

1. Definitions

“**Contract**” means the agreement in writing between the Contractor and Council for the provision of Services under the Contract.

“**Contract Material**” means all material brought or required to be brought into existence as part of, or for the purpose of, performing the Services, including but not limited to documents, equipment, information and data stored by any means.

“**Contract Period**” means the time stated to complete the Services under the Contract.

“**Contractor**” means the person or company whose Offer for the Services has been accepted and its executors, administrators and successors.

“**Council**” means Liverpool City Council.

“**Council’s Representative**” means the person nominated by Council to act on Councils behalf.

“**Fee**” means cost of the services including approved variations.

“**Intellectual property**” means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of intellectual property arising under Common Law and/or Statute.

“**GST**” means Goods and Services Tax.

“**Notice**” means formal written communication to be given to any party under the Contract and must be in English. A Notice may be issued by hand, post or electronic transmission and will be deemed to be received:

- (i) if by hand, on the date of delivery,
- (ii) if by prepaid post on the second business day after posting;
- (iii) if by facsimile or email, when the senders facsimile or email system confirms the notice or communication has been transmitted in its entirety to the facsimile number or email address of the addressee, as the case may be.

“**PAYG**” means Pay As You Go.

“**Request for Quotation**” means the process undertaken and includes the documentation used in order to invite Contractors to provide a price or prices to undertake the Services in accordance with the Contract.

“**Services**” means the whole of the Services to be performed in accordance with the Contract, including approved variations.

2. Provision of Services

2.1 The Contractor must perform the Services in a diligent manner and to the standard of skill and care reasonably expected of a Contractor experienced in the provision of the type of Services required under this Contract.

2.2 The Contractor must use all reasonable efforts to inform itself of the requirements of the Contract and must regularly consult with Council’s Representative during the performance of the Services.

2.3 If the Contractor considers that information, documents and other particulars made available to it are inadequate or contain errors or ambiguities, the Contractor must give written Notice as soon as practicable to Council detailing the errors or ambiguities.

2.4 The Contractor must obtain all approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services, except where obtained by Council.

2.5 The Contractor must ensure that all work done in connection with the Services complies with the requirements of all applicable legislation, codes and statutory authorities’ requirements and all relevant Australian Standards applicable to the Services.

3. Council’s Obligations

3.1 The Council will as soon as reasonably practicable, or as required by this Contract:

- (i) make available to the Contractor all relevant instructions, information, documents, specifications, plans, drawings and any other material and particulars, and

- (ii) answer queries in writing made by the Contractor, relating to Council's requirements in connection with this Contract.

4 Contractors Personnel and subcontracting

- 4.1 The Contractor must nominate within five (5) business days from the date of the letter of acceptance its representative who will be responsible on behalf of the Contractor for all aspects of the Services and shall have the legal power to bind the Contractor in respect of any matters arising in connection with the Services. Any substituted representative must be notified in writing to Council within 48 hours.
- 4.2 The Contractor must ensure that all personnel engaged by it in connection with the Services are appropriately qualified, competent and experienced in the provision of the type of Services required by Council.
- 4.3 The Contractor shall not assign any part of the Services under the Contract without the prior written approval of Council. The Contractor shall provide to Council all information required in order to consider giving such consent.
- 4.4 The Contractor must use its best endeavours to ensure that the persons named in its Offer (or alternates agreed by Council) are engaged by the Contractor to undertake the Services.
- 4.6 No subcontracting of any rights or obligations of the Contractor under this Contract shall relieve the Contractor from any liability or obligation under this Contract or at law.

5. Program and Delay

- 5.1 The Contractor must, within four (4) days of acceptance, submit to Council a program for the performance and completion of the Services.
- 5.2 The Contractor must perform the Services expeditiously and in accordance with the program.
- 5.3 As soon as practicable after becoming aware of any matter which is likely to delay or which has delayed the Services, the Contractor must give written Notice to Council detailing the circumstances and extent or likely extent of the delay.

6. Confidentiality

- 6.1 The Contractor and its servants or agents must not, without the prior written consent of Council,

at any time issue any statement or communication or make any representation directly or indirectly in connection with the Services or this Contract to any person or entity who is not a party to this Contract other than:

- (i) as necessary to perform the Services, or
- (ii) with respect to any matter already within the public domain.

- 6.2 The Contractor must protect and keep safe and secure all materials and documentation provided by Council to the Contractor.
- 6.3 If requested by Council, the Contractor will arrange for each person who is engaged by the Contractor for the purposes of this Contract to execute a deed of confidentiality as provided by the Council. The Contractor will within seven (7) days deliver the executed deed to Council.

7. Intellectual Property

- 7.1 The Contractor hereby as beneficial owner irrevocably assigns to Council ownership of Intellectual Property rights including without limitation all copyright, rights to inventions (whether patentable or not) all industrial designs (whether registrable or not) and all other Intellectual Property rights as are not already vested in Council in all materials (whether completed or not or in the course of preparation) produced in connection with or pursuant to this Contract. If requested by Council to do so, the Contractor will deliver all such materials to Council within the time specified by Council in its request.
- 7.2 The Contractor upon request of Council procure the execution of all documents and do and procure the doing of all acts and things requested by Council for the purpose of giving effect to this Clause. The Contractors obligations under this Clause shall survive the termination of this Contract.
- 7.3 The Contractor warrants that it will not breach any intellectual property rights of any third party.
- 7.4 On, or as soon as reasonably practicable after, the expiration or earlier termination of this Contract, the Contractor must deliver to Council all Contract Material.
- 7.5 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract unless it has obtained the prior written approval of

Council to do otherwise. While Council will not unreasonably withhold approval, it may attach any terms and conditions it considers appropriate.

8. Variations

8.1 Council may direct in writing the Contractor to increase, decrease or delete any part of the Services, change the character or quality of any material or work, carry out urgent Services or change the hours of Services.

8.2 A variation shall be valued by agreement between Council and the Contractor or failing agreement, by the Council.

9. Workplace health and safety

9.1 For the purposes of this clause:

‘Act’ means the *Work Health and Safety Act 2011*, as amended from time to time;

‘Notifiable Incident’ is a notifiable incident as defined in the Act, from time to time;

‘Regulation’ means the *Work Health and Safety Regulation 2011*, as amended from time to time.

9.2 The Contractor will:

- (i) comply with and discharge all obligations imposed on the Contractor by the Act, the Regulation and any other regulation in connection with health and safety including without limitation on a person who conducts a business or undertaking; and
- (ii) discharge the duties of a person who conducts a business or undertaking under the Regulation.

9.3 The Contractor will indemnify Council against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, Council as a result of or in connection with:

- (i) any breach of this clause by the Contractor;
- (ii) any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety;
- (iii) any enforcement of obligations imposed on the Contractor under the

Act, the Regulation or any other regulations.

9.4 If a Notifiable Incident occurs at the workplace the Contractor must:

- (i) immediately notify Council of the notifiable incident; and
- (ii) take all reasonably practicable steps to secure the area where the notifiable incident occurred until an inspector arrives at the area or any earlier time that an inspector directs
- (iii) Exercise its notification obligation to the regulator.

10. Reimbursable Expenses

10.1 Council will reimburse the Contractor the reasonable costs, expenses, fee or charges incurred by the Contractor limited to those items agreed as reimbursable items, provided that in all cases the Contractor has obtained Council's prior written approval to incur or pay those costs, expenses, fees or charges.

11. Payment

11.1 Unless otherwise agreed between Council and the Contractor, the Contractor can claim payments within seven (7) days of completion for the Services.

11.2 The amount the Contractor is entitled to claim is an amount equal to the value of the Services completed at the reference date less the sum of;

- (i) previous payments made by Council;
- (ii) the estimated cost of rectifying any defects;
- (i) costs payable by the Contractor to Council;
- (ii) any other deductions that Council is entitled to make under or in connection with this Contract.

11.3 Within ten (10) business days after service of your payment claim, Council's Representative will provide the Contractor with a payment schedule identifying the payment claim to which it relates and stating the payment that Council will be making. If the scheduled amount is less than the amount claimed by the Contractor, the payment schedule will indicate the reason(s).

11.4 The Contractor must submit to Council a tax invoice for the scheduled amount, a statutory declaration that all subcontractors have been paid all moneys due and payable to them, and a completed Subcontractor's Statement regarding Workers Compensation, Payroll Tax and Remuneration as required by the *Workers Compensation Act 1987 (NSW)*, *Payroll Tax Act 2007 (NSW)* and *Industrial Relations Act 1996 (NSW)*, as amended and a copy of the Contractor's Certificate of Currency for Workers Compensation insurance as required by section 175B of the *Workers Compensation Act 1987 (NSW)*.

11.5 Within 28 days of receiving a valid tax invoice; Council will pay the scheduled amount.

11.6 Payment, in part or in total, of the Fee does not constitute an acceptance by Council of the Services and does not amount to a waiver of any right or action which Council may have at any time against the Contractor

12. GST and PAYG Withholding

12.1 Payments for any taxable supplies under the Contract include GST.

12.2 The Contractor must issue a tax invoice or adjustment note (as the case may require) within five business days after each of the following occurring in relation to that taxable supply:

- (i) the Contractor submitting a claim for payment that is not in the form of a Valid Tax Invoice;
- (ii) Council certifying an amount for payment different to the amount claimed; or
- (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.

12.3 Whenever Council reasonably considers itself bound by law to do so, Council shall be entitled to withhold from any payment otherwise due to the Contractor, amounts calculated and to be withheld in accordance with the law.

13. Insurance

13.1 The Contractor warrants that it will hold and maintain for the duration of the Contract the

following insurances to cover its obligations under the Contract:

- (i) Workers' Compensation insurance in accordance with the *Workers' Compensation Act 1987 (NSW)*;
- (ii) Public Liability insurance for a minimum amount of \$10 million in respect of each claim unless otherwise specified in the Order;
- (iii) Professional indemnity insurance for a minimum amount of \$10 million in respect of each claim unless otherwise specified by Council;
- (iv) any other insurance as specified by Council.

12.1 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.

12.2 The Contractor must, if requested by Council promptly provide a certificate of currency for each insurance policy.

14. Indemnity by the Contractor

14.1 The Contractor shall indemnify the Council against:

- (i) loss of or damage to the Council's property; and
- (ii) Claims in respect of personal injury or death or loss of, or damage to any other property, arising as a consequence of the Contractor performing Services under the Contract. The indemnity shall be reduced proportionally to the extent that the act or omission of the Liverpool City Council, or its employees or agents, contributed to the loss, damage, death or injury.

15. Inspection and Access

15.1 The Contractor must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to this Contract.

15.2 The Contractor must, within a reasonable time of any request, give Council access to, or verified

copies of, any information which may be reasonably required to enable any claim to be substantiated and verified.

- 15.3 The Contractor must, at all reasonable times and upon reasonable notice, permit Council to access the Contractor's premises in order for Council to inspect, discuss and assess material produced in connection with the Services.

17. Termination by convenience

- 17.1 Council may terminate the whole or part of the Services at any time, by written Notice to the Contractor.

- 17.2 Council shall pay the Contractor the fees and expenses reasonably incurred by the Contractor in carrying out the Services under the Contract to the date of termination.

- 17.3 Council will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to the termination.

- 17.4 Council will not be liable to pay for any Services performed after the termination date as specified in the Notice.

18. Breach of Contractor

- 18.1 Breach of the Contract occurs when the Contractor:

- (i) fails to commence the Services within the period specified by Council; or
- (ii) fails to perform the Services at a rate of progress satisfactory to Council; or
- (iii) has neglected or omitted to carry out any instructions of Council; or
- (iv) has failed to complete the whole of the Services by the Practical Completion Date; or
- (v) has intimated that it is unwilling or unable to complete the Services by the Practical Completion Date; or
- (vi) has committed an act of bankruptcy, becomes insolvent or the Council reasonably considers that the Contractor is likely to become insolvent;

- 17.2 Council may, by giving Notice in writing within seven (7) days' notice, terminate the Contract and engage with others to complete the Services. Council shall prepare a certificate on its completion setting out the costs of the new Contractors and all costs and losses incurred by Council. If the amount in the certificate is greater than the amount payable to the Contractor under the Contract, then the Contractor is liable to pay the difference to Council.

18. Disputes

- 18.1 If a dispute arises out of or relates to this Contract, or the breach, termination, validity or subject matter thereof, or to any related claim in restitution or law, in equity or pursuant to any statute, the parties to the agreement and the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to litigation.

- 18.2 The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC.

- 18.3 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

- 18.4 The terms of the Guidelines are hereby deemed incorporated into this Contract.

- 18.5 This clause shall survive termination of this Contract.

19. General Provisions

19.1 Entire Agreement

- 19.1.1 In the event that Council and the Contractor have legally executed a written contract for the provision of the Services ("the Formal Contract") that differs from this Contract, the terms of the Formal Contract shall prevail over the terms of this Contract to the extent of any inconsistency.

- 19.1.2 Subject to clause 19.1.1, this Contract:

- (i) Is the entire agreement between the parties about its subject matter;
- (ii) In relation to its subject matter supersedes any prior understanding or agreement between parties; and

- (iii) Supersedes any prior communication, condition, warranty, promise, inducement, indemnity or representation imposed, given or made by a party.

19.2 Waiver

- 19.2.1 Any failure by a party at any time to enforce a clause of this Contract, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.
- 19.2.2 No provision of this Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving party.
- 19.2.3 A waiver by a party of a breach of any part of this Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

19.3 Severability

- 19.3.1 If any part of this Contract is determined to be invalid, unlawful or unenforceable for any reason than that part, to the extent of the invalidity, unlawfulness or unenforceability will be severed from the rest of this Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

19.4 Code of Conduct

- 19.4.1 The Contractor is bound by Council's Code of Conduct policy including all Conflict of Interest provisions found on Council's webpage located at <http://www.liverpool.nsw.gov.au/council/policies-and-forms/policies-and-procedures-of-council>. Any breach of this policy may result in termination of a Contract as determined by Council.

19.5 Compliance with the *Government Information and (Public Access) Act 2009 (GIPA)*

- 19.5.1 When requested in writing by Council, the Contractor must provide Council with immediate access to any information in its possession that Council may be required to release under the GIPA at no expense to Council.
- 19.5.2 The Contractor must supply the information in the format as requested by Council.

19.6 Governing Law

- 19.6.1 This Contract is governed by and construed in accordance with the laws of New South Wales and Council and the Contractor submit to the non-exclusive jurisdiction of the courts of New South Wales.