies with Vietnamese and/or Simplified Chinese language capabilities will be given preferential consideration.

#### **A3. Conditions of Tendering**

##### **A3.1 Contents of Tender**

Tenders shall be submitted in the format of Section C of this RFT using the same schedules, headings and numbering. Each Schedule shall begin on a new page. Your Company's name shall appear on each page of the Tender.

##### **A3.2 Submission of Tenders**

Your Tender must be submitted to our online e-tender facility located at the following link :

- [ACU Tender Portal](#)
- <https://app.eprocure.com.au/acu/home>

Tenders must be submitted via [ACU Tender Portal](#) by 3:00 PM on the Closing Date as specified on the front page of this RFT.

### **A3.3 Validity**

Tenders shall be valid for a period of 90 days.

### **A3.4 Contact Information**

All questions with regard to this RFT must be made through the [ACU Tender Portal](#). Discussions with parties associated with ACU that circumvent the use of the tender portal may result in your disqualification from the RFT process.

### **A3.5 Conforming Tenders**

If your Tender does not fully conform to the requirements of this RFT we may treat it as nonconforming and we may reject it.

## **A4. Pricing**

The prices you submit in your Tender are to be in the format given in Schedule 2, Section C of this RFT. All of your tendered prices are to include GST.

Our preferred billing model is project-based, with costs varying depending on the specific campaign requirements, target markets, and media buying needs.

Our preferred billing currency is Australian dollars, but we are happy to discuss an alternative billing currency if required. For Australia-based agencies, all of your tendered prices are to include GST.

## **A5. Term**

The proposed Term of any Agreement resulting from this RFT process, is three (3) years from contract signing, with two (2) x one (1) year extension options to be exercised at ACU's sole discretion.

## **A6. Insurance**

**A6.1.** Comprehensive Public and Products Liability Insurance: \$20 million per incident.

**A6.2.** Professional Indemnity Insurance: \$10 million per incident

**A6.3.** Workers Compensation Insurance.

You are required to ensure that your personnel are covered by Workers Compensation Insurance in accordance with applicable laws.

#### **A6.4. Vehicle Registration and Insurance.**

You are required to ensure that all vehicles that you bring onto our site have current registration and are comprehensively insured.

#### **A7. Evaluation Process**

Tenders will be examined against broad criteria as outlined in, but not limited to, Section C. Assessment Criteria may be modified, added or removed at the sole discretion of the nominated representatives from the ACU Faculty, Directorate or Tender Committee members associated with this tender. Any Tender not meeting pre-determined mandatory criteria will be rejected. Remaining Tenders will then be evaluated against pre-determined weighted criteria using a scoring system applied by representatives from each of the participating ACU departments.

Based on the outcomes of these scored assessments, a short-list of Tenderers will be prepared. Final selection of successful Tender(s) will be made using a process that balances the capability, price and risk of each Tender. Negotiations may be carried out with short-listed tenderers. The final decision involves managerial judgement in conjunction with structured analysis.

Reference checking of the Tenderer's client referees may occur as part of the assessment process. All Tenderers, successful or otherwise, will be notified by us as soon as is practicable after completion of the evaluation process.

#### **A8. Disclaimer**

This document is strictly an invitation to Tender and does not constitute a contract between ACU and any other party unless and until a formal contract is negotiated and signed by ACU and any relevant respondent.

You should not rely on the information supplied to you by us in or in connection with this RFT but should make your own assessment of its accuracy and completeness.

You agree that any participation in this tender process is undertaken at your own risk and that ACU will not bear any liability for any loss or any of the costs incurred by You as a result of responding to this RFT.

ACU reserves the right to change this RFT, any aspect of it and the process that has been outlined at any time at its sole discretion without liability to You.

ACU reserves the right to discontinue the tender process at its sole discretion without liability to You.

No claims that You were disadvantaged by lack of information or inability to resolve ambiguities will be considered.

#### **A9. Confidentiality**

Information received from respondents will be treated in the strictest confidence and not disclosed to unauthorised persons

## **SECTION B - SCOPE OF SUPPLY**

We are seeking a documented response from you to deliver the following services.

Your response is to include:

- A description of your detailed offer explaining how it meets the Scope requirements set out in this Section B.
- A plan and time-frame for implementation of, and training of ACU personnel in, utilisation of your Services, where applicable.
- Your price, specified as per Schedule C2.
- Your response to the requirements set out in Section C - Schedules.

### **B1. Services**

You will be required to provide some or all of the following Services to ACU. Please note that the provision of Services under any Agreement arising out of this RFT process is non-exclusive, and ACU reserves the right, and may decide, to award the work to more than one provider.

#### **B1.1 Strategic Planning and Consulting:**

- a. Market research and analysis
- b. Brand strategy development
- c. Campaign planning and management.
- d. Media planning and buying

#### **B1.2 Digital Marketing:**

- a. Search engine marketing (SEM)
- b. Social media marketing and management
- c. Influencer marketing
- d. Content marketing
- e. Optimisation of digital channels

#### **B1.3 Media Buying and Planning:**

- a. Negotiating and purchasing ad space in various media channels, such as programmatic, social media, print, online, and outdoor advertising
- b. Media strategy and execution

#### **B1.4 Data and Analytics:**

- a. Campaign performance tracking and reporting
- b. Audience insights and segmentation
- c. ROI measurement and optimisation

#### **B1.5 Integrated Campaigns:**

- a. Multi-channel campaign coordination
- b. Consistent messaging across various platforms
- c. Cross-channel promotional strategies

### **B2. Deliverables**

Depending on business needs, you will be required to provide some or all of the following deliverables, the outcomes of which would ensure a comprehensive and integrated approach to achieving ACU's marketing and advertising goals, providing measurable results and strategic insights throughout the process.

**B2.1 Strategic Planning and Analysis:**

- a. Comprehensive market research and analysis reports
- b. Detailed marketing strategy and media planning documents
- c. Competitor analysis and market positioning strategies
- d. Advise ACU on the latest industry trends.

**B2.2 Media Planning and Buying:**

- a. Strategic media plans with recommended channels and schedules
- b. Media buying execution plans with detailed cost breakdowns
- c. Performance metrics and optimisation recommendations

**B2.3 Digital Marketing Services:**

- a. SEM strategy documents and execution plans
- b. Social media strategy and execution plans
- c. New media strategy and execution plans

**B2.4 Data and Analytics:**

- a. Campaign performance reports with detailed analytics
- b. Audience insights and segmentation analysis
- c. ROI and effectiveness analysis with recommendations for improvement

**B2.5 Integrated Campaign Management:**

- a. Detailed project management plans for multi-channel campaigns
- b. Coordination and execution timelines
- c. Cross-channel promotional strategies and execution plans

**B2.6 Reporting and Accountability:**

- a. Regular status reports and progress updates
- b. Budget tracking and financial reporting
- c. Post-campaign analysis and lessons learned documentation

**B2.7 Client Collaboration and Communication:**

- a. Scheduled meetings and strategic discussions
- b. Transparent communication protocols
- c. Access to project management tools and dashboards

**B3. Key Performance Indicators (KPIs)**

The list below represents the minimum KPIs that will be applied to any ongoing contractual or supply relationship arising from this RFT.

- Brand Health
- Performance
- Reach and Engagement



- Website Traffic
- Budget Efficiency
- Contract Management.
- Manage Costs.
- DIFOT - Delivery In Full and On Time.
- Reporting
- Admin

NB: KPIs may be refined and other KPIs developed, as part of negotiations subject to any formal arrangement being entered into between ACU and the successful Tenderer. Refer **Attachment 1** for indicative KPIs applicable to any contract arising from this RFT process.

#### **B4. Other Matters**

##### **B4.1 ESOS/National Code**

While you are not required to have in-depth knowledge of the *Education Services for Overseas Students* (ESOS) Framework, you must be aware of its existence and the obligations related to marketing under the *National Code of Practice for Providers of Education and Training to Overseas Students* 2018 (National Code) and ESOS.

##### **B4.2 Anti Foreign Bribery Laws**

You will be required to comply with all applicable anti-bribery and corruption laws, regulations, and international treaties. You must not directly or indirectly, offer, give, solicit, or accept any bribe or other improper benefit in connection with this procurement process or any subsequent contract. You will be required to implement and maintain effective anti-bribery and corruption policies and procedures.

##### **B4.3 Campus Locations**

To the extent that they may be relevant to this tender opportunity, the addresses of ACU's Australian campus locations are listed below:

<b>ACU Campus Locations in Australia</b>	
<b>Ballarat</b> (Aquinas)	1200 Mair Street, Ballarat VIC 3350
<b>Blacktown</b> (St Josephine Bakhita)	22 Main Street, Blacktown NSW 2148
<b>Brisbane</b> (McAuley at Banyo)	1100 Nudgee Road, Banyo QLD 4014
<b>Canberra</b> (Signadou)	223 Antill Street, Watson ACT 2602
<b>Melbourne</b> (St Patrick's)	115 Victoria Parade, Fitzroy VIC 3065
<b>North Sydney</b> (MacKillop)	40 Edward Street, North Sydney NSW 2060
<b>Strathfield</b> (Mount Saint Mary)	25a Barker Road, Strathfield NSW 2135

## SECTION C - SCHEDULES

You are to complete the schedules contained in this section of the RFT and submit them with your Tender.

### C1. Company Information and Contact Details

Please provide the following details:

Registered Company Name	
Trading Name	
Australian Business Number	
Registered Office Address	
Postal Address	
Head Office Telephone Number	
Head Office Fax Number	
Head Office Email Address	
List of Owners	
List of Directors	
Contact Person for this RFT	
Position / Title of Contact Person	
Location of Contact Person	
Email Address of Contact Person :	
Phone Number of Contact Person :	Landline Direct : Mobile :

### C2. Schedule of Prices

Item Number	Description	Tendered Price (GST Inclusive)
<b>Example Only:</b> Radio	Radio placements across XX radio network over a 3 month period	\$XX
<b>Example Only:</b> Facebook Ads	Targeting XX – XX cohorts. State based targeting VIC, NSW, ACT, QLD	XX% commission from total social media budget

### **C3. Tender Assessment Criteria - Information to Support Your Submission**

You are to provide the information requested in this schedule with your Tender. You shall provide the information in the same sequence and with the same numbering as used in this schedule.

The information requested in this schedule will form, in part, the Tender Assessment Criteria used to evaluate your tender response.

Accordingly, please examine carefully the wording of these requirements and please be careful and thorough in how you present your responses. What you say in your response to these requirements will be reviewed and rated by the evaluation team and will form a key component of your overall assessment.

Please be careful to provide definitive proposals to any of these requirements. We are looking to see concrete statements of what you have done, will do or will provide.

#### **The Pillars of Success**

A successful, mutually beneficial and lasting ACU and Supplier relationship will be built upon four foundation areas, known as the Pillars of Success.

These are:

- Quality of Services Provided.
- Effectiveness of the Service Provision Process.
- Your Ability to Manage Costs and Price.
- Your Organisational Excellence.

Please provide responses to the requirements outlined below in accordance with the four areas, “The Pillars of Success”, listed above.

#### **C3.1. Quality of Provided Services**

It is vital that the quality of the Services provided to ACU ensures they are fit for purpose and effective. This includes, but is not limited to, meeting the following criteria.

##### **C3.1.1. Services Standard**

Please indicate what standard you set for your Services to meet. Please provide your service standard specification for each Service you provide.

##### **C3.1.2. Services Accreditation**

Please indicate what, if any, external accreditation applies to the Services you provide. Please provide documentary proof of this accreditation. How often must the accreditation be renewed. To what date does your accreditation currently apply. Do you intend to seek re-accreditation prior to the expiry of the current period.

##### **C3.1.3. Licence to Perform Services**

Organisation based and personnel based licences may be required to performed the agreed Services. Please confirm your organisation have the required licences.

Please confirm :

- What licences you hold as an organisation, relevant to the Services.
- What licences, relevant to the Services, your personnel individually hold.
- What process you use to identify what licences are required to be held, by your organisation, your direct employees and any contractors you may engage, to perform the Services.
- What process you use to ensure the required licences are held by the organisation and each person and what process you use to track renewal of licences to ensure they occur within the required time-frame.

#### **C3.1.4. Safety of the Services**

Please indicate why you believe your service offering is safe to people, property and the environment.

Please indicate what steps you take in the design process to ensure maximum safety outcomes are achieved in the services you supply. Please indicate how you capture the principles of the “hierarchy of control” in the steps you take to ensure your services represent best practice in safety performance.

## **C3.2. Effectiveness of the Service Provision Process**

ACU operates across a number of campuses in various States and Territories in Australia. The logistics of the service provision process need to ensure that needs are met at these locations. The dynamic nature of the ACU environment can mean that actual requirements and forecasted requirements may, at times, differ. The requirements listed below are aimed at determining whether your organisation has the capacity to ensure the ongoing effective service provision to ACU in a manner that represents greatest operational efficiency and simplicity for ACU and its personnel.

### **C3.2.1. Service Delivery Expertise**

Please indicate the qualifications and level of experience of those personnel that will be engaged in the provision of the Services.

Please indicate how you ensure personnel engaged with the delivery of the Services remain abreast of developments and receive ongoing appropriate training.

### **C3.2.2. Service Delivery Resources**

Please indicate the resources you will use to deliver the Services.

For personnel, please specify the number and titles of the personnel who you will use to deliver the Services.

For material resources, please indicate :

- The nature of the material resource.
- Its maintenance requirements.
- Whether all maintenance and associated costs are included in the provision of the Service.

### **C3.2.3. Service Delivery Method**

Please outline the method by which the Services will be delivered. Please explain why you believe this method will maximise the effective delivery of the Services.

### **C3.2.4. Service Delivery Schedule**

Please indicate the schedule of times and activities to deliver the Services. Please indicate what flexibility you have in modifying this schedule to meet changing or changed circumstances.

### **C3.2.5. Service Delivery Outcomes**

What outcomes have you successfully achieved in delivering similar Services. What evidence do you have to support your answer. Please provide examples that show your knowledge of students, international education and markets – including case studies and/or your past work portfolio.

### **C3.3. Cost and Price Management**

The ability to proactively manage the costs associated with the Services you provide is of paramount importance.

#### **C3.3.1. Business Plan.**

Do you use a business plan to run your business and manage costs. If so, please provide a copy.

#### **C3.3.2. Procurement Practices**

What processes do you use to manage your procurement requirements effectively. How do you ensure that you are able to leverage your buying power to achieve competitive prices consistent with your market power. Why do you believe you are able to offer Services, and Goods that may be needed to help deliver those Services, at prices that represent value to ACU.

#### **C3.3.3. Cost Control**

What processes do you use to monitor your costs and identify opportunities for improvement. Please provide evidence where you have been successful in effective cost control and what innovative measures were undertaken.

Please explain how your Schedule of Rates fee offerings, where applicable, are market competitive.

Please explain your approach to deliver value for money outcomes.

#### **C3.3.4. Standard National Pricing, Pricing Methodology, Price Review Mechanism and Price Models**

ACU is seeking Standard National Pricing for the Services required. This means the same prices irrespective of the location of where the services are required.

Please explain the pricing methodology you have used as the basis for your quoted prices.

What mechanism do you propose for reviewing prices. What supporting documentation are you prepared to provide to support any claim for a price adjustment. Your price review mechanism must include provision for a price reduction where movements in key cost drivers warrant such a reduction.

In addition to the Prices quoted as per **Schedule C2**, what alternative Price Model would you recommend, if any, for managing the Services.

### **C3.4. Organisational Excellence and Alignment**

ACU is seeking a supplier relationship that will be aligned to, and help it achieve, its objectives.

#### **C3.4.1. Alignment With ACU Mission.**

ACU Values that align with its Mission include :

- *the pursuit of knowledge; dignity of the person; service for the common good; students, staff and alumni enjoying an exceptional experience.*

Please explain why you believe your business is aligned to these values. Please provide applicable supporting evidence.

ACU values community support, fair and equitable employment practices, and has a clear commitment to improving gender equality.

Please explain how your organisation is able to effect these values and practices: including providing your organisation's:

- Gender Equality Policy and/or statements on actions your organisation is taking to promote and improve gender equality.
- Modern Slavery Policy, Statement (if you are required by law to submit) and/or detailed document describing your organisation's anti-modern slavery initiatives, actions taken and future plans.

#### **C3.4.2. Supplier Preference.**

Please provide evidence that the ACU business is important to senior management within your organisation. Based on your understanding of the financial value of the ACU business, in broad terms, where would you rate ACU compared to your other customers (eg top 5, bottom 10). Based on your understanding of the financial value of the ACU business, in broad terms, how would you compare the ACU business to your overall revenue (eg 1% of revenue, 15% of revenue).

#### **C3.4.3. Account Management.**

ACU values consistency, reliability and continuity across its supplier account management teams. Please define the account management function you would use for ACU. Please explain what protocols you would enact to ensure KPI performance was measured, reviewed and acted upon to ensure agreed objectives were continuing to be met. Please explain how would ensure back-up account management takes place. Please identify how your emergency account management would work, in the event your regular contact personnel were not available. Please indicate what reports you would be willing to provide on a monthly, quarterly and annual basis to assist both the management and review of supply and contract performance.

#### **C3.4.4. Workplace Health, Safety and Environment, (WHSE).**

Please indicate how you ensure your environmental and safety obligations are met, both from a legal requirement standpoint and from your own initiatives aimed at best practice. Please

provide a copy of your Occupational Health and Safety and Environment Policy. Please provide evidence of your environment and safety performance, including safety data such as injury and incident reporting statistics. Please indicate whether you have an Environment Management System and a Safety Management System in place and if so, whether they have been certified against an appropriate standard. Please indicate what specific initiatives you have undertaken in relation to WHSE. For example, waste reduction, recycling and injury prevention programs and safety training.

Does your organisation have a position designated as a WHSE role and occupied by a suitably qualified person. Please indicate whether this role is permanent within your organisation and whether this position is full-time or part-time.

Please indicate what accreditations, if any, your organisation has in relation to Environmental Sustainability.

Please indicate what reporting systems are in place that routinely generate data in relation to Environmental Sustainability initiatives.

#### **C3.4.5. Quality Management System (QMS).**

Please indicate whether you have a documented Quality Management System in place. Please indicate if your QMS has been certified against one of the AS ISO 9000 Series standards. If so, please indicate the relevant standard, the date of your last re-certification audit and your certifying organisation. Please provide a copy of your latest QMS certificate. Please provide any additional information you feel would be of assistance.

#### **C3.4.6. Infrastructure Capacity.**

Please indicate the infrastructure capability of your organisation, specifically in relation to your ability to both meet and add value to ACU's requirements.

#### **C3.4.7. Record Management System and Data Integrity.**

This is part of your QMS. However, ACU regards this as such an important part of the service to be offered, it will be separately assessed. Please explain how you will maintain records, what records you will keep, how they will be kept and what access ACU will have to them. Please indicate what mode of access ACU will have to such records.

Good record keeping practices have no meaning unless the data can be relied upon as being accurate at all times. Please explain what processes you use to ensure your data is accurate. How do you check to verify that your data is accurate and your record keeping up to date.

#### **C3.4.8. Performance Improvement and Innovation.**

ACU is keen to continually seeking ways to improve its offerings, operational efficiency and reduce its operating costs. Please indicate how you would identify opportunities for improvement. Please provide examples of successful innovations that you have implemented, that resulted from your initiative. Please give examples of what innovations you believe would be of value to ACU and indicate what would need to be done by both yourselves and ACU in order to implement. Please describe your willingness, ability and recommended process, to provide ACU:



- ongoing market updates around engagement tactics; and
- recommendations for innovation and creativity in the marketing services and channels

across the term of any contract arising from this RFT process.

#### **C3.4.9. Personnel Knowledge and Experience.**

It is important that capable, knowledgeable and experienced personnel are available at all levels within your organisation who will be managing some aspect of the ACU relationship to ensure our requirements are met, our account is effectively managed and issues, where they arise, are dealt with professionally and promptly. Please provide information to support why you believe your organisation meets this requirement. Please indicate what you do to ensure you have and maintain well-trained and capable personnel. How will you ensure there is continuity of support to ACU when personnel are absent or if key personnel leave your organisation.

#### **C3.4.10. Technology Excellence.**

Companies that are abreast of, and invest in, technology developments can assist ACU greatly by being able to offer new solutions to meeting existing requirements that may allow shorter lead-times, greater responsiveness and reduced cost. Please indicate what technology capability you have that you believe can be of benefit to ACU.

#### **C3.4.11. Emergency Preparedness.**

Please indicate what provisions you make to allow your business to continue to operate, and therefore to continue to supply ACU, in the event of unforeseen circumstances or emergencies. Such circumstances may include industrial relations issues, supply chain disruptions and acts of nature.

#### **C3.4.12. Change Control.**

Please indicate how you manage changed requirements in any aspect of the buyer/supplier relationship. How do you ensure altered requirements are captured and implemented throughout the various functions in your organisation that play a role in your company's ability to meet ACU requirements.

#### **C4. Information About Your Organisation**

- C4.1** Please provide the following details in relation to ownership, structure, longevity and size:
- C4.1.1** Details of Company Ownership. Indicate whether your company :
- Is Privately Owned or Publicly Listed; and
  - Is Locally Based or Overseas Based; and
  - Has a Parent. If so, please specify name of Parent and Head Office location of Parent.
- C4.1.2** Number of years the organisation has been in business, both Locally and Overseas as applicable.
- C4.1.3** Total number of employees, both Locally and Overseas as applicable..
- C4.1.4** List Sales Turnover, both Locally and Overseas as applicable.
- Last Year
  - Average last three (3) years
- C4.1.5** A statement confirming your financial viability.
- C4.2** What is your organisational structure in regards to the management of the Services offered in your Tender? What are the qualifications and experience of this team?
- C4.3** Provide a high level organisational chart indicating where the team(s) would report that would provide the Services offered in your Tender.
- C4.4** Briefly describe the history of your company and the drivers that shaped its current position in the market.
- C4.5** Indicate the predominant nature of your organisation's activities.
- C4.6** Indicate recent changes, internal or external including regulatory, that have impacted, or have the potential to impact on your business.
- C4.7** Pricing Structure and Cost Drivers. Indicate the major cost drivers of the prices you quote and your overall pricing model.
- C4.8** Provide details of your current service provision arrangements.

## **C5. Insurance**

For the following insurances:

- General Liability (Product and Public Liability).
- Professional Indemnity.
- Workers Compensation.
- Comprehensive Motor Vehicle.

**C5.1** Please indicate who is currently your Insurance broker/manager/provider.

**C5.2** Please provide a Certificate of Currency stating what is covered.

Please identify other insurance categories that may apply to your business that are relevant to the goods or services being provided, and provide us with the relevant insurance information.

For the purposes of accuracy, information that is provided must come from your insurer in the form of a Certificate of Currency or your insurer must sign-off on your final response, prior to its submission.

## C6. References

These are people that may be contacted as part of the RFT evaluation process to seek feedback on their experience of your business offering to them.

a) Please provide any ACU referees that you have dealt with in providing services to ACU.

ACU Departments	Location	ACU Contact and Telephone Number
1.		
2.		
3.		
4.		

b) Please provide referees of up to four (4) of your largest clients.

Organisation Name and Location	Industry	Principal Contact and Telephone Number
1.		
2.		
3.		
4.		

Select two referees from the above list in which assignments are relevant to your competence to undertake the proposed supply of goods and services and briefly describe the services you have provided to these organisations. Please include;

- Your assessment of the success of each of these engagements/relationships and highlight any improvements that were made, innovations, cost reductions etc.
- Anything your organisation might have done differently for these clients?

## C7. Schedule of Qualifications and Exceptions

In this schedule you shall detail all of your qualifications and exceptions to the RFT. For all other parts of the RFT for which no qualification or exception is detailed in this schedule it shall be deemed that you fully comply with the requirements of these parts of the RFT.

Section No.	Clause No.	Tenderer's Response

## **SECTION D - GENERAL TERMS AND CONDITIONS**

These Terms and Conditions apply to this Request for Tender and are intended to apply to any subsequent agreement with a successful supplier resulting from this tender process.

### **1. Provision of Services**

- 1.1 You must provide the Services to us in accordance with, and as specified in, this Agreement.

### **2. Conditions as to Quality of Services**

- 2.1 The Services must match the description of the Services in this Agreement.
- 2.2 If You provided us with a demonstration of the Services before we entered into this Agreement, the Services must correspond in nature and quality with the Services demonstrated.
- 2.3 If You showed us a result achieved by the Services before we entered into this Agreement, the Services must correspond in quality with the Services that achieved that result.
- 2.4 The Services must be performed by appropriately qualified and trained personnel.
- 2.5 The Services must be performed with due care and skill.
- 2.6 The Services must be fit for the purposes for which these type of Services are commonly bought and for any other purposes which we specify.
- 2.7 Any items which You use or supply in conjunction with the Services must be of merchantable quality, comply with any applicable standards of the Standards Association of Australia and any other standards specified in this Agreement and be fit for their usual purpose and any purpose which specify.
- 2.8 Where there is a procedure for obtaining accreditation in relation to the provision of a service of the same nature as the Services then the Services must be provided to the standard required by the relevant accreditation body and You must be accredited by the accreditation body at the time that the Services are provided.

### **3. Inspection and Information**

- 3.1 You must keep the ACU Representative fully informed on all aspects of the Services performed.
- 3.2 You must provide to the ACU Representative upon request:
  - (a) copies of all Technical Materials, reports, data and information relating to the Services;

- (b) progress reports on the performance of the Services and in such detail as will allow the ACU Representative to ascertain whether the Services are in conformity with this Agreement; and
  - (c) a detailed program for the projected provision of the Services.
- 3.3 At all reasonable times, the ACU Representative will have the right to inspect, examine, review and witness tests on the Services or their results at:
  - (a) Our Premises;
  - (b) your premises; and
  - (c) at the premises of any of your Sub-Contractors.
- 3.4 You agree to ensure that the ACU Representative is provided with access to your premises and that all facilities reasonably required for the ACU Representative to review, inspect, examine and witness the testing of the Services and their results are made available to the ACU Representative.
- 3.5 You must advise the ACU Representative when any part of the Services has been completed and is ready for review, inspection, examination or witnessing of testing.
- 3.6 If, as a result of any review, inspection, examination, or witnessing of testing, the ACU Representative is not satisfied that the Services will comply in all respects with this Agreement and You are informed in writing of the ACU Representative's dissatisfaction, You agree to take such steps as are necessary to ensure compliance.
- 3.7 We have the right to withhold any payment of money due to You under this Agreement until such time as the Services comply with this Agreement.
- 3.8 Any review, inspection, examination or witnessing of testing of the Services or their results by the ACU Representative does not relieve You of your responsibilities under this Agreement.
- 3.9 Where this Agreement provides a period of time during which the Services must be carried out and/or a date by which the Services must be completed then, subject to agreement between the parties, the period of time or the date for carrying out and completion of the Services may be extended upon receiving written confirmation by from ACU. This facility is to allow for a change in the days required to perform the services due to factors that may include, but necessarily limited to, unavailability of resources. It is not for the purpose of Scope or Price changes.

#### **4. Performance of the Services**

- 4.1 You must, in performing the Services:
  - (a) use your best efforts not to interfere with any of our activities, or the activities of any other person, on Our Premises;
  - (b) be aware of, comply with, and ensure that your Personnel comply with:
    - (i) all applicable laws, regulations and industrial awards and agreements, including all applicable safety, health and environment laws and regulations;

- (ii) all safety, health and environment guidelines, rules and procedures applicable to Our Premises or specified in this Agreement;
  - (iii) all reasonable directions and orders given by our representatives consistent with the scope; and
  - (iv) all ACU policies and procedures (as amended from time to time).
- (c) ensure that Our Premises are left secure, clean, orderly and fit for immediate use;
- (d) where a date is specified for completion of the Services, provide the Services by the specified date, unless agreed otherwise by us; and
- (e) ensure that You have and maintain sufficient numbers of duly qualified Personnel necessary to provide the Services. If any of your Personnel engaged in providing the Services do not comply with any provisions of this Agreement, including without limitation **Clause 4.1(b)**, You must, at our request, immediately ensure that those Personnel cease providing the Services and do not enter Our Premises and replace them with other Personnel sufficiently qualified to provide the Services.

## **5. Plant & Equipment**

- 5.1 Unless this Agreement provides differently, You agree to supply, at your own expense, all labour, plant, equipment, tools, appliances or other property and items You require to fulfil your obligations under this Agreement.
- 5.2 Any plant, equipment, tools, appliances or other property and items that we provide to You to enable You to complete this Agreement remains our property and must only be used for the purposes of fulfilling your obligations under this Agreement.
- 5.3 You must keep our property in good order and condition. Allowance for fair wear and tear may be made, in specified cases, prior to the provision of our property.
- 5.4 You are responsible and must compensate us for any loss or damage to or waste of Our Premises or property by your Personnel.

## **6. Price**

- 6.1 On approval by ACU of the Services provided, ACU agrees to pay You the Price for the Services.
- 6.2 Unless this Agreement provides otherwise, the Price is inclusive of:
  - (a) all costs incurred by You in performing the Services;
  - (b) the cost of any items used or supplied in conjunction with the Services; and
  - (c) all Taxes including GST.
- 6.3 Unless this Agreement provides otherwise, the Price includes GST.
- 6.4 The Price may not be increased without our prior written consent.



## **7. Invoicing and Payment**

- 7.1 Unless this Agreement states that progress payments are to be made, You must invoice us at the completion of the Services in a form suitable to ACU's requirements.
- 7.2 Where progress payments are to be made, You must invoice us at the end of each calendar month (or other period specified in this Agreement) for the Services performed by You in that month or that period (as the case may be).
- 7.3 When submitting any invoice under **Clause 7.1** or **Clause 7.2** You must provide us with:
- (a) all relevant records to enable us to calculate and/or verify the amount of the invoice together with the number of this Agreement; and
  - (b) the statement referred to in **Clause 7.8** ("**Statement**").

If this Agreement allows You to invoice us more frequently than monthly You are only required to lodge the Statement with the last invoice submitted in each month.

- 7.4 We will pay all invoices rendered to us by You under **Clause 7.1** or **Clause 7.2**, which comply with **Clause 7.3**, no later than, and not be liable to pay earlier, thirty (30) days after the end of the month in which the invoice was submitted, except where we:
- (a) exercise our right to retain part of the Price pursuant to **Clauses 3.7, 7.5 or 12.7**; or
  - (b) dispute the invoice, in which case we will:
    - (i) notify You in writing of the dispute;
    - (ii) pay the undisputed part of the relevant invoice (if any) once we have received an Adjustment Note from You; and
    - (iii) dispute the balance. If the resolution of the dispute determines that we are to pay an amount to You, we will pay that amount as soon as practicable upon resolution of that dispute.
- 7.5 We may reduce any payment due to You under these terms by any amount for which You are liable to us, including costs, charges, damages and expenses. This does not limit our right to recover those amounts in other ways.
- 7.6 Unless otherwise specified, any money payable under this Agreement is to be paid in Australian currency.
- 7.7 If this Agreement involves the supply of Services on a cost plus or per hour basis we have the right to conduct an audit of the basis of your charges using your records. This right continues for twelve (12) months after we pay the relevant invoice.
- 7.8 For Services performed in New South Wales, where required by the relevant Act, each time that You submit an invoice under this Agreement, You must provide us with a duly completed signed and dated statement in the appropriate format which :
- (a) complies with the requirement of that Act; and

- (b) has attached to it a copy of any relevant certificate of currency in respect of that Act; and
- (c) covers the period up to the date of the invoice.

## **8. Acceptance of the Services**

- 8.1 We will not be deemed to have accepted the Services until we have had a reasonable time to inspect and test the results of the Services after they have been performed. Payment for the Services before inspection does not constitute acceptance of them.
- 8.2 If upon inspection or testing we find any of the Services to be Defective Services, we may, at our option, and after notifying You in writing:
  - (a) reject the Defective Services; or
  - (b) make good the Defective Services.
- 8.3 At our option and request, You agree to:
  - (a) refund to us any payments made by us in respect of any Defective Services that we reject; or
  - (b) make good free of charge any Defective Services that we reject; or
  - (c) reimburse us for any expenses we incur in making good any Defective Services, under **Clause 8.2**.
- 8.4 Our inspection, testing or acceptance of some or all of the Services does not in any way:
  - (a) change or affect your obligations under this Agreement; or
  - (b) affect our rights to claim for any damage or loss we may suffer because of your breach of warranty or failure to fulfil any of your other obligations under this Agreement.
- 8.5 If we decide to accept some Services from You which do not comply with the terms of this Agreement, this decision does not bind us to accept the future performance of Services which do not comply with the terms of this Agreement. Payment for work done prior to inspection is not to be construed as acceptance of Defective Services by us.

## **9. Termination, Suspension and Variation and of this Agreement**

- 9.1 Either Party ("**Terminating Party**") may immediately terminate this Agreement by notice in writing to the other Party ("**Other Party**") if:
  - (a) the Other Party fails to comply with or is in breach of any of its obligations under this Agreement and such non-compliance or breach is not remedied by it within 14 days of the Terminating Party requesting the other Party to do so in writing;

- (b) any representation, warranty or statement made by, or repeated by, the Other Party, in, or in connection with, this Agreement is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated; or
- (c) an Insolvency Event occurs in respect of the Other Party.

The Parties acknowledge that each and all of the events described above are deemed to be fundamental breaches of this Agreement for the purpose of this Agreement and in the event of termination the Terminating Party is entitled to full contractual damages.

## 9.2 Termination for Convenience

- (a) Without prejudice to any of our other rights under this Agreement, we may, for our sole convenience and at our absolute discretion, terminate this Agreement at any time by giving You at least 3 months written notice. Immediately on receipt of this notice, You have a duty to avoid incurring new obligations and to mitigate existing obligations in order to minimise the cost incurred.
- (b) Upon termination of this Agreement under this **Clause 9.2**, You will be entitled to payment of Goods or Services provided to us up to the time of termination at the Price specified in this Agreement, including any payments to third parties reasonably incurred by You up until termination.

## 9.3 Termination for Cause

In addition to the reasons specified elsewhere in this **Clause 9** as being reasons to terminate the agreement for cause, it is agreed that failure to meet the performance requirements as set out in the KPIs is regarded a material breach of this agreement and may give rise to termination for cause, at the sole discretion of ACU.

- 9.4 We may terminate this Agreement by written notice to You effective immediately if, in our opinion, there is a Change of Control in relation to You. You acknowledge that any Change of Control of You is deemed to be a fundamental breach of this Agreement, for the purposes of this Agreement and in the event of termination we are entitled to full contractual damages.

- 9.5 When You receive a notice of termination from us, You must:

- (a) stop work to the extent required by the notice;
- (b) take such action as necessary or as we direct, for the transfer, protection and preservation of our property; and
- (c) do your best to minimise the cost of termination to us.

- 9.6 Any expiration or termination of this Agreement does not affect:

- (a) any rights of the Parties which may have accrued before the date of termination; and
- (b) the rights and obligations of the Parties under **Clauses 13, 14 and 15** which survive termination of this Agreement.

- 9.7 We have the right, at any time and for any reason, to suspend this Agreement or any part of this Agreement by giving You notice.
- 9.8 When You receive a notice of suspension from us, You must suspend this Agreement until such time as we direct that this Agreement is no longer suspended. At such time, You must promptly recommence the performance of your obligations under this Agreement.
- 9.9 Without limiting any other term of this Agreement, upon termination or expiry of this Agreement, you must:
- (a) if requested by ACU by no later than 20 business days after the date of termination, provide ACU with a complete copy of all data and information stored through the Solution, in a commercially reasonable format requested by ACU; and
  - (b) permanently delete and destroy any and all data and information stored through the Solution, as soon as reasonably practicable after provision to ACU of the data and information as directed by ACU under clause 9.6(a), or the expiration of the period stated in clause 9.6(a) (whichever is later).
- 9.10 Where the suspension of this Agreement is not a result of any default or action on your part, or on the part of your Personnel, we will reimburse You for the verified reasonable additional costs You incurred as a direct consequence of the suspension.
- 9.11 We may vary this Agreement at any time on written notice to You. The time specified for action to be completed by You as a result of this notice will be consistent with the nature of the variation and the amount of notice given. Considerations in relation to price will be agreed between the parties, where applicable, and based on material consequences that You are able to verify. When You receive a notice of variation from us You must vary this Agreement in accordance with our notice.

## **10. Independent Contractor**

- 10.1 Both Parties acknowledge that You are our contractor and not our employee or agent.
- 10.2 You must ensure that each of your Sub-Contractors acknowledges in each sub-contract that the sub-contractor is your contractor and not your employee or agent.

## **11. Warranties**

- 11.1 You warrant that the Services and the results of the Services will be in conformity with this Agreement (including, without limitation, **Clause 2**), of high quality and workmanship and otherwise satisfactory.
- 11.2 If we find any of the Services or their results to be Defective Services we may, at our option, and after notifying You in writing:
- (a) reject the Defective Services; or
  - (b) re-perform or make good the Defective Services.
- 11.3 At our option and request, You agree to:

- (a) re-perform or make good free of charge any Defective Services that we reject; and
  - (b) reimburse us for any expenses we incur in making good any Defective Services.
- 11.4 Any Defective Services that are re-performed or made good by You under this Clause will be subject to the same warranty as the original Services, from the date of re-performance or the date on which the Defective Services were made good.
- 11.5 You will not be liable for any defect or fault in any Service that is caused by our negligence or the negligence of our employees.
- 11.6 The remedies provided in this Clause do not exclude any other remedies provided by law.

## **12. Insurance**

12.1 You must effect or cause to be effected:

- (a) except in respect of the risks dealt with at **Clause 12.1(b)** and **Clause 12.1(c)**, a broad form public and products liability policy written on an occurrence basis with a limit of indemnity of not less than the amount specified in Section A which covers your liability (including to us) in respect of:
  - (i) loss of, damage to, or loss of use of property; and
  - (ii) the injury (including disease or illness) to, death of or illness of any person,  
  
happening anywhere in Australia and arising out of or in the course of or in connection with the performance by You of this Agreement;
- (b) comprehensive motor vehicle insurance with a limit of liability of not less than the amount specified in Section A which covers third party property damage arising from or in relation to any plant or vehicles (registered or unregistered) or any injury to or death of any person arising from or in relation to the use of any unregistered plant or vehicle in the course of performing this Agreement;
- (c) compulsory third party vehicle insurance for all registered vehicles used in the course of performing this Agreement; and
- (d) all risks property insurance for any specialised plant and equipment used in relation to the provision of the Services, against the risk of loss, damage or destruction caused by insurable risks including theft, malicious damage, fire, lightening, storm and tempest for their full reinstatement or replacement value and including cover while the specialised plant and equipment are in transit or, in temporary storage during the course of transit.

12.2 You must effect or cause to be effected insurance which fully insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by You in the performance of this Agreement (or their dependants) giving rise to a claim under any statute relating to workers or accident compensation or for employers liability at common law in every State or Territory where the Agreement will be carried out as well as each State or Territory where your employees normally reside or where their

contract of employment was made and, where possible at law or under the relevant State or Territory scheme extending to indemnify us as principal for principal's liability to persons engaged in performing this Agreement by You.

- 12.3 You must effect or cause to be effected professional indemnity insurance which covers You for your liability arising from a breach of duty owed in a professional capacity, whether owed in contract or otherwise, by any act or omission by You or your Personnel in relation to the performance of this Agreement with a limit of indemnity of not less than the amount specified in Section A. The policy is to include cover for your liability for unintentional breaches for Intellectual Property Rights and unintentional breaches of trade practices related legislation.
- 12.4 You must effect or cause any other insurances reasonably required by us from time to time.
- 12.5 You must ensure that each insurance referred to in this Clause is in effect on the date of commencement of this Agreement and are maintained:
- (a) in the case of the insurance referred to at **Clause 12.1(d)**, until the expiration termination of this Agreement;
  - (b) in the case of the insurances referred to at **Clause 12.2** until the expiry or earlier termination of this Agreement;
  - (c) in the case of the insurance referred to at **Clause 12.3** until the expiration of 7 years following the expiry or earlier termination of this Agreement;
  - (d) in the case of any insurance required by us under **Clause 12.4**, until the date notified by us to You.
- 12.6 You must, in respect of each of the insurances referred to in this **Clause 12**, provide us with a copy of the policy wording and a certificate of currency at the time of execution of this Agreement and thereafter upon request.
- 12.7 If You do not comply with **Clause 12.6** we may, but are not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt from You or deduct the premiums payable from any amounts payable to You under this Agreement.
- 12.8 You must notify us immediately that You receive a notice of cancellation or any other notice in respect of the insurances required to be maintained under this **Clause 12** from any insurer and You must provide us with a copy of that notice without undue delay.
- 12.9 You must ensure that the insurance referred to in **Clause 12.1** extends to insure us for our vicarious liability for acts or omissions by You or your Personnel and the policy must provide that the insurer waives all rights of subrogation which it may otherwise be entitled against us to the extent that we are insured under the policy.
- 12.10 In respect of any insurance effected which insures multiple insureds You must ensure that the policy includes a cross-liability Clause, a Clause in which the insurer agrees not to impute the acts or omissions of one insured to another insured and, a Clause in which the insurer agrees that any non-disclosures or misrepresentations prior to the effecting of the policy by any person will not be imputed to any other insured.



- 12.11 Subject to your obligations to your insurers, You must inform us immediately You become aware of any actual, threatened or likely claims under any of the insurances referred to in this **Clause 12** which could materially reduce the available limit.
- 12.12 You must ensure that all Sub-Contractors are similarly insured as required by this **Clause 12** as if they were You, as is appropriate given the nature of the goods to be supplied or services to be provided by those Sub-Contractors.
- 12.13 The provisions of this **Clause 12** are not to be read so as to reduce your liability under any other provision of this Agreement.

### **13. Liability and Indemnities**

- 13.1 You acknowledge that if You enter Our Premises, then to the extent permitted by law, You do so at your own risk. You must ensure that your Personnel are also aware that they enter Our Premises at their own risk.
- 13.2 You will be liable for, and must indemnify us and keep us indemnified from and against any liability and any loss or damage of any kind whatsoever, arising directly or indirectly from:
- (a) any breach of any warranty or any of the terms or conditions of this Agreement by You;
  - (b) the illness, injury or death of any of your Personnel arising out of or in connection with this Agreement;
  - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
    - (i) the performance of the Services by You; and/or
    - (ii) the entry onto, and the activities undertaken on and in, Our Premises by You or your Personnel;
  - (d) any negligence or wilful act or omission by You or any of your Personnel in connection with this Agreement;
  - (e) any claim made against us by or on behalf of any of your Personnel or by any government or regulatory authority in respect of any relevant legislation concerning income Tax, workers compensation, annual leave, long service leave, superannuation, pay-roll tax, remuneration or any applicable award, determination or Agreement of a competent industrial tribunal;
  - (f) any penalty imposed for breach of an applicable law in connection with the performance of the Services by You;
  - (g) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by You or your Personnel and used in relation to this Agreement; and
  - (h) any claim that the Services or the results of the Services, anything You do in providing us with the Services, or our use of the results of the Services infringes or allegedly infringes the Intellectual Property Rights of any person;

except to the extent that any liability, loss or damage is solely and directly caused by our wilful misconduct or Gross Negligence or that of our Personnel (other than You).

- 13.3 Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which we are entitled will also be held by us to the benefit of, and will extend to protect, each of our Personnel (excluding You and your Personnel).
- 13.4 Each indemnity in this Agreement is a continuing obligation separate and independent from your other obligations and survives termination of this Agreement.
- 13.5 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 13.6 If we enter this Agreement as agent for and on behalf of joint venture partners, the liability of each of those joint venture partners under this Agreement is several and not joint, nor joint and several.

#### **14. Intellectual Property**

- 14.1 You must not, without first obtaining the written consent of ACU, in any manner advertise, publish or disclose to any other person or company the fact that You have contracted to furnish the ACU with Goods or Services.
- 14.2 Our Technical Materials and the Project IP are confidential to ACU, and You must not use them for any purpose other than in connection with this Agreement, and You must not disclose Our Technical Materials or Project IP to any other party. Upon completion or termination of this Agreement, You must return all of Our Technical Materials, Project IP and all copies of those things to ACU.
- 14.3 You will not become entitled to any Intellectual Property Rights in respect of Our Technical Materials, which will at all times remain the property of ACU. The Intellectual Property Rights in any and all improvements or modifications to Our Technical Materials, will automatically vest in and become the property of ACU.
- 14.4 All Intellectual Property Rights in Project IP are hereby assigned to, and shall vest in, ACU absolutely immediately upon creation. You shall execute such confirmatory assignments as ACU may require.
- 14.5 You warrant that the supply of the Goods and/or provision of Services does not and will not infringe the Intellectual Property Rights of any third party.

Should an allegation or claim be made that the supply of the Goods and/or Services infringes upon a third party's Intellectual Property Rights, You must, at Your own cost, modify the Services so that they become non-infringing, and so that they still meet the functionality and requirements for the Solution set out in this Agreement.

If You fail or refuse to modify the Services within 20 business days of the allegation or claim being notified to You, ACU may elect in its sole and absolute discretion to either:

- (a) terminate this Agreement by notice in writing to You, in which case any and all fees paid by ACU relating to the period beginning on the day after the date of termination, must be immediately refunded to ACU; or



- (b) request that You, at Your own cost, obtain a right for ACU to use the infringing portion of the Solution from the relevant third party.

If ACU serves a notice under subclause (b), then You must do all things reasonably necessary in order to obtain a right for ACU to use the infringing portion of the Solution within 20 business days of being served with ACU's notice. If you fail or refuse to obtain that right for ACU within 20 business days of being served with ACU's notice, then ACU may exercise its rights under sub clause (a) of this clause 14.5.

Nothing in this clause 14.5 limits ACU's ability to exercise any other right that it has by virtue of this Agreement or under the law generally.

- 14.6 You indemnify ACU in respect of all claims, costs (including legal costs on a solicitor and own client basis), losses and damages suffered or incurred by ACU and which arise out of or as a result of any infringement or alleged infringement of any Intellectual Property Rights of any third party through your use and sale of the Goods, or provision of any Service, to ACU.
- 14.7 You agree to take all reasonable measures to protect Our Technical Materials and Project IP.
- 14.8 We grant You a non-exclusive and non-transferable, revocable licence to use the Confidential Information, Our Technical Materials the Project IP for the sole purpose of supplying the Goods and providing the Services to us under this Agreement.

## **15. Confidential Information**

- 15.1 Each Party undertakes that it will not, during or anytime after the expiration of the Term of this Agreement (except in the proper course of its duties under this Agreement or as required by law or by the other Party) disclose to any person any Confidential Information of or relating to the other Party of which it has become possessed as a result of this Agreement or the negotiations preceding this Agreement including, but not limited to, the terms of this Agreement.
- 15.2 Nothing in this **Clause 15** prohibits disclosure of information which:
  - (a) is in the public domain;
  - (b) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;
  - (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party to this Agreement; or
  - (d) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a Party.
- 15.3 The obligations under this **Clause 15** survive termination of this Agreement.
- 15.4 The terms of this Agreement may be disclosed to:
  - (a) any legal, financial and other adviser of a Party;
  - (b) the auditor of a Party; or

- (c) a bona fide prospective purchaser of a Party or the business of that Party provided that such bona fide prospective purchaser agrees to keep the terms of this Agreement confidential in accordance with **Clause 15**.

15.5 You acknowledge and agree that monetary damages may be inadequate compensation for Your breach of clauses 14, 15 or 16 of this Agreement and, subject to the court's discretion, ACU may restrain by an injunction or similar remedy, any conduct or threatened conduct which is or would be a breach of clauses 14, 15 or 16 of this Agreement, and compel specific performance of this Agreement.

## **16. Privacy**

16.1 You must:

- (a) manage all Confidential Information to which you have access to under this Agreement in accordance with your obligations as set out in this Agreement;
- (b) implement all appropriate technical and organisational measures against unauthorised or unlawful use of such Confidential Information, and against accidental loss, alteration or destruction of, or damage to, such Confidential Information;
- (c) use reasonable efforts to ensure the security of such Confidential Information, at all times;
- (d) within 48 hours inform ACU if any Confidential Information is lost, altered or destroyed;
- (e) not modify, amend or alter the contents of such Confidential Information other than as strictly necessary for the purposes of providing the Processing Services;
- (f) not disclose or permit the disclosure of any such Confidential Information to any third party unless specifically authorised in writing by ACU prior to any such disclosure;
- (g) only use such Confidential Information in accordance with the terms of this Agreement, and only then to the extent absolutely necessary for, and in connection with, the provision of the Processing Services to ACU, and for no other purpose whatsoever;
- (h) on termination of this Agreement or any earlier termination of your right or obligation to use such Confidential Information, and as otherwise directed by the ACU, you shall either:
  - i. destroy the Confidential Information and all copies thereof,
  - ii. transfer the Confidential Information to ACU or such other third party as ACU may direct, or
  - iii. archive the Confidential Information subject to agreement on terms of archiving including costs;
- (i) not disclose such Confidential Information to any third party except in accordance with this Agreement;
- (j) notify ACU if you receive any request, complaint, notice or communication which relates directly or indirectly to the use of such Confidential Information, and provide ACU with full cooperation and assistance in relation to any such complaint, notice or communication;

- (k) provide all reasonable assistance to ACU, having regard to the nature of the use and such Confidential Information available to you, to assist ACU to comply with its obligations under applicable privacy laws;
  - (l) keep and provide to ACU on request a record of your use of such Confidential Information and make available to ACU all information necessary (and allow for and contribute to audits or inspections) to demonstrate compliance with your obligations set out in this Agreement;
  - (m) take reasonable steps to ensure the reliability of all your employees or other representatives or contractors who have access to such Confidential Information and ensure that all such persons:
    - iv. are informed of the confidential nature of the Confidential Information before they gain access to it, and
    - v. have committed themselves to the confidentiality obligations under this Agreement or are under an appropriate statutory obligation of confidentiality.
  - (n) comply with the *Privacy Act 1988* (Cth), and any other applicable legislation, where the Confidential Information it receives constitutes personal information as defined in the applicable legislation).
- 16.2 For the purpose of (o) under the Privacy Act, **Personal Information** means information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable as defined in the Privacy Act 1988 (Cth) which is collected, used, disclosed, stored or handled by you for the purposes of this Agreement.
- 16.3 You must have sufficient practical understanding of local laws and that of countries in which you will conduct the Services on behalf of ACU such that you can ensure that your processing does not breach or cause ACU to breach any legislation or regulation.
- 16.4 You must comply with, and support ACU to comply with, the requirements of
- (a) the relevant laws;
  - (b) any data processing impact assessment or privacy impact assessment, as relevant;
  - (c) any cross-border or international transfer impact assessment; and
  - (d) requirements regarding the assessment and contracting of sub-processors.
- 16.5 On behalf or in consultation with ACU, you will:
- (a) perform, prepare, lodge and store and make available to the relevant government authority, any data processing impact assessment dossier, as required;
  - (b) perform, prepare, lodge and store and make available to the relevant government authority, a cross-border personal data transfer processing impact assessment dossier, as required.
- 16.6 You must provide data localization in accordance with the requirements of the relevant laws.
- 16.7 If you are located outside of Vietnam, you will identify and submit to ACU for its approval, a Vietnam-based advertising service provider to conduct Vietnam-based advertising ('sub-contractor').

- 16.8 The respondent will provide ACU with responses sufficient to assess its privacy posture and protections be completing a Vendor Checklist for Privacy, if requested for ACU to do so.

## **17. Information Systems**

- 17.1 Where we have information that is reasonably accessible and necessary for You to perform your obligations under this Agreement and which we may provide to You without breaching any obligation to another person or which arises by law, we will provide You with access to that information which may, at our sole discretion, determine to be at your cost.
- 17.2 We in our discretion, acting reasonably, may decide the means by which we provide information required under **Clause 17.1** and from time to time may vary that means. Nothing in **Clause 17.1** obliges us to give You or any of your Personnel, access to an information system controlled or used by us or to continue such access once provided.
- 17.3 If we decide, in our discretion, to give You or any of your Personnel access to an information system controlled or used by us (including any computer and network facilities) then:
- (a) You must ensure that the access is used only by those Personnel requiring that access for the purposes of this Agreement, including by controlling use of passcodes and access codes;
  - (b) You must keep us informed of those persons who require or have that access and any passcodes or access codes used by them;
  - (c) You must ensure that your Personnel use the access only for the purposes for which it was granted, including that no information is obtained or used which we have not agreed to provide for the purposes of **Clause 17.1** and that no function of the information system not required for that purpose is used;
  - (d) You must ensure that all information obtained through such access is kept confidential in accordance with **Clause 15**;
  - (e) You must ensure that your Personnel use the information system in a lawful manner and in accordance with our policies and procedures, as notified and amended from time to time, which are applicable to the access and use of our information systems or to any content accessed or transmitted through our information systems (including, without limitation, any computer use or other relevant policy);
  - (f) You must ensure that your Personnel, before making use of that access, agree to be bound by the Relevant Policies as notified and amended from time to time;
  - (g) If requested by us, You must deliver to us signed consents from any of your Personnel who will have access to the computer and network facilities agreeing to be bound by the Relevant Policies.
- 17.4 This **Clause 17** is a material Clause of this Agreement and breach of this Clause in part or in whole by You or any of your Personnel will be deemed to be a fundamental

breach of this Agreement giving rise to us of the right to terminate under **Clause 9.1** of this Section D.

## **18. Your Personnel and Set-Off**

- 18.1 If an Insolvency Event occurs in relation to You, we may, out of moneys payable to You, on behalf of You, make payments directly to any of your Personnel.
- 18.2 If any of your Personnel obtains a court order in respect of moneys referred to in **Clause 18.1** and produces to us the court order and a statutory declaration that it remains unpaid, we may pay the amount of the order, and costs included in the order, to that Personnel and the amount paid will be a debt due from You to us.
- 18.3 We will be entitled to deduct any moneys paid under **Clauses 18.1** and **18.2** to your Personnel from any money due from us to You.
- 18.4 We may deduct from moneys due to You any money due from You to us whether under this agreement or otherwise.

## **19. Taxes**

- 19.1 Subject to **Clause 19.3**, should any Taxes be levied on, in respect of, or in relation to, the Services these will be to your account. You will be responsible for the payment of those Taxes and will provide documentary evidence of the payment of those Taxes if made on our behalf.
- 19.2 Without limiting **Clause 19.1**, You will be solely liable for income tax imposed on You in respect of income derived by You in the performance of the Services.
- 19.3 Your invoiced prices are to be inclusive of GST. Your Tax Invoice must state the amount of GST in your invoiced prices on an itemised basis.
- 19.4 If any change in law (including the GST law) effects or is accompanied by or undertaken in connection with a reduction in, or abolition of, any then existing Taxes, the consideration payable by us will be reduced by the same amount as your actual total costs are reduced as a consequence of this reduction whether directly, by way of a reduction in, or abolition of, Taxes paid or payable by You to your third party suppliers or to any government, or indirectly, by way of reduction in the prices charged by third party suppliers to You.
- 19.5 If You have not provided us with an Australian Business Number, we are entitled to withhold from any payment made to You such amounts as are required for us to comply with the provisions of the *Taxation Administration Act 1953* (Cth) and related legislation.
- 19.6 We can request that You enter into a written agreement with us in relation to a particular supply or supplies under this Agreement which provides that:
  - (a) we will issue a recipient created tax invoice (or adjustment note) for the acquisition that we make (or are deemed to make) from You and will provide You with a copy of any such recipient created tax invoice or adjustment note;
  - (b) You will not issue a tax invoice (or adjustment note) for the supply You make (or are deemed to make) to us;

- (c) You will promptly provide us all information necessary to enable us to issue a recipient created tax invoice (or adjustment note) on a timely basis; and
- (d) each Party will notify the other party if they cease to be registered for GST, or cease to satisfy the requirements for the issue of recipient created tax invoices.

19.7 In this **Clause 19** supplier means the party making the supply and recipient means the party to whom the supply is made.

## **20. Assignment, Sub-Contracting and Change of Control**

- 20.1 You may not assign the rights and/or obligations under this Agreement without our prior written consent.
- 20.2 We have the right to assign any or all of our obligations or rights under this Agreement at any time to any Related Entity or to any party that is financially capable of meeting our obligations under this Agreement.
- 20.3 You may not sub-contract your obligations under this Agreement unless we consent to such arrangement.
- 20.4 Any consent given by us under this Clause must include a condition that the sub-contractor or assignee agrees to be bound by this Agreement.
- 20.5 Sub-contracting does not relieve You from any liability or obligation under this Agreement. You remain liable to us for the acts and omissions of any Sub-Contractors, as if they were your acts or omissions.
- 20.6 You must notify us immediately upon becoming aware of a Change of Control or the likelihood of a Change of Control in relation to You. We have the right at any time on or after a Change of Control of You to terminate this Agreement under **Clause 9**.

## **21. Notices**

- 21.1 Any notice, approval, consent or other communication in relation to this Agreement must be:
  - (a) in writing;
  - (b) marked for the attention of
    - (i) in the case of a notice to us, the ACU Representative; and
    - (ii) in the case of a notice to You, the Supplier Representative; and
  - (c) left at or sent by prepaid ordinary post to the last notified address of the Party, sent by facsimile to the last notified facsimile number of the Party, or sent by electronic mail ("email") to the last notified email address of the Party.
- 21.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 21.3 If posted in Australia, a letter is taken to be received on the third day after posting.



- 21.4 If posted overseas, a letter is taken to be received on the seventh day after posting.
- 21.5 A facsimile is taken to be received at the time shown in a transmission report by the machine which indicates that the whole facsimile was sent.
- 21.6 An email is taken to be received at the time shown in a delivery confirmation report generated by the sender's email system.

## **22. Settlement of Disputes**

- 22.1 In the event of any dispute or difference arising between the Parties as to the construction of the Agreement or as to any matter or thing of any nature arising under or in connection with the Agreement, then a Party must give prompt notice of that dispute to the other Party. Such notice must be made clear that it is a **Notice of Dispute** by the use of appropriate wording.

Within 7 days of the service of that notice, the Supplier's Representative and the next-up manager of the Supplier's Representative or other senior executives as may be appropriate, and the ACU Representative and the next-up manager of the ACU Representative or the ACU Procurement Manager, or his delegated authority, or a senior executive of ACU, must meet and in good faith attempt to resolve the dispute. If they do not resolve the dispute within 14 days of their initial meeting, then either Party may refer the dispute to mediation or an external means of determination including litigation.

The issuing of a Notice of Dispute is a condition precedent to the commencement by either party of arbitration proceedings with regard to the matters in dispute.

If the Supplier's Representative is the Chief Executive or Managing Director of the Other Party's organisation, then the Other Party's second-in-charge or board member may attend the initial meeting with the Supplier's Representative.

- 22.2 Notwithstanding the existence of a dispute, both Parties will continue to perform their respective obligations under the Agreement. Any conciliation, mediation, arbitration or expert determination will be held in the State or Territory in Australia in which the Services are to be provided.
- 22.3 A party may commence court proceedings relating to any dispute arising out of this Agreement at any time where that party seeks urgent interlocutory relief.

## **23. The Terms and Conditions of this Agreement Take Precedence**

- 23.1 By executing this Agreement You agree to be bound by the terms in this Agreement.
- 23.2 This Agreement, when duly signed on our behalf, is the only agreement which we will recognise as authority for charging for the Services to our account and supersedes all previous communications and negotiations in relation to the Services.
- 23.3 Except as may be specifically provided in this Agreement, any terms and conditions contained in, or relating to, any other documents, including any of your documents, in respect of the Services, are excluded.

## **24. Other Matters**

- 24.1 Any of our rights under these terms can only be waived by us in writing.
- 24.2 Subject to **Clause 9**, these terms may not be varied except in writing signed by both Parties.
- 24.3 We may exercise a right, remedy or power in any way we consider appropriate.
- 24.4 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.
- 24.5 To the extent of any inconsistency between the terms and conditions in the various sections of this Agreement, then (subject to **Clause 24.6**) the terms and conditions as set out in Sections A, B and C then prevail over, to the extent of any such inconsistency, the General Terms and Conditions in this Section D and then over any terms and conditions in any attachment, annexure or schedule, unless it is made clear that the specific Term or Condition in any attachment, annexure or schedule is meant to take precedence over the General Terms and Conditions in this Section D.
- 24.6 Where we provide to You access to our Information Systems it will be for the sole purpose of assisting You to supply the Services. You are required to regard knowledge of our systems as confidential and not to be shared to other parties, not to breach any security provision relating to the use of such systems and not to cause damage to, or in some way corrupt or disrupt the functioning of, such systems. You may be required to agree to special terms and conditions relating to the use of such systems and nothing in these Section D General Terms and Conditions may override, or otherwise weaken or lessen the effect of, any special terms and conditions attached to the use of our Information Systems.
- 24.7 You must obtain at your own expense any necessary Licences or permits and comply with applicable laws in providing the Services to us.
- 24.8 Our rights, remedies and powers under this Agreement are in addition to any rights, remedies and powers provided by law.
- 24.9 The provision of Services under this Agreement are non-exclusive. ACU reserves the right, at its sole discretion, to purchase the Services covered by this Agreement from other sources should circumstances warrant.
- 24.10 There is no requirement for a minimum purchase in any period by ACU to be made. There is no “take or pay” provision in this Agreement.
- 24.11 This Agreement cannot be automatically rolled-over. This Agreement will terminate at the scheduled date unless there is agreement in writing between the parties for it to be renewed.

Unless specified to the contrary in where the termination date has been reached but there has been no agreement to extend or terminate this agreement, the agreement will be regarded as terminated but the terms of this agreement, including, but not limited to, pricing, specifications and delivery, shall remain applicable on a month to month basis until such time as a formal notification to terminate is issued by one party to the other or an extension of the agreement, or new agreement, is agreed between the parties. The



minimum period for a notice of termination after the termination date has lapsed, and in the absence of a further agreed period, is one month.

## **25. Governing Law**

- 25.1 This Agreement is governed by the laws of the state in Australia where the Services are provided.
- 25.2 You and we agree to submit to the non-exclusive jurisdiction of the courts of the state in Australia where the Services are provided and the courts of appeal from them.

## **26. Interpretation**

- 26.1 In this Agreement unless the contrary intention appears:
- (a) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
  - (b) the singular includes the plural and vice versa;
  - (c) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
  - (d) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
  - (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (f) a reference to an annexure, attachment or schedule is a reference to an annexure, attachment or schedule to this Agreement, and a reference to this Agreement includes an annexure, attachment or schedule;
  - (g) a reference to a **Clause** or section is a reference to a **Clause** or section in this Agreement;
  - (h) a reference to a third person or a third party is a reference to a person who is not a party to this Agreement;
  - (i) a reference to “A\$”, “\$A”, “dollar” or “\$” is a reference to Australian currency; and
  - (j) the words “includes” or “including” means includes or including without limitation.
- 26.2 Headings are inserted for convenience and do not affect interpretation of this Agreement.

## **27. Counterparts**

This Agreement may be executed in any number of counterparts, which taken together will constitute one instrument. A duly signed and legible counterpart of this Deed transmitted by facsimile, email or other means of electronic transmission will be

deemed to have the same legal effect as delivery of an original signed copy of this Deed for all purposes.

## **28. Modern Slavery**

28.1. In performing its obligations under this Agreement, the Contractor shall and shall ensure all of its agents, contractors and sub-contractors:

- (a) comply with all applicable Laws, statutes or regulations in force from time to time, including but not limited to the Modern Slavery Act; and
- (b) take reasonable steps to ensure that there is no Modern Slavery in the supply chains of the Contractor agents, contractors and/or sub-contractors or in any part of their respective businesses or dealings.

28.2. The Contractor represents and warrants that:

- (a) it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act; and
- (b) neither the Contractor, nor any of its officers, employees or other persons associated with the Contractor:
  - (i) has been convicted of any offence involving Modern Slavery; and
  - (ii) having made reasonable enquiries, to the best of its knowledge has been or is the subject of any investigation, inquiry or enforcement proceedings by any Authority or other administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.

28.3. The Contractor shall implement due diligence procedures for its own Contractor agents, contractors and sub-contractors, and other participants to ensure that there is no Modern Slavery in its supply chains.

28.4. The Contractor shall deliver to the Participating University:

- (a) no later than 3 calendar months from December 31 each year, an annual statement prepared in accordance with clause 16(1) of the *Modern Slavery Act 2018* (Cth), including, but not limited to, the steps it has taken to ensure that Modern Slavery is not taking place in any of its supply chains or in any part of its business; and
- (b) such other information or reports as may reasonably be required from time to time by the Participating University to comply with the requirements, or avoid any contravention, of the Modern Slavery Act.

28.5. For the purposes of clause 28.4. any reference to obligations imposed upon a 'reporting entity' in clause 16(1) of the *Modern Slavery Act 2018* (Cth) shall be taken to mean obligations imposed upon the Contractor, to the extent that those obligations apply to the Contractor.

28.6. The Contractor shall notify the Participating University as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain, which has a connection with this Agreement.

## SECTION E - DEFINITIONS

In this Agreement unless the contrary intention appears:

**Adjustment** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Adjustment Event** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Adjustment Note** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Agreement** means this agreement as constituted by the Header Page, the Table of Contents, Sections A to F and any other annexures, attachments and schedules.

**Background IP** means your Intellectual Property Rights which:

- (a) are in existence at the date of this Agreement; or
- (b) come into existence after the date of this Agreement otherwise than in connection with this Agreement.

**ACU** means the Australian Catholic University Limited (ABN 15 050 192 660).

**ACU Policy Documents** means all of our applicable policy documents formulated from time to time identified to or provided to You including without limitation, those relating to information systems, security, privacy, occupational health and safety and environment.

**ACU Representative** means the person noted as the ACU Representative in Section A.

**Chain of Responsibility Legislation** means any State or Commonwealth legislation based on or adapted from the Road Transport Reform (Compliance and Enforcement) Bill Model provisions as approved by each State and Territory Government.

**Change of Control** means for a corporation, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attaching to shares in the corporation; or
- (c) Control of more than half the issued shares of the corporation (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital).

**Commencement Date** means the date specified in Clause 6, Section A.

**Confidential Information** means information in any form or media directly or indirectly given to a Party during the course of business relations, whether before, on or after the date of this Agreement. Confidential information includes information concerning a Party's or any Related Entity's business activities, strategies, plans and assets, products and their specifications, the method of production, the type and status of major items of plant and equipment used in relevant production facilities, the markets in which products are sold and methods of distribution, a party's Intellectual Property Rights, financial affairs, technologies, source and object codes and computer records, clients, customers, suppliers, distributors and their financial affairs and agreements with them and any other information that:

- (a) is, by its nature, confidential or non-public;
- (b) is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
- (c) a Party knows or ought to know is confidential,

but excludes information that is:

- (d) in or enters the public domain through no fault of either party;
- (e) or was made available to a Party by a person (other than the other Party) who, as far as that Party knows, has or then had the unrestricted legal right to do so; or
- (f) or was developed by a Party without that Party relying on, referring to, or incorporating any of the other Party's Confidential Information.

**Consultancy Services** means, on behalf of ACU, any review performed for, advice given to or service provided to, in response to a stipulated requirement, whether specifically requested or provided as an ancillary service.

**Control** means a power or control that is direct or indirect or that is, or can be, exercised as a result of, by means of or by the revocation or breach of a trust, an agreement, a practice, or any combination of them, whether or not they are enforceable. It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else.

**Delivery Date** means the date specified for delivery of the Goods as set out in a purchase order issued by us to You in relation to this Agreement or elsewhere in this Agreement.

**Delivery Method** means the method specified for delivery of the Goods as set out in a purchase order issued by us to You in relation to this Agreement or elsewhere in this Agreement. In the absence of a pre-specified delivery method, means using your normal delivery practices made known to, and accepted by, us prior to execution of this Agreement.

**Defective Goods** means Goods which are not in conformity with this Agreement or are defective in design, performance, workmanship or makeup.

**Defective Services** means Services or the results of any Services which are not in conformity with this Agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

**Gender Equality** includes the commitment to equal remuneration between women and men; removing barriers to the full and equal participation of women in the workforce; the elimination of discrimination on the basis of gender in relation to employment matters; and a zero tolerance for sexual harassment.

**General Terms and Conditions** means the terms and conditions in Section D of this Agreement.

**Goods** means the goods specified in Sections B and C of this Agreement (including any part of the goods specified).

**Gross Negligence** means the failure to perform a duty in reckless disregard of the consequences.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (C'th).

**Hosting Services** means the hosting of the Solution by the Consultant for the benefit of ACU, as detailed in Schedule B.

**Implementation** means the implementation of the agreed requirements in accordance with Schedule B, and “**Implement**” has a corresponding meaning.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, taking any step that could result in the person becoming insolvent, under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

**Intellectual Property** means all Intellectual Property Rights created, discovered or coming into existence as a result of, for the purpose of or in connection with the supply of the Goods and/or provision of the Services or this Agreement (including without limitation all Intellectual Property Rights developed by You in supplying the Goods and/or providing the Services and all improvements to Background IP developed in connection with this Agreement or provision of the Services).

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and Confidential Information, and other results of intellectual activity in any field whether or not registrable, registered or patentable. These rights include rights in applications to register these rights and all renewals and extensions of these rights.

**Item** means a **Product**.

**IP** means **Intellectual Property**.

**Key Performance Indicators** mean the specified and agreed performance requirements that will be used to measure the overall effectiveness of contractual arrangements.

**KPIs** mean **Key Performance Indicators**.

**Licences** means all licences, qualifications, registrations and other statutory requirements necessary for performance of services and supply of goods under this Agreement.

**Material Safety Data Sheet**. Has the same meaning as **Safety Data Sheet**.

**Modern Slavery Act** means the *Modern Slavery Act 2018* (Cth) and any legislation in operation in the Jurisdiction dealing with similar or equivalent subject-matter.

**Modern Slavery** has the meaning given in section 4 of the *Modern Slavery Act 2018* (Cth) and, if the context requires, the meaning given under any other applicable Modern Slavery Act.

**MSDS** means a **Material Safety Data Sheet**. It has the same meaning as Safety Data Sheet.

**National Code of Practice for the Preparation of (Material) Safety Data Sheets** means the national code, or its equivalent, as published, and revised from time to time, by the National Occupational Health and Safety Commission or its successor organisation or body.

**Our Premises** means the site to where Goods are delivered or Services are provided.

**Our Technical Materials** means all the Intellectual Property Rights in and the materials making up the plans, designs, engineering information, data, specifications, reports, accounts and other material provided by us to You in relation to this Agreement or the Services, or as specified in this Agreement, including all modifications and improvements to such material developed in connection with this Agreement or the Services.

**Party** means You or us.

**Parties** means You and us.

**Personnel** means in relation to a Party, the employees, officers, agents, Sub-Contractors and consultants of that Party and in the case of ACU includes its students and visiting educational professionals.

**Point of Delivery** means the address specified for delivery of the Goods as set out in a purchase order issued by us to You in relation to this Agreement or elsewhere in this Agreement.

**Price** means the price specified in this Agreement or the rates for supply of Goods and performance of the Services (as the case may be).

**Product** means a **Good** or a **Service**.

**Project IP** means all Intellectual Property Rights created, discovered or coming into existence as a result of, for the purpose of or in connection with the provision of the Services or this Agreement (including without limitation all Intellectual Property Rights developed by You in providing the Services and all improvements to Background IP developed in connection with this Agreement or provision of the Services).

**Related Entity** means any related body corporate as defined in the *Corporations Act 2001 (Cth)*.

**Safety Data Sheet.** A document prescribed by government regulation setting out the safety characteristics of the item being supplied. Has the same meaning as an MSDS.

**Safety Performance Requirements** means those characteristics of the purchased item that need to be present to ensure safe functioning in the intended application. They include meeting any mandatory Company or external standard (such as Australian Standards and/or regulatory requirements). They also include those detailed specifications applicable to manufactured items that are necessary to guarantee the continued safe operation of the process in which they are used. For Services, they include ensuring that Services are provided by suitably qualified personnel to a suitably accredited service standard.

**SDS – a Safety Data Sheet**



**Services** means the services specified in this Agreement (including any part of the specified services and the results of the specified services).

**Sub-Contractor** means any contractor or sub-contractor engaged by a Party and those contractor's or sub-contractor's employees, officers, agents, consultants and contractors.

**Supplier** means the entity noted as the Supplier in Section A.

**Supplier Representative** means the person noted as the Supplier representative in Section A.

**Taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

**Tax Invoice** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (C'th)*.

**Technical Materials** includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this Agreement.

**Term** means the term of this Agreement as specified in Clause 8 of Section A.

**Training Services** means the training services to be provided to ACU by the Supplier, in accordance with Schedule B.

**You** means the organisation or person named in this Agreement as the Supplier of the Goods or Services.

**Warranty Period** means the period of:

- (a) twenty four (24) months from the date of delivery or twelve (12) months from the date of installation or initial use of the goods, whichever is the sooner (in the case of the goods); or
- (b) twelve (12) months from the date on which the service is performed (in the case of the services).

**We and Us** means the ACU Entity identified in Section A.

#### **WHSE Terms:**

- **E** means Environment.
- **FAI** means First Aid Injury.
- **First Aid Injury** means general first aid is required only to treat injury and time away from work is not required.
- **Lost Time Injury** has the standard meaning and generally means time away from work of at least one day, to recover and be fit for return to work for some, if not all, duties.

- **LTI** means Lost Time Injury.
- **Medical Treatment Injury** has the standard meaning and generally means treatment by trained medical practitioner is required but does not result in an LTI.
- **MTI** means Medical Treatment Injury.
- **Near Miss** means a **Safety Incident** that does not result in injury to people or property but had the potential to do so.
- **OHS** means Occupational Health and Safety, only.
- **Safety Incident** means event that either caused injury to people or damage to property or the environment or had the potential to do so.
- **SI** means Safety Incident.
- **WHSE** means Workplace, Health, Safety and Environment.

**Written Claim** means a written claim given by You in accordance with Section D Clause 12.5(b).



## SECTION F - ATTACHMENTS

Attachment 1 – Indicative KPIs to apply to this RFT (and any contract arising from it).

KPI	Measure	Target Description
Performance	Improvements in: ROI CPA CLV Conversions	<ol style="list-style-type: none"> <li>1. Return on Investment (ROI): Measures the profitability of the campaign in relation to the cost.</li> <li>2. Cost Per Acquisition (CPA): The cost to acquire a new customer.</li> <li>3. Customer Lifetime Value (CLV): The projected revenue from a customer over their lifetime.</li> <li>4. Conversion Rate: The percentage of visitors who take a desired action.</li> </ol>
Reach and Engagement	Overall uplift YOY: Impressions Reach Engagement rate	<ol style="list-style-type: none"> <li>1. Impressions: The number of times an ad is displayed.</li> <li>2. Reach: The number of unique users who saw the ad.</li> <li>3. Engagement Rate: The level of engagement (likes, shares, comments) with the content.</li> <li>4. Video Completion Rate (VCR): The percentage of viewers who watch a video ad to the end.</li> </ol>
Budget Efficiency	Improvements in: CPM Ad frequency CPC	<ol style="list-style-type: none"> <li>1. Cost Per Thousand Impressions (CPM): The cost of 1,000 ad impressions.</li> <li>2. Ad Frequency: The average number of times an individual sees the ad.</li> <li>3. Cost Per Click (CPC): The cost of each click on an ad.</li> </ol>
Contract Management	Data Accuracy and Availability.	Zero instances of missing or inaccurate records held by Supplier.
Manage Costs	Costs Managed Against Budget.	Costs not greater than annual budget and invoiced accurately and in a timely manner
DIFOT	Delivery In Full and On Time	95% Deliveries made within designated time frames.
Reporting	Accurate supply of campaign reports	Supply of campaign reports in agreed timeframe.
Admin	Campaign Set ups	Timeframe for go to market to be done within a reasonable turnaround time based on both parties' agreement.