

Scouts NSW



Major Works Contract

Major Works Contract

Purpose

The purpose of this Agreement is to set out the legal Agreement between the Contractor and the Client and to regulate the matters in connection with the Project as described in **Annexure A**.

This Contract includes the following Annexures, and these form part of this Contract between the parties:

1. **Annexure A** – Contract Details.
2. **Annexure B** – Contractors Quote for the Works & Contractors Certificates of Currency for Insurance(s).
3. **Annexure C** – Any relevant plans, designs and specifications for the Project.
4. **Annexure D** – Execution Clauses.
5. **Annexure(s)** – include here any further annexures that are so required and attached to this Contract, named:

➤ Annexure - _____

This Contract governs the terms of any **Major Works Contract**, that *The Scout Association of Australia New South Wales Branch* [from herein known as "**Scouts NSW**"], enters into with a project cost of Eighty Thousand Australian Dollars or greater, [AU \$80,000 or greater] including GST.

Guide on how to complete this contract

1. The parties must add in the information required for the Project by completing Annexures A, B & C.
2. The parties must sign Annexure D.
3. If there is insufficient space to complete any of the above pertinent parts of the Contract, please write in that section see *Annexure "E", "F", etc.*, as required and attach any such annexure to the Contract and complete the front page relating to the Annexures.

1 The Project

- 1.1 The details of the work to be carried out are set out in *Annexure 1* of this Agreement. All work must be compliant with the **Specifications** and **Work Standard**, as required by this Agreement.

2 Contract for Service

- 2.1 Nothing in this Agreement shall create a partnership, agency, or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

3 Mutual Warranties

- 3.1 The Client and Contractor warrant to each other that during this term of this Contract, each will:
- a) act in good faith with matters that arise out of, or in connection with this Contract and work collaboratively;
 - b) perform obligations imposed on them to avoid hindering the performance of the other party;
 - c) perform their respective obligations under this Contract; and
 - d) comply with all Statutory Requirements;
 - e) in the event of a dispute, undertake to try and first resolve any such dispute by engaging in good faith with the other in a mediation process before commencing arbitration or litigation. The cost of the mediator will be borne equally between the parties.

4 Contractor Warranties

- 4.1 The Contractor warrants that:
- a) they will maintain one or more policies of insurance covering all business risks required for the work performed and potential liabilities, as stipulated in this Contract;
 - b) they will implement a safe system of work while carrying any work on the Project;
 - c) they will carry out all work in a tradesman like manner, and to the satisfaction of the Scouts NSW Project Manager;
 - d) the Goods are of good quality, fit for purpose, free from defects and omissions in material, design, or workmanship; upon title passing to the Client, will be unused and free from any charge or encumbrance; and will comply with all laws that are related in any way to the Goods;
 - e) the Contractor will not infringe the Intellectual Property Rights of any person in providing the Goods or Services or otherwise performing the Contract; and

- f) the Goods or Services and their use will not result in a breach of any law or mandatory code of conduct; infringe any person's rights (including Intellectual Property Rights and moral rights), or constitute a misuse of any person's confidential information;
- g) it has the capacity and authority to enter into and to perform this Contract;
- h) this Contract is approved by the duly authorised representative of that party;
- i) there are no actions, suits, or proceedings pending or threatened against the Contractor that would affect their ability to carry out its obligations under this Contract;
- j) once duly signed, this Contract will constitute a legal, valid, and binding obligation on that party;
- k) that there is no conflict of interest likely to arise in the performance of its obligations under this Contract;
- l) the Contractor, its agents, and Sub-Contractor undertake that they will not divulge to anyone or use any Confidential Information relating to the Client; and
- m) the Contractor, its agents, and its Sub-Contractors undertake that they will not post any text, image, audio-visual material on any social network or in any other public place or forum, which could be hurtful, embarrassing, or damaging to the Client in any way.

5 Client Warranties

- 5.1 The Client warrants that they will arrange with its servants and agent, to facilitate the work and give access to the Contractor to carry out the works as required by the Project. Use of Sub-Contractor

6 Contract Price

- 6.1 The Client will pay the Contract Price as agreed in the Contract. The price is inclusive of GST, stipulated in Annexure A and described in the Contractors Quote. In the event of any dispute between these documents, Annexure A will override any provision in the Contracts Quote.

7 Invoices

- 7.1 The Contractor may invoice the Client for the relevant Contract Price:
- a) on delivery of all Goods and Services; or
 - b) for each Stage of the Project, as agreed between the parties and set out in Annexure A.

8 Payment of Invoices

- 8.1 The Client will pay each correctly rendered invoice within 28 days of the date of its receipt of that invoice. An invoice is correctly rendered if:
- a) the invoice is a Tax Invoice;
 - b) the Goods have been delivered, the Services completed or Stage completed;
 - c) the amount claimed in the invoice is correctly calculated;
 - d) the invoice includes the Client purchase order number, is addressed to the Client and set out in a manner that identifies the Contract, the Goods or Services which the invoice covers and itemises each amount claimed, to a level of detail asked for by the Client; and
 - e) the invoice is accompanied by documents that adequately show the Goods supplied, the Services that were performed, and the basis on which the amounts are claimed.

9 Disputed Amounts

- 9.1 If the Client disputes an invoice, the Client does not need to pay the disputed amount until the dispute is resolved but will pay all undisputed amounts by the due date.

10 Contractor Statement

- 10.1 The Contractor must give the Client a completed Contractor Statement within 5 Business Days of the Client's request, showing that the Contractor has paid the Sub-Contractors.

11 Amount Due to Client

- 11.1 Any amount payable by the Contractor to the Client pursuant to an indemnity, warranty, reimbursement, rebate or refund obligation, or default event under the Contract is a debt due and payable to the Client on Demand. Any Demand must be accompanied by verifying documentation, and if the amount payable is a taxable supply, a tax invoice must be issued. At the Client's option, the Contractor must pay or credit the amount to the Client within 28 days after the issue of the Demand.

12 Liability

- 12.1 The Contractor's liability includes any acts or omissions, representation, statement, or tortious acts or omission, of its employees, agents, or Sub-Contractors, resulting in a breach of this Contract. Any such act or omission on the part of the Contractor shall be a **"Default."**
- 12.2 The Client agrees to give the Contractor 30 days in which to remedy any Default. If the Contractor fails to remedy a Default, the Contractor will indemnify the Client for any loss incurred due to the breach of Contract, including any legal and other enforcement costs. This clause binds the company, its directors, agents, permitted successors and assigns, against all claims, losses, damages, and liabilities.

13 Defects Liability

- 13.1 If the Client discovers a “Defect” within 12 months after the completion date of the Project, the Contractor must return to rectify any such defect within 30 days of receiving a Notice of the Defect from the Client.
- 13.2 If the Contractor fails to remedy a Defect, the Contractor will indemnify the Client for any loss incurred, including any rectification costs, legal and enforcement costs.

14 Termination

- 14.1 Either party may terminate this Contract by giving the other party 14 days' written Notice of Termination. Either party may terminate this Contract if the other commits a material breach of this Contract, that is, a breach capable of being remedied, however, is not remedied within 30 days of a written request to remedy the breach has been served on the defaulting party.
- 14.2 Either party may terminate this Contract if a party is declared bankrupt, insolvent, in liquidation, is being wound up, dissolved, or a receiver or a liquidator is appointed.
- 14.3 If the Client terminates the Contract, the Client will pay the Contractor for the work carried out in accordance with the Contractual Standards, up until the Notice of Termination is served, calculated to the nearest one hour or stage of the Project.

15 Assignment

- 15.1 Neither party may assign, delegate, Sub-Contract, mortgage, charge, or otherwise transfer any or all of his rights and obligations under this Agreement without the prior written consent of the other party. This Agreement shall be binding on any successors in title.

16 Sub-Contractor

- 16.1 The Contractor may perform its obligations under this Agreement through Sub-Contractors, provided the Contractor:
- a) first obtains the Client's written consent of the name, identity, and qualifications of the Sub-Contractor, provides evidence of such and gives the Client the insurances as required by this Contract; and
 - b) will pay the Sub-Contractor for any work performed and continues to be liable for the performance of this Contract; and
 - c) indemnifies the Client fully against any loss or damage suffered by the Client arising from any act, omission, or negligence of any agent or Sub-Contractor; and
 - d) the Contractor will continue to be responsible for the Project and supervise the Sub-Contractor.

17 Non-Disclosure

- 17.1 Except as agreed, required by law, regulatory authority, or stock exchange, neither party may disclose the terms of this Contract to anyone other than on a confidential basis.

18 Confidential Information

- 18.1 The Contractor must not use the Clients confidential information other than to carry out its contractual obligations. The Client concedes that it may be necessary to make available confidential information relating to the performance of this Contract to other parties.
- 18.2 Should this be so, the Client will agree in writing beforehand as to the nature of the disclosure requested by the Contractor, the documents to be disclosed, and the parties to whom such disclosure will be made, providing that the recipient of the confidential information, will agree to sign a Confidentiality Deed.

19 Return Of Confidential Information

- 19.1 At the Client's request, the Contractor, its servants, agents, and Sub-Contractors must immediately deliver to the Client all documents containing or referring to the confidential information in their possession, power, or control.

20 Obligations & Confidential Information

- 20.1 Damage for breach of confidential information will include any economic loss or damage to reputation, work, or professional standing. The Contractor undertakes to make all employees, agents, and Sub-Contractors aware of the obligations relating to confidential information and take all reasonable steps required to ensure compliance by all these parties.

21 Press Announcements

- 21.1 The Client can make announcements, including press announcements or releases about this Project and the transactions to which it relates, at its sole discretion, or as required by law, Government, funding Authority for this Project, or the stock exchange rules.

22 Reporting

- 22.1 The Contractor must provide to the Client reports that are pertinent to the Project. These reports will be requested by the Client in writing. Reports will be provided by the Contractor to the Client on a weekly, fortnightly, monthly or quarterly basis, as directed and requested by the Client. The reporting obligations extend to include details of any person or entity involved in performing the Contractor's obligations or will receive a benefit under this Contract.

23 Review Meetings

- 23.1 The Contractor must attend meetings with the Client at a place and time to be agreed upon between the parties. The meetings will be held on a weekly, fortnightly, monthly or quarterly basis, to be determined by the Client. The Client will set and send an agenda before the meeting.

24 Audit

- 24.1 The Client may conduct or appoint a third party to audit the Contractor's performance and compliance with this Contract. The Client will pay for the auditor's costs. However, where the auditor objectively determines that the performance by the Contractor falls below the service levels or identifies breaches of this Contract, any of the Client's costs (including third party auditor fees) in respect of that audit will become payable by the Contractor.

25 Change Request

- 25.1 Either party may request a change to the scope, packaging, or description of any goods or services by issuing a Notice in writing to the other party. If the Contractor requests the Change, a Change Proposal must be included and satisfy the requirements of such outlined in this Contract.

26 Change Proposal Requirement

- 26.1 Contractor Change Proposals must:
- a) set out a complete description of the Change; and
 - b) specify all changes to the relevant Contract Price, the relevant timeframes, and any other conditions that the Contractor reasonably requires to perform the Change and must detail reasons for those changes. Any adjustment to the Contract Price must be based on the Contractor's actual increased costs due to the Change but are only payable if the change was requested or required by the Client.

27 Response to a Change Proposal

- 27.1 The Client may accept or reject a Change Proposal at any time within 20 Business Days of receiving the Change Proposal. Where the Client agrees with a Change Proposal, the parties will execute a Change Notice on those terms, and this Contract will be varied accordingly, with effect from the date of execution of the Change Notice.

28 Privacy Policy and Laws

- 28.1 The Contractor, its servants, agents, or Sub-Contractors must all comply with the Client's Privacy Policies. They must also comply with the Privacy Act 1988 (Commonwealth) and all privacy and data protection laws that may be in force, regulating the collection, storage, use, and disclosure of information.

29 Notices

- 29.1 Any communication to be served on either party can be sent by express post, recorded delivery, or by email. Any notice served by email must also be served by express post unless the other party acknowledges receipt of the email. It shall be deemed to have been delivered if sent by express post or express registered post to the correct postal address within 72 hours of posting.

30 Cumulative Remedies

- 30.1 The rights and remedies provided in this Contract are in addition to other rights and remedies given by law independently of this Contract.

31 Variation and Waiver

- 31.1 No provision in this Contract or right created may be waived or varied except in writing and must be signed by the parties.

32 Indemnities

- 32.1 The indemnities in this Contract are continuing obligations and continue after this Contract ends. Completion or Termination of this Contract will not affect any remedies that either party may have under this Contract.

33 Time

- 33.1 So far as any time, date, or period is mentioned in this Agreement, or in terms of the description of the Project, time shall be of the essence.

34 Costs

- 34.1 The parties agree to pay their own legal costs and other expenses in connection with the preparation, execution, and completion of this Contract and other related documentation.

35 Counterparts

- 35.1 This Contract may be executed in counterparts. All counterparts, when taken together, are to be taken to constitute one instrument.

36 Governing Law

- 36.1 This Contract is governed by the law in force in New South Wales. Each party to this Contract submits to the non-exclusive jurisdiction of the courts of New South Wales.

37 Severability

- 37.1 If any provision of this Contract is deemed invalid or unenforceable in a jurisdiction, it is severed for that jurisdiction, and the remainder of this Contract will continue to operate.

38 Entire Agreement

- 38.1 This Contract constitutes the entire Agreement reached by the parties to this Agreement and supersedes any previous understandings or agreements on that subject matter.

39 Intellectual Property Rights

- 39.1 The relevant party will retain all Intellectual Property Rights of the parties existing before the Contract date. Intellectual Property includes property such as copyright and trademarks as defined in this Contract and in accordance with its usual legal meaning.

40 Force Majeure

- 40.1 If a party is delayed or unable to perform its contractual obligations because of a significant event beyond that party's reasonable control, then that obligation is suspended, but only so far and for as long as it is affected by the event. Such an event is called a *Force Majeure Event*.
- 40.2 If one occurs, the party affected by it must promptly give the other party Notice of the event and estimate the non-performance and delay.
- a) They must take all reasonable steps to overcome the effects of the event (*but this does not require the settlement of industrial disputes or other claims on unreasonable terms*); and
 - b) resume compliance as soon as practicable, after the event no longer affects either party.

Definitions that Apply to this Contract

The definitions used in this Contract and the rules of interpretation are defined as follows:

- **CLAIM** - means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature, howsoever, arising and whether presently or in the future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
- **CONFIDENTIAL INFORMATION** - means all confidential, non-public, or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on, or after the date of a contract relating to the business, technology, or other affairs of the Discloser. It includes any method of doing business.
- **CONTRACT PRICE** - means the price set out in this Contract.
- **CONTRACTOR** - means employees, partners, agents, and Subcontractors (including employees of Subcontractors) of the Contractor.
- **DEMAND** - means a written Notice setting out any claim for reimbursement or payment that is to be made by one party to the other.
- **GST** - means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth. Any amounts referred to in this Contract are inclusive of GST.
- **INFRINGEMENT CLAIM** - means any Claim where the Intellectual Property Rights of a party have been breached.
- **INTELLECTUAL PROPERTY RIGHTS** - means all intellectual property rights, including current, future, registered, and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries, and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
- **INSURANCES** - mean that the Contractor engaged to carry out this work must at all times hold the proper qualification (*if so required by law*) or trade license (*if so required by law*) for the work being completed and must hold insurances relevant to the work being performed that include but are not limited to Public Liability Insurance of \$20,000,000, Professional Indemnity Insurance (*sufficient to cover the cost of the works or Project*), Contractor All Risk Insurance and Workers Compensation Insurance, whichever of these are relevant.
- **PROJECT** - means any piece of work to be done by the Contractor for the Client. The Project is fully described in *Annexure A – Contract Details*.
- **REPRESENTATIVE** - of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venture, Contractor, or sub-contractor.

- **SERVICES** - means the services that the Contractor may supply in response to a Client's Order.
- **SPECIFICATIONS** - means any specification of the work for this Project, including but not limited to any relevant Australian Standards, any engineering or architectural drawings, any design specifications from the producer of any product used for the Project, any Australian Building Code and Standards, and any necessary Local Council or Authority requirements.
- **WORK STANDARD** - means all work must be completed to a standard that complies with the relevant Australian Standards, any engineering or architectural drawings, any design specifications from the producer of any product used for the Project, any Australian Building Code and Standards, and any necessary Local Council or Authority requirements.

Furthermore, the Contractor engaged to carry out this work must at all times hold the proper qualification (*if so required by law*) or trade license (*if so required by law*) for the work being completed.

In the event of a conflict between the standards and specifications, this should be referred to a specialist already contracted to this Project in the area of specialty to which the issue arises.

If there is no such suitably qualified expert or professional, then the matter must be referred to the Client so that the appropriate expert or professional can be engaged by the Client, if so required.

CONTRACT DETAILS

DATE OF THIS AGREEMENT _____

PARTIES TO THIS AGREEMENT ARE

“Contractor”

[Contractor’s name] & [address of the Contractor] OR [Name of Contractor Company] & [ABN or ACN]

AND

“Client”

The Scout Association of Australia New South Wales Branch from herein known as **“Scouts NSW”**, [the Client], ABN 42 460 434 054

NAME OF THE CONTRACTOR’S LICENSE HOLDER

CONTRACTOR LICENSE NUMBER

SCOUTS NSW PROJECT MANAGER & CONTACT DETAILS

SCOUTS NSW CLIENT REPRESENTATIVE & CONTACT DETAILS *(if so appointed for this Project)*

ADDRESS FOR SERVICE OF ANY NOTICES

Client

The Scout Association of Australia New South Wales Branch [*Scouts NSW*]

[Insert Address for Service, if different to the Contract address]

Contractor

[Contractors Address for Service, if different to the Contract address]

The Contract is a:

1. Construction Only Contract Yes ___ No ___
2. Design and Construct Contract Yes ___ No ___

The party responsible for the design is:

Client Yes ___ No ___ Contractor Yes ___ No ___

Other _____

The party responsible for getting approval from the Authority/Council/Government, if so required, is:

Client Yes ___ No ___ Contractor Yes ___ No ___

Other _____

LOCATION & DESCRIPTION OF WORK TO BE PERFORMED

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OUTCOMES OF WORK PERFORMED, DESCRIPTION OF STAGES AND TIME FRAMES

GOVERNMENT PROCUREMENT - Guidelines and requirements

[If so applicable, then please refer to the following Government website:

https://reservemanager.crownland.nsw.gov.au/_data/assets/pdf_file/0007/1313962/CRIF-2021-22-Procurement-guidelines.pdf

NOTE: Whilst this link is from the most recent CRIF program, the links and references direct the CLM to existing Crown Land Manager links that are current and ongoing.

When entering into this Contract, each division must ensure that they comply with any Government or funding requirements, as outlined by the Authority who is the source of the funds.]

CONTRACT INSURANCES *[If so required for this Project]*

Public Liability Insurance - \$20,000,000: Yes ___ No ___

Professional Indemnity Insurance (to cover the cost of the works/Project): Yes ___ No ___

Contractor All Risk Insurance (to cover the cost of the works/Project): Yes ___ No ___

Workers Compensation Insurance: Yes ___ No ___

Specify any other insurances for the Project, as so required:

PAYMENT METHOD

Lump Sum Agreed Payment of AUS \$_____ including GST.

OR

Hourly Rate of Work: AUS \$_____ including GST;

Estimated Hours of work: _____ Hours.

PAYMENT SCHEDULE

Invoice for work performed is to be paid at the completion of the work. The Client will have 28 days to pay the Invoice.

OR

Invoice for work performed is to be paid in progress payments at the following stages:

a) Stage 1 – Amount or % of Project cost to be paid \$_____ OR _____%

Date of Anticipated Payment: [_____]

b) Stage 2 – Amount or % of Project cost to be paid \$_____ OR _____%

Date of Anticipated Payment: [_____]

c) Stage 3 – Amount or % of Project cost to be paid \$_____ OR _____%

Date of Anticipated Payment: [_____]

d) Stage 4 – Amount or % of Project cost to be paid \$_____ OR _____%

Date of Anticipated Payment: [_____]

e) Stage 5 – Amount or % of Project cost to be paid \$_____ OR _____%

Date of Anticipated Payment: [_____]

The Client will have 28 days to pay any Invoices once received from the Contractor.

QUOTE FOR THE WORKS,

CERTIFICATE OF CURRENCY

&

INSURANCE(S)

PLANS,

DESIGNS

&

SPECIFICATIONS

EXECUTION CLAUSES

Client Execution

Signed and delivered by

The Scout Association of Australia New South Wales Branch, ABN 42 460 434 054 in accordance with section 127 of the Corporations Act 2001.

Signature – Director

Name of Director

Signed and delivered by

The Scout Association of Australia New South Wales Branch, ABN 42 460 434 054 in accordance with section 127 of the Corporations Act 2001.

Signature – Director

Name of Director

Signed and delivered by

The Scout Association of Australia New South Wales Branch, ABN 42 460 434 054 in accordance with section 127 of the Corporations Act 2001.

Signature – Director

Name of Director

AFFIX COMPANY SEAL HERE

Contractor Execution – Company

Signed and delivered by

Company Name

ABN _____
in accordance with section 127 of the Corporations Act 2001.

Signature – Director

Name of Director

Signed and delivered by

Company Name

ABN _____
in accordance with section 127 of the Corporations Act 2001.

Signature – Director

Name of Director

Contractor Execution

Signed and delivered by

Name

Address

Signature

Witness Signature

Witness Name

Signed and delivered by

Name

Address

Signature

Witness Signature

Witness Name

Signed and delivered by

Name

Address

Signature

Witness Signature

Witness Name

Signed and delivered by

Name

Address

Signature

Witness Signature

Witness Name