

1 Provision of Services

The Contractor must provide the work or services ('Services') referred to in the Contract to Council in accordance with the Contract, and must:

- (a) Commence and complete the Services by the dates referred to in the Contract and in accordance with any program specified or agreed in writing by Council, or if no time is specified, within a reasonable time
- (b) If the Services are to be completed in stages or milestones, complete each stage or milestone within the periods or dates referred to in the Contract
- (c) Perform the Services in a proper, timely and efficient manner using that standard of skill, care, diligence and technical knowledge that would reasonably be expected of a skilled, competent and experienced professional or service provider in the field relevant to the Services
- (d) Comply with any brief or technical specification applicable to the Services
- (e) Ensure that the Services are carried out by the Key Personnel referred to in the Contract, and that the Key Personnel do not delegate the performance of the Services to any other person without the prior written agreement of Council
- (f) Act in good faith
- (g) Comply with the reasonable instructions and directions of Council's Representative
- (h) Effect adequate controls in accordance with statutory requirements to ensure protection of the environment
- (i) Ensure the health and safety of its employees and other personnel and comply with all relevant obligations under the *Work Health and Safety Act 2011* and Council's policies, procedures and requirements relating to work health and safety (as notified to the Contractor)
- (j) Use best endeavours to protect people and property, to avoid loss or damage and to prevent nuisance
- (k) Provide all equipment and materials necessary for the performance of the Services (other than anything referred to in the Contract to be provided by Council)
- (l) Comply with all Laws and with the lawful requirements or policy of any governmental agency affecting or applicable to the provision of the Services
- (m) Obtain all statutory licences, consents, permits and approvals necessary for carrying out the Services (other than any referred to in the Contract to be obtained by Council)
- (n) Use reasonable endeavours to work, liaise and cooperate with others whose work or services are relevant to the Services or the deliverables that the Services form part of
- (o) Advise Council as soon as practical after becoming aware of any event that may adversely affect the performance of the Services.

2 Price, Fees and Expenses

- (a) The price, rates or fees payable by Council for the Services is the lump sum set out or calculated in accordance with unit prices or service rates stated in the Contract. Unless otherwise specified in the Contract, the price, rates or fees are fixed for the duration of the Contract and are not subject to escalation or review.
- (b) Any additional costs, expenses or disbursements including, without limitation, travel, accommodation and subsistence expenses, may only be charged if provided for in the Contract or in a written variation issued by Council, or if the expense is agreed in writing prior to the expenditure and proof of expenditure has been provided.
- (c) If at the written request of Council the Contractor performs work additional to the Services, the rate or fee for the additional work is the rate referred to in the Contract or if no such rate is specified then at the rate agreed between Council and the Contractor.

3 Invoicing and payment

- (a) The Contractor must submit to Council a tax invoice in respect of the Services once they are completed and accepted, or at such other times referred to in the Contract. A tax invoice submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act and must include any other information which Council may require including Council's 'Subcontractors Statement' and be sent to the address and contact person specified in the Contract.
- (b) Council must pay the invoiced amount within 30 days from receipt of an accurate invoice, as certified by Council's Representative. If, however, Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Contractor of the amount Council believes is due for payment. The parties will endeavour to resolve any dispute by negotiation in good faith.
- (c) Payment of an invoice is not evidence that the Services have been supplied in conformance with the Contract but is payment on account.

4 GST

- (a) Unless otherwise expressly stated, all amounts payable under the Contract are exclusive of GST.
- (b) The Contractor is entitled to recover from Council the amount of any GST payable on taxable supplies provided under this Contract, within the meaning of the GST Act.

5 Variations

- (a) Any variation to the Contract must be directed or approved by Council in writing.
- (b) Any fee adjustment payable for the variation is to be based on the applicable rates for fees in this Contract, or if none, then reasonable rates or fees.

6 Time

- (a) Council may extend the time for performance of the Services or any part of the Services for any reason, by written notice to the Contractor.
- (b) Council may suspend the performance of the Services at any time for any reason by written notice to the Contractor. The Contractor must, on receiving the notice, cease all work immediately or within the time specified in the notice, and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services. The Contractor must recommence the Services when reasonably directed to do so by Council.
- (c) Unless otherwise agreed in writing, the Contractor will not be entitled to recover from Council any additional fee or any loss expense or damages which it may incur as a consequence of Council extending the time or suspending the performance of the Services.
- (d) If the extension or suspension directed by Council under this clause extends for a period of more than 6 months, or for more than such other period agreed by the parties, the Contractor may terminate the Contract by giving reasonable notice to Council. Clause 13(c) shall apply if the Contract is terminated by the Contractor under this clause.

7 Ethics and Fair Dealings

The Contractor agrees to be bound by Council's Code of Business Ethics for Tenderers and Contractors, which can be viewed and downloaded from Council's website.

8 Warranties

The Contractor warrants to Council:

- (a) **(Purpose)** that the Services are fit for the purpose and will give the results requested or agreed by Council in the Contract
- (b) **(Conflict)** that it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any

business activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Contract

- (c) **(IP)** that it has the right to provide the Services and to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services and that the performance of the Services will not infringe the Intellectual Property Rights of any third party.

9 Assignment and Sub-contracting

- (a) The Contractor must not assign or sub-contract to any third party the Contract or any of its interests or obligations in the Contract without the prior written consent of Council (which may be given or withheld by Council in its absolute discretion).
- (b) The Contractor will not, as a result of any assignment or sub-contracting arrangement, be relieved from the performance of any obligation under the Contract and will be liable to Council for all acts and omissions of an assignee or sub-contractor as though they were the actions of the Contractor itself.

10 Ownership of Contract Material and Intellectual Property

- (a) Subject to **clause 10(d)** Council will exclusively own and be entitled to the benefit of all works designs items materials ideas or information produced or developed by the Contractor or under the direction of the Contractor in connection with the provision of the Services ('Contract Material'), including all Intellectual Property Rights in the Contract Material. The Contractor must not use the Contract Material other than for the purpose of performing the Services, without the prior written consent or license of Council.
- (b) Council may use, copy and distribute the Contract Material for any purpose. The Contractor indemnifies Council against all losses, liabilities and legal costs arising from any allegation of infringement of Intellectual Property Rights arising from any such use, copying or distribution.
- (c) The Contract Material and any other property, materials, equipment or information owned by Council and used by the Contractor in connection with the Services must be promptly returned to Council on the termination or expiry of the Contract.
- (d) This Contract does not alter ownership of any pre-existing Intellectual Property Rights of either party and clause 10(a) does not apply to pre-existing Intellectual Property Rights.

11 Confidentiality, Media and Privacy

- (a) The Contractor and its employees, agents and sub-contractors must not disclose or otherwise make available the Confidential Information to any other person.
- (b) The Contractor and its employees, agents and sub-contractors must not disclose to any third party or the media, any information relating to Council or the affairs of others which may have come to their knowledge as a result of this Contract.
- (c) The Contractor hereby consents to Council publishing or otherwise making available information in relation to the Contractor (and the provision of the Services) as may be required:
 - (i) By the Auditor-General;
 - (ii) To comply with the *Government Information (Public Access) Act 2009 (NSW)*.
- (d) The Contractor acknowledges that in providing the Services it will be bound by the Information Privacy Principles set out in the *Privacy and Personal Information Protection Act 1988 (NSW)* and any applicable Code of Practice in the same way as Council would have been bound had the relevant act been done by Council.
- (e) If required under the Contract the Contractor agrees to sign and comply with the terms of the Declaration of Confidentiality and Interest form included with the Contract. The Contractor must also ensure that each employee or contractor performing the Services signs a Declaration of Confidentiality and Interest Form and provides a copy to Council.

12 Failure to perform

- (a) Without limiting any other available remedy, if the Contractor fails to provide any of the Services in accordance with the Contract, Council will not be required to pay for those Services (until they are provided correctly) and may issue a notice of breach requiring the Contractor to remedy any default or re-perform the Services within the time specified in the notice.
- (b) If the default referred to in the notice is not capable of being remedied or the Services are not capable of being re-performed, or the Contractor fails within the time specified in the notice to remedy the default or re-perform the Services, Council may have the Services remedied or re-performed by a third party or do so itself. In either case, the Contractor must pay to Council on demand the reasonable costs incurred by Council in doing so, or Council may deduct those costs from any sum payable by it to the Contractor. Council will use its reasonable endeavours to mitigate any costs incurred under this clause.

13 Termination

- (a) Without limiting any other available remedy Council may terminate the Contract at any time and without giving prior notice when the Contractor has not remedied a breach within the time specified in the notice; becomes bankrupt or insolvent; or has a Receiver/Manager/Administrator appointed.
- (b) If a program or project to which the Services relate is terminated, Council may terminate or cancel the Contract at any time by giving 28 days written notice to the Contractor. The Contractor must, on receiving the notice, cease all work immediately or within the time specified in the notice, and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services.
- (c) Council must pay all reasonable amounts due in accordance with **clause 2** for all work performed by the Contractor up until termination and will not be liable to compensate the Contractor for any loss of prospective profits which it would have earned but for the termination.

14 Liability and Indemnity

- (a) The Contractor indemnifies Council, its employees and agents from and against all actions, claims, losses, damages, penalties, demands or costs which may be incurred, brought or made against it or them by any person in respect of or by reason of or arising out of the performance of the Contract including:
 - (i) any negligence, wrongful act or omission by the Contractor or of any other persons for whose acts or omissions the Contractor is liable
 - (ii) death or injury to any person or loss of or damage to any property
 - (iii) any breach of the Contract by the Contractor
 - (iv) any breach by the Contractor of the Work Health & Safety Act 2011 and associated legislation (so far as is permissible at law).
- (b) The Contractor's liability to indemnify Council is reduced proportionally to the extent that an action or omission of Council or its employees or agents (other than the Contractor) may have contributed to the injury, damage or loss.
- (c) Neither party is liable to the other for consequential or indirect loss arising out of this contract including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts or omissions by either party or a breach of statutory requirements.
- (d) The Contractor's liability arising out of or in connection with this Contract is limited as follows:
 - (i) For loss of, or damage to, tangible property: the greater of \$20 million or the amount of public liability insurance required to be held by the Contractor under this Contract.
 - (ii) For professional negligence: the greater of \$1 million or the amount of professional indemnity insurance required under this Contract.

15 Insurance

- (a) The Contractor must take out and maintain for the duration of the Contract the following insurance policies:
- (i) Workers compensation insurance in respect of its employees
 - (ii) Public liability insurance for \$20 million or such higher amount specified in the Contract covering Council and the Contractor against all claims for loss or injury arising from the provision of the Services by the Contractor, its sub-contractors, employees and agents
 - (iii) Professional Indemnity Insurance for \$1 million or such higher amount specified in the Contract covering the Contractor's legal liability arising out of any act, neglect, default, error or omission made or done by or on behalf of the Contractor or any of its employees or agents in connection with the Services.
- (b) On request, the Contractor must provide Council with certificates of currency of any insurance it is required to have under the Contract.

16 Dispute Resolution

- (a) Any party claiming that an issue, dispute or difference ("Issue") has arisen must notify the other party giving details of the Issue. During a 21-day period after a notice is given of an Issue, each party must use its best endeavours to resolve the dispute, by conferring at least once to endeavour to reach agreement or to agree on methods of doing so.
- (b) At every such conference, each party is to be represented by a senior manager or executive who has the appropriate authority to agree to resolutions or methods. All such conferences must be conducted in good faith and without prejudice.
- (c) If, after a 21-day period from the date a notice is given of an Issue, the Issue has not been resolved, then the Issue may be referred for mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.
- (d) Neither party may commence legal proceedings (other than for urgent interlocutory or like relief) until the procedures in paragraphs (a) and (b) have been followed.

17 Relationship and Non-Exclusivity

- (a) The Contract is not a contract of employment. If Council has an obligation to pay any employee entitlement in respect of the Contractor's employees, the Contractor must pay the entitlement on Council's behalf or the fee will be reduced by a corresponding amount.
- (b) The Contractor must not act outside the scope of the authority conferred on it by the Contract and must not bind Council or hold itself out as having any authority to do so, except where authorised by Council in writing.
- (c) The Contract is non-exclusive. Council has the right to engage others to provide the same or similar services.

18 Services of Notices

Notices under the Contract may be served by hand, mail, or email to the address of the other party as stated in the Contract or as otherwise notified in writing by the recipient.

19 Governing Law

The Contract is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of New South Wales.

20 Entire Agreement and Contractor Terms

- (a) The Contract constitutes the entire agreement between Council and the Contractor, and replaces any previous written or oral agreements between Council and Contractor.
- (b) The issue by Council of a Contract or purchase order does not constitute acceptance by Council of any standard terms and conditions of supply provided to Council by the Contractor unless specifically agreed in writing by Council.

21 Surviving Obligations

The Contractor's obligations under clause 8, clauses 9 to 16 and clause 19 will survive the termination or expiry of this Contract.

22 Definitions and Interpretation

In these Conditions, unless the context otherwise requires:

- (a) **Contract** means the contract for the provision of the Services of which these Conditions form part
- (b) **Contractor** means the person supplying the Services under the Contract and includes its successors and permitted assigns
- (c) **Conditions** means these Standard Conditions of Contract – Professional Services
- (d) **Confidential Information** means any information disclosed or made known to the Contractor, or acquired or developed by the Contractor during the course of or for the purposes of this Contract, except for information:
 - (i) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions
 - (ii) which the Contractor can demonstrate was in its possession prior to the date of the Contract
 - (iii) which the Contractor can demonstrate was independently developed by the Contractor: or
 - (iv) which is lawfully obtained by the Contractor from another person entitled to disclose such information.
- (e) **Contractor's Representative** means the person nominated by and representing the Contractor for the purposes of the Contract
- (f) **Council's Representative** means the person nominated by and representing Council for the purposes of the Contract
- (g) **Day** means calendar day.
- (h) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*
- (i) **Intellectual Property Rights** means any right in respect of industrial or intellectual property including, without limitation, designs, copyright, future copyright, confidential information, trade secrets, know-how, trademarks and rights defined as 'Moral Rights' under the *Copyright Act 1968 (Cth)*
- (j) **Laws** means the law in force in New South Wales and the Commonwealth of Australia, including common law and legislation
- (k) **Services** means the services (or any of them) specified or referred to in the Contract
- (l) Terms and conditions in the Contract prevail over these Conditions to the extent of any inconsistency
- (m) Any standard terms and conditions provided by the Contractor which are inconsistent with the Contract, including these Conditions, do not apply to the extent of the inconsistency.
- (n) Words importing the singular include the plural and vice versa and words importing a gender include every other gender
- (o) Monetary references are to Australian currency
- (p) Reference to an Act by name includes the rules, regulations and local laws for the time being in force under the Act for the period of the Contract
- (q) Where two or more persons or bodies comprise the Contractor they will be bound under the Contract jointly and severally.