

TERMS AND CONDITIONS

1 Definitions

The definitions applicable to this Agreement are as set out below and in Attachment 1 :

Event Date means the date so described in the Purchase Order or Quote.

Fees means the fees payable to You for the provision of the Services as set out in the Purchase Order.

IPR means all current and future registered and unregistered rights in respect of copyright, designs, trademarks, patents and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended and revised from time to time).

Milestones means the milestones specified in the Purchase Order.

Performance Services means the artistic Services of the Service Provider or an artist engaged by the Service Provider, as indicated in a Purchase Order.

Services means the services described in the Quote and Purchase Order, as varied in accordance with this Agreement, and includes the supply of goods.

Venue means the address where the Performance Services will take place as set out in the Purchase Order.

2 Supply of Services

- (a) You must provide the Services to Zoos Victoria in accordance with this Agreement.
- (b) You must:
 - (i) perform the Services and all things which are necessary and incidental to performing the Services;
 - (ii) provide the Services in a proper, timely, safe and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced provider of services that are similar to the Services;
 - (iii) perform the Services in accordance with any requirements set out in this Agreement and Zoos Victoria's reasonable directions from time to time; and
 - (iv) comply with all applicable Laws (including the Supplier Code of Conduct) when providing the Services.
- (c) You acknowledge that the Victorian State Government is committed to ethical, sustainable and socially responsible procurement. By fulfilling the Purchase Order You confirm that You agree to comply with the Supplier Code of Conduct.
- (d) If the Services are Performance Services:
 - (i) You must perform and complete the Services at the Venue(s) on the Event Date(s) and in accordance with the reasonable requirements and directions of Zoos Victoria;
 - (ii) You must avoid any inappropriate or unprofessional conduct, which is racist, sexist, disablist, homophobic, biphobic, transphobic or other discriminatory conduct that is reasonably likely to offend, insult, humiliate, intimidate or ridicule any minorities;
 - (iii) You must provide all equipment necessary for the Services at your own expense;
 - (iv) You are responsible for the costs for all accommodation and transport, meals, room service charges, telephone calls, data and film access, all other service charges (including but not limited to any charges for damage to property) and any transport for private purposes;
 - (v) You must not change or alter the performance aspect of the Services without the prior written approval of Zoos Victoria; and
 - (vi) if the Service Provider (or artist as the case may be) becomes ill, or is injured, in such a manner to prevent it from providing the Services, You must replace such person with another person capable of delivering the Services.

3 Failure to perform

- (a) If You fail to provide any of the Services in accordance with this Agreement, Zoos Victoria will not be required to pay for those Services (until they are provided correctly) and may require You to remedy any default or re-perform those Services within a reasonable time as directed by Zoos Victoria.
- (b) If the default referred to in **clause 3(a)** is not capable of being remedied or the Services are not capable of being re-performed, or You fail within the time specified to remedy the default or re-perform the Services, Zoos Victoria may either have the Services remedied or re-performed by a third party or do so itself. In either case, You must pay the reasonable costs and expenses incurred by Zoos Victoria in doing so.
- (c) This **clause 3** does not limit any remedies available to Zoos Victoria in relation to Your failure to perform in accordance with this Agreement.

4 Insurance

- (a) You must, before the Date of Agreement effect the following insurances with reputable insurers:
 - (i) If required, professional indemnity insurance covering liability however arising in connection with the performance of Services and Your other obligations under this Agreement with a limit of liability of not less than \$1 million; and
 - (ii) workers' compensation insurance in accordance with the requirements of the Law.
- (b) Zoos Victoria agrees to maintain, during the course of the Works, public liability insurance covering legal liability for damage to any real or personal property, including the property of Zoos Victoria or any other third party, and injury to, or death of, any person, arising out of Your performance of the Works.
- (c) On request, You must provide Zoos Victoria with evidence of the currency of any insurance required under this Agreement.

5 Variations

- (a) Zoos Victoria may at any time direct You to vary the Services under the Agreement by issuing You a notice in writing and amending the existing Purchase Order or issuing a new Purchase Order (**Variation Order**).
- (b) If the Variation Order requires the omission of part of the Services, Zoos Victoria may perform the omitted works, or have them performed by others as it sees fit.
- (c) If a Variation Order is issued, then the parties must endeavour to agree to an equitable adjustment to the Fees (if any) having regard to the nature of the variation on the scope of Services.
- (d) If the parties are unable to agree within 14 days of the Variation Order, then Zoos Victoria may elect to terminate this Agreement in its absolute discretion pursuant to **clause 16(a)**.

6 Assignment

- (a) You must not assign or deal with any right or obligation under this Agreement without Zoos Victoria's prior written consent.
- (b) Zoos Victoria may at any time grant or create any security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement over this Agreement and any rights under this Agreement.

7 Subcontractors

- (a) You must not subcontract any part of the Services without Zoos Victoria's prior written consent.
- (b) Your obligations under this Agreement are not lessened or otherwise affected by entering into a subcontract agreement.
- (c) You must ensure that all subcontractors comply with the requirements of this Agreement and Laws when performing the Services.

8 Confidentiality

You must treat this Agreement as confidential and must not disclose its existence, the information contained in it or its subject matter to any third party (except as may be required to perform Your obligations under this Agreement, by law, a Court order or the rules of any securities exchange) or use it for advertisement, display or publication without the prior written consent of Zoos Victoria.

9 Nature of relationship

You provide the Services to Zoos Victoria as an independent contractor.

10 Risk and Indemnity

- (a) You continually indemnify Zoos Victoria and its representatives, agents, officers or employees (**Indemnified Parties**) against any liability, cost, loss or expense (including legal expense on a full indemnity basis) incurred by Zoos Victoria arising out of any of the following:
 - (i) any material breach of this Agreement by You; and
 - (ii) any negligent or wilful act or omission by You, your personnel or subcontractors in connection with the performance of the Services.
- (b) Your liability under **clause 10(a)** will be reduced proportionally to the extent that an act or omission of Zoos Victoria contributed to the liability, cost, loss or expense, as the case may be.

11 Fees

- (a) The Fees payable by Zoos Victoria for the Services are set out in the Quote. The Fees are fixed and include all costs, expenses, overheads, taxes and charges (excluding GST).
- (b) Zoos Victoria agrees to pay You the Fees in arrears for performance of the Services in accordance with this Agreement.
- (c) You must issue a payment claim and corresponding tax invoice to Zoos Victoria's Accounts Payable Department (email:

- ap.invoices@zoo.org.au) on the last working day of each month showing sufficient particulars of the Services performed and the amount that You claim to be due, or in accordance with the agreed Milestones. If requested, you must provide Zoos Victoria with any supporting information in relation to a payment claim.
- (d) If Zoos Victoria informs you that it does not agree with the amount claimed in the payment claim, You must issue a revised payment claim and tax invoice to reflect the revised amount.
- (e) Zoos Victoria will pay the amount set out in the payment claim within 30 days of receipt of a valid tax invoice. Zoos Victoria agrees that payment will be made by EFT and EFT remittance advice will be emailed to You at the same time that payment is made.
- (f) You must continue to perform your obligations under this Agreement notwithstanding any dispute about an invoice.
- (g) Payment of an invoice is not to be taken as evidence that the Services have been provided in accordance with this Agreement.
- 12 Intellectual Property**
- (a) All IPR created by You in performing the Services (**New IPR**) vests immediately on creation in Zoos Victoria.
- (b) Zoos Victoria grants You a revocable, royalty-free licence to use New IPR for the performance of the Services.
- 13 Indigenous Cultural and Intellectual Property**
- The parties acknowledge that nothing in this Agreement transfers ownership of any Indigenous Cultural and Intellectual Property, and all rights and interests in the ICIP, including in relation to the Services, remain with the traditional owners of the ICIP. In the event that You become aware of any ICIP in the course carrying out the Supply of Services, You agree to identify and provide written notice to Zoos Victoria of that ICIP.
- 14 Taxes**
- (a) Unless expressly stated otherwise in this Agreement, the Fee does not include GST. Zoos Victoria is not required to pay the GST component of the Fee until the Client receives a *tax invoice* from the Contractor in respect of the *taxable supply*.
- (b) If an *adjustment event* occurs, the Contractor must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.
- (c) Italicised expressions used in this **clause 1413** have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 15 Suspension**
- Zoos Victoria may, acting reasonably, direct You to suspend and, after a suspension has been instructed, to re-commence, the Services. You will be entitled to terminate the Agreement if the suspension continues for 2 months or more. You will otherwise not be entitled to any compensation resulting from such suspension.
- 16 Termination**
- (a) Zoos Victoria may terminate this Agreement at any time by giving written notice to You. If this Agreement is terminated by Zoos Victoria, You will be entitled to payment for the value of the Services completed up to the date of receipt of the notice of termination and Your reasonable costs directly associated with such termination. If no Services have been performed, You must return any deposits paid by Zoos Victoria.
- (b) Zoos Victoria may immediately terminate this Agreement by written notice to You if:
- You breach any term of this Agreement and fail to rectify such breach within 7 days after receipt of a notice to do so; or
 - You enter or threaten to enter into bankruptcy, liquidation or any other form of insolvency, administration, external management or receivership.
- (c) The termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.
- (d) You may immediately terminate this Agreement by written notice, if:
- Zoos Victoria has not paid a correctly rendered and undisputed invoice within 30 days after the date on which payment is due;
 - You have provided Zoos Victoria with written notice that payment is overdue; and
 - Zoos Victoria has not made payment within 14 days after receiving such notice.
- (e) The obligations which by their nature survive, or which are expressed to survive, the termination or expiry of this Agreement will survive (including this **clause 16** and **clauses 4, 8 and 10**).
- 17 Force Majeure**
- (a) If a Force Majeure Event materially affects a party's obligations under this Agreement such that the party cannot carry out a material obligation under the Contract (**Affected Party**), the Affected Party must promptly provide notice to the unaffected party and use reasonable efforts to mitigate the effects of the Force Majeure Event.
- (b) The obligations of both parties under this Agreement shall be suspended upon the Affected Party providing notice.
- (c) If a Force Majeure Event continues for more than 30 days, Zoos Victoria may terminate the Agreement.
- 18 Disputes**
- (a) If a dispute or difference arises in respect of this Agreement (**Dispute**), a party must notify the other party of the Dispute and must endeavour to negotiate in good faith to resolve the Dispute.
- (b) If the Service Provider and Zoos Victoria are unable to resolve the Dispute within 14 days of receipt of a notice of dispute, a senior representative of Zoos Victoria and the Service Provider must meet and endeavour to resolve the Dispute. If the Dispute is not resolved within a further 14 days, either party is free to pursue its rights at law.
- 19 Anti-slavery**
- (a) Without limiting anything else in this Agreement, You must take all reasonable steps to ensure there is no Modern Slavery in Your operations, supply chain and any aspect of the Services, including:
- establishing appropriate systems and processes to ensure any risks or occurrences of Modern Slavery in Your supply chain are assessed, and addressed;
 - undertaking reasonable due diligence of Your own subcontractors and suppliers to ensure that any risks or occurrences of Modern Slavery are assessed, and addressed;
 - promptly notifying Zoos Victoria as soon as You are aware of, or reasonably suspect, Modern Slavery in Your operations, supply chain or any aspect of the Services; and
 - undertaking, at Your own cost and within a reasonable timeframe, remediation actions to address and cease any instances of Modern Slavery in Your operations, supply chain or any aspect of the Services, to the satisfaction of Zoos Victoria.
- (b) You must do all that is necessary to assist Zoos Victoria in complying with its obligations under the *Modern Slavery Act 2018* (Cth).
- 20 Notices**
- (a) Any notice under this Agreement must be given in writing and may be delivered by hand or sent by pre-paid post or email to the other party.
- (b) A notice is taken to be received:
- if delivered by hand, on that day;
 - if posted, 3 days after posting; or
 - if sent by email, when confirmation of delivery is received by the sender which records the time that the email was delivered to the addressee's last notified email address unless the sender receives a delivery failure notification indicating that the email has not been delivered to the address.
- 21 General**
- (a) This Agreement will be governed by and construed according to the Laws of Victoria and the parties accept the jurisdiction of courts exercising jurisdiction in Victoria.
- (b) Time is of the essence in relation to the provision of the Services.
- (c) Nothing in this Agreement prevents Zoos Victoria from obtaining any services which are similar to the Services from any third party.
- (d) This Agreement contains the entire understanding between the parties as to the provision of the Services. This Agreement may only be amended by written agreement of the parties.
- (e) No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
- (f) The failure by a party to insist upon a strict performance by the other party of any of the terms or provisions of this Agreement will not be deemed a waiver of that or any subsequent breach or default.
- (g) A reference to:
- "includes" means includes without limitation;
 - "a party" means Zoos Victoria or You, as the context requires, and a reference to "the parties" means both of them;
 - a person includes a partnership, a joint venture, an unincorporated association, a corporation and a government or statutory body or authority;
 - a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

PURCHASE ORDER MINOR WORKS (up to \$75,000 (ex. GST))



TERMS AND CONDITIONS

1 Definitions

The definitions applicable to this Agreement are as set out below and in Attachment 1.

Cladding Guideline means the guideline titled "Minister's Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products" issued pursuant to section 188(1)(c) of the *Building Act 1993 (Vic)* on 13 March 2018, as amended or replaced from time to time.

Completion means the works being completed in accordance with all relevant requirements, defect free, and in a condition able to be handed over to Zoos Victoria.

Contract Price means the amount set out in the Purchase Order, as adjusted in accordance with this Agreement.

Date for Completion means the date set out in the Quote.

OHS Laws mean all applicable occupational health and safety, dangerous goods and electricity safety legislation and any directions on safety or notices issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the Works.

Supplier Code of Conduct means the Supplier Code of Conduct published by the Victorian government and available at <https://www.buyingfor.vic.gov.au/supplier-code-conduct>.

Site means the buildings and land that may be accessed by You while carrying out the Works as described in the Purchase Order.

Works means the work described in the Quote and Purchase Order as varied in accordance with this Agreement.

2 Performance of Works

(a) You must:

- (i) carry out the Works in accordance with this Agreement; and
- (ii) bring the Works to Completion by the Date for Completion.

(b) You must carry out the Works:

- (i) in a proper, timely, safe and efficient manner using the standard of care, skill and diligence that would reasonably be expected from a skilled contractor experienced in the performance of work similar to the Works;
- (ii) in accordance with any requirements set out in this Agreement, and Zoos Victoria's reasonable directions from time to time; and
- (iii) so that the Works, when completed:
 - (A) comply with all Laws; and
 - (B) are fit for their intended purpose.

(c) You must comply with all applicable Laws (including the Supplier Code of Conduct) when carrying out the Works.

(d) You acknowledge that the Victorian State Government is committed to ethical, sustainable and socially responsible procurement. By fulfilling the Purchase Order, You confirm that you agree to comply with the Supplier Code of Conduct.

3 Failure to carry out Works

(a) If You fail to carry out the Works in accordance with this Agreement, Zoos Victoria will not be required to pay for those Works (until they are provided correctly) and may require You to remedy any default in the Works within a reasonable time as directed by Zoos Victoria.

(b) If the default referred to in **clause 3(a)** is not capable of being remedied, or You fail within the time specified to remedy the default, Zoos Victoria may either have the Works remedied by a third party or do so itself. In either case, You must pay the reasonable costs and expenses incurred by Zoos Victoria in doing so.

(c) This **clause 3** does not limit any remedies available to Zoos Victoria in relation to Your failure to carry out the Works in accordance with this Agreement.

4 Insurance

(a) You must, before the Commencement Date, effect workers' compensation insurance in accordance with the requirements of the Law.

(b) Zoos Victoria agrees to maintain, during the course of the Works, public liability insurance covering legal liability for damage to any real or personal property, including the property of Zoos Victoria or any other third party, and injury to, or death of, any person, arising out of Your performance of the Works.

(c) On request, You must provide Zoos Victoria with evidence of the currency of any insurance required under this Agreement.

5 Variations

(a) Zoos Victoria may at any time direct You to vary the Works under the Agreement by issuing You a notice in writing and amending the existing Purchase Order or issuing a new Purchase Order (**Variation Order**).

(b) If the Variation Order requires the omission of part of the Works, Zoos Victoria may perform the omitted works, or have them performed by others as it sees fit.

(c) If a Variation Order is issued, then the parties must endeavour to agree to an equitable adjustment to the Contract Price and the extension to Date for Completion (if any) having regard to the nature of the variation on the scope of Works.

(d) If the parties are unable to agree within 14 days of the Variation Order, then Zoos Victoria may elect to terminate this Agreement in its absolute discretion pursuant to **clause 1.1(a)**.

6 Assignment

You must not assign or deal with any right or obligation under this Agreement without Zoos Victoria's prior written consent.

(a) Zoos Victoria may at any time grant or create any security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement over this Agreement and any rights under this Agreement.

7 Subcontracting

(a) You must not subcontract any part of the Works without Zoos Victoria's prior written consent.

(b) Your obligations under this Agreement are not lessened or otherwise affected by entering into a subcontract.

(c) You must ensure that all subcontractors comply with the requirements of this Agreement and Laws when carrying out the Works.

8 Confidentiality

You must treat this Agreement as confidential and must not disclose its existence, the information contained in it or its subject matter to any third party (except as may be required to perform Your obligations under this Agreement, by law, a Court order or the rules of any securities exchange) or use it for advertisement, display or publication without the prior written consent of Zoos Victoria.

9 Nature of relationship

You provide the Works to Zoos Victoria as an independent contractor.

10 Access

(a) Zoos Victoria must give You sufficient access to the Site to allow You to commence work on the Site within the time set out in the Details.

(b) You will not be given exclusive access to the Site and may be required to share the Site with others.

11 Site conditions

(a) You are deemed to have inspected the Site, including its surroundings and local conditions, facilities on or near it and physical conditions above and below the surface including underground services (**Site Conditions**) before commencing the Works.

(b) You have no entitlement to claim any additional payment or adjustment to the Contract Price or extension to the Period whether under this Agreement or otherwise at law in connection with any discrepancy between the Site Conditions encountered by You during the construction of the Works and those conditions which You anticipated, or could have reasonably anticipated, at the date of this Agreement.

12 Occupational Health and Safety

You must:

- (a) comply with the OHS Laws;
- (b) immediately inform Zoos Victoria of all incidents, injuries or near misses in relation to any person engaged in, or affected by, Your performance of Your obligations under this Agreement; and
- (c) if Zoos Victoria conducts inquiries in relation to incidents, injuries or near misses, assist Zoos Victoria with its reasonable inquiries and promptly cooperate with any requests by Zoos Victoria for information, documentation or access to interview Your employees.

13 Risk and Indemnity

(a) You continually indemnify Zoos Victoria and its representatives, agents, officers or employees (**Indemnified Parties**) against any liability, cost, loss or expense (including legal expense on a full indemnity basis) incurred by Zoos Victoria arising out of any of the following:

- (i) any material breach of this Agreement by You; and
 - (ii) any negligent or wilful act or omission by You, your personnel or subcontractors in connection with the provision of the Works.
- (b) Your liability under **clause 13(a)10(a)** will be reduced proportionally to the extent that an act or omission of Zoos Victoria contributed to the liability, cost, loss or expense, as the case may be.

14 Payment

- (a) The Contract Price payable by Zoos Victoria for the Works are set out in the Quote. The Contract Price is fixed and include all costs, expenses, overheads, taxes and charges (excluding GST).
- (b) Zoos Victoria agrees to pay You the Contract Price in arrears for performance of the Works in accordance with this Agreement.
- (c) You must issue a payment claim and corresponding tax invoice to Zoos Victoria's Accounts Payable Department (email: ap.invoices@zoo.org.au) on the last working day of each month showing sufficient particulars of the value of the Works performed and the amount that You claim to be due. If requested, you must provide Zoos Victoria with any supporting information in relation to a payment claim.
- (d) If Zoos Victoria informs you that it does not agree with the amount claimed in the payment claim, You must issue a revised payment claim and tax invoice to reflect the revised amount.
- (e) Zoos Victoria will pay the amount set out in the payment claim within 30 days of receipt of a valid tax invoice. Zoos Victoria agrees that payment will be made by EFT and EFT remittance advice will be emailed to You at the same time that payment is made.
- (f) You must continue to perform your obligations under this Agreement notwithstanding any dispute about an invoice.
- (g) Payment of an invoice is not to be taken as evidence that the Works have been provided in accordance with this Agreement.

15 Taxes

- (a) Unless expressly stated otherwise in this Agreement, the Contract Price does not include GST. Zoos Victoria is not required to pay the GST component of the Contract Price until Zoos Victoria receives a *tax invoice* from You in respect of the *taxable supply*.
- (b) If an *adjustment event* occurs, You must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.
- (c) Italicised expressions used in this **clause 15** have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

16 Suspension

Zoos Victoria may, acting reasonably, direct You to suspend and, after a suspension has been instructed, to re-commence, the Works. You will be entitled to terminate the Agreement if the suspension continues for [2] months or more. You will otherwise not be entitled to any compensation resulting from such suspension.

17 Termination

- (a) Zoos Victoria may terminate this Agreement at any time by giving written notice to You. If this Agreement is terminated by Zoos Victoria, You will be entitled only to payment for the value of the Works completed up to the date of receipt of the notice of termination and Your reasonable costs directly associated with such termination. If no Works have been performed, and no equipment or materials purchased for the Works, You must return any deposits paid by Zoos Victoria.
- (b) Zoos Victoria may immediately terminate this Agreement by written notice to You if:
 - (i) You breach any term of this Agreement and fail to rectify such breach within 7 days after receipt of a notice to do so; or
 - (ii) You enter or threaten to enter into bankruptcy, liquidation or any other form of insolvency, administration, external management or receivership.
- (c) The termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.
- (d) You may immediately terminate this Agreement by written notice, if:
 - (i) Zoos Victoria has not paid a correctly rendered and undisputed invoice within 30 days after the date on which payment is due;
 - (ii) You have provided Zoos Victoria with written notice that payment is overdue; and
 - (iii) Zoos Victoria has not made payment within 14 days after receiving such notice.
- (e) The obligations which by their nature survive, or which are expressed to survive, the termination or expiry of this Agreement will survive (including this **clause 17** and **clauses 4, 8 and 13**).

18 Force Majeure

- (a) If a Force Majeure Event materially affects a party's obligations under this Agreement such that the party cannot carry out a material obligation under the Contract (**Affected Party**), the Affected Party must promptly provide notice to the unaffected party and use reasonable efforts to mitigate the effects of the Force Majeure Event.

- (b) The obligations of both parties under this Agreement shall be suspended upon the Affected Party providing notice.
- (c) If a Force Majeure Event continues for more than 30 days, Zoos Victoria may terminate the Agreement.

19 Disputes

- (a) If a dispute or difference arises in respect of this Agreement (**Dispute**), a party must notify the other party of the Dispute and must endeavour to negotiate in good faith to resolve the Dispute.
- (b) If the Contractor and Zoos Victoria are unable to resolve the Dispute within 14 days of receipt of a notice of dispute, a senior representative of Zoos Victoria and the Contractor must meet and endeavour to resolve the Dispute. If the Dispute is not resolved within a further 14 days, either party is free to pursue its rights at law.

20 Anti-slavery

- (a) Without limiting anything else in this Agreement, You must take all reasonable steps to ensure there is no Modern Slavery in Your operations and supply chain, including:
 - (i) establishing appropriate systems and processes to ensure any risks or occurrences of Modern Slavery in Your supply chain are assessed, and addressed;
 - (ii) undertaking reasonable due diligence of Your own subcontractors and suppliers to ensure that any risks or occurrences of Modern Slavery are assessed, and addressed;
 - (iii) promptly notifying Zoos Victoria as soon as You are aware of, or reasonably suspect, Modern Slavery in Your operations or supply chains; and
 - (iv) undertaking, at Your own cost and within a reasonable timeframe, remediation actions to address and cease any instances of Modern Slavery in Your operations or supply chains, to the satisfaction of Zoos Victoria.
- (b) You must do all that is necessary to assist Zoos Victoria in complying with its obligations under the *Modern Slavery Act 2018* (Cth).

21 Notices

- (a) Any notice under this Agreement must be given in writing and may be delivered by hand or sent by pre-paid post or email to the other party.
- (b) A notice is taken to be received:
 - (i) if delivered by hand, on that day;
 - (ii) if posted, 3 days after posting; or
 - (iii) if sent by email, when confirmation of delivery is received by the sender which records the time that the email was delivered to the addressee's last notified email address unless the sender receives a delivery failure notification indicating that the email has not been delivered to the address.

22 Indigenous Cultural and Intellectual Property

The parties acknowledge that nothing in this Agreement transfers ownership of any Indigenous Cultural and Intellectual Property, and all rights and interests in the ICIP, including in relation to performance of the Works, remain with the traditional owners of the ICIP. In the event that You become aware of any ICIP in the course of carrying out the Works, You agree to identify and provide written notice to Zoos Victoria of that ICIP.

23 General

- (a) This Agreement will be governed by and construed according to the Laws of Victoria and the parties accept the jurisdiction of courts exercising jurisdiction in Victoria.
- (b) This Agreement contains the entire understanding between the parties as to the provision of the Works. This Agreement may only be amended by written agreement of the parties.
- (c) No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
- (d) The failure by a party to insist upon a strict performance by the other party of any of the terms or provisions of this Agreement will not be deemed a waiver of that or any subsequent breach or default.
- (e) A reference to:
 - (i) "includes" means includes without limitation;
 - (ii) "a party" means Zoos Victoria or You, as the context requires, and a reference to "the parties" means both of them;

- (iii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
- (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

24 Cladding

- (a) The Contractor must:
 - (i) to the extent the Works include design, ensure that any design solution must not include the installation into any building of Type A or Type B Construction a Prescribed Combustible Product as part of an External Wall (including as an attachment) unless the Contractor has obtained a determination of the Building Appeals Board that the installation of the Prescribed Combustible Product complies with the *Building Act 1993* (Vic) and the regulations made under that Act;
 - (ii) not install into any building of Type A or Type B Construction a Prescribed Combustible Product as part of an External Wall (including as an attachment) unless the Contractor has obtained a determination of the Building Appeals Board that the installation of the Prescribed Combustible Product complies with the *Building Act 1993* (Vic) and the regulations made under that Act;
 - (iii) indemnify the Principal from and against any loss, damage, expense or claim (including any third party claim against the Principal) arising out of or in connection with any breach by the Contractor of its obligations under **clause 24(a)(i)** or **24(a)(ii)**; and
 - (iv) if it becomes aware of the use of any Prescribed Combustible Product on the project, immediately notify the Zoos Victoria.
- (b) Terms which have been defined or special meaning in the Cladding Guideline have that meaning where used in this **clause 24**.

25 Minimum rate of pay for Tip Truck Owner Drivers

- (a) In this **clause 25**:
 - (i) **Freight Broker** means a broker or agent in the business of procuring or arranging the engagement of independent contractors by hirers including a person who provides an online platform that facilitates the engagement of contractors by hirers; and
 - (ii) **Tip Truck Owner Driver** means an independent contractor who drives a tip truck in connection with excavation work in the building and construction industry.
- (b) Irrespective of who engages them, the Contractor must ensure that any Tip Truck Owner Driver carrying out the Works is paid according to the following:
 - (i) an hourly rate that is at least at the relevant rate in the Rates and Cost Schedules for Tip Truck Owner Drivers developed by the Transport Industry Council (**Relevant Rate**) plus any road tolls and Freight Broker fees;
 - (ii) a per load rate based on a reasonable estimate of the number of hours likely to be required to complete the specific job, taking into account all relevant circumstances and based on what a competent and experienced person in the position of the person engaging the Tip Truck Owner Driver would consider to be reasonable, multiplied by the Relevant Rate, plus any agreed incentive component which may be reduced in proportion to any shortfall in the load moved, plus any road tolls and Freight Broker fees; and
 - (iii) if the Tip Truck Owner Driver is underpaid, the Contractor must make good that underpayment or otherwise ensure that it is paid.

26 Reporting Criminal Conduct and Unlawful Conduct Obligations

The Contractor:

- (a) must comply with and ensure that its officers, employees and subcontractors comply with the RCUC Policy in connection with performing the work under the Contract on the basis that a reference to a contractor in the RCUC Policy is a reference to the Contractor;
- (b) acknowledges that the RCUC Policy applies to the Contract and does not limit in any way the Contractor's or its officers', employees', agents' and subcontractors' obligations under this Contract, at law or under any other policy;
- (c) must report Criminal Conduct and Unlawful Conduct in accordance with the RCUC Policy;
- (d) must, and must ensure that each of its subcontractors, immediately advise the Principal of any report made by the Contractor or its subcontractors to the WIV or a Relevant Regulator under the RCUC Policy unless prohibited by law;
- (e) agrees that notwithstanding any other clause in this Contract, if the Contractor does not comply with the requirements of this clause 26, the Principal may, in its absolute discretion, do any or all of the following:

- (i) require the Contractor to implement any corrective or remedial action to rectify the breach, including the removal of any individual or subcontractor involved with the Criminal Conduct or Unlawful Conduct;
- (ii) request or recommend the suspension or removal of the Contractor from pre-qualification schemes and panel arrangements related to Victorian public construction procurement;
- (iii) share information about the Contractor with other departments, agencies and the Construction Supplier Register;
- (iv) suspend the Contract until such time as the breach has been remedied to the satisfaction of the Principal;
- (v) by written notice immediately terminate the Contract; and/or
- (vi) exercise any other rights under the Contract or at law.

ATTACHMENT 1 – Umbrella Defined terms

Agreed Terms means the terms under cover of the heading entitled 'Agreed Terms'.

Agreement means the Purchase Order and Agreed Terms together with any referenced materials.

Date of Agreement means the Date set out in the Purchase Order

Force Majeure Event means any event or combination of events that is beyond the reasonable control of a party, including acts of God, war, terrorism, civil commotion, industrial action, fire, explosion, flood, epidemic, pandemic or natural disaster.

Indigenous Cultural and Intellectual Property or ICIP means rights in the cultural heritage belonging to Australian Aboriginal and Torres Strait Islander (Indigenous) peoples, including but not limited to: all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory;

- literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
- scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and phenotypes of flora and fauna);
- traditional knowledge of culture, climate and ecosystem that shape and inform design principles, including processes of community consultation and evaluation of housing design;
- items of movable cultural property and immovable cultural property (including sacred and historically significant sites and burial grounds);
- human remains and tissues; and
- documentation of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.

Laws means all laws including rules of common law and equity, statutes, regulations, determinations, by-laws, mandatory codes, standards and guidelines, writs, orders, injunctions, judgments and government authority requirements.

Modern Slavery has the same meaning as in the *Modern Slavery Act 2018* (Cth)

Purchase Order means the order form for the Services given by Zoos Victoria to You.

Quote means the quotation for the Services issued by You prior to the Date of Agreement.

Supplier Code of Conduct means the Supplier Conduct of Conduct published by the Victorian government and available at <https://www.buyingfor.vic.gov.au/supplier-code-conduct>.

Zoos Victoria means the statutory authority so entitled established and governed by the *Zoological Parks and Gardens Act 1995* (Vic)