



LACHLAN SHIRE COUNCIL

TERMS AND CONDITIONS OF BUSINESS GOODS AND SERVICES

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TERMS AND CONDITIONS – GOODS AND SERVICES

PURCHASE ORDER

| | | |
|----------------------------|---------------------------------|--|
| Council | Name | Lachlan Shire Council |
| | Address | 58-64 Molong Street, Condobolin NSW 2877 |
| | ABN | 82 815 250 829 |
| | Telephone | (02) 6895 1900 |
| | Email | council@lachlan.nsw.gov.au |
| | Representative / Contact | |
| Supplier | Name | |
| | Address | |
| | ABN | |
| | Telephone | |
| | Email | |
| | Representative / Contact | |
| Project Description | | |
| Goods | | |
| Services | | |
| Delivery Point | | |
| Delivery Time | | |
| Rates/Fees | | |
| Term | | |
| Commencement Date | | |
| Completion Date | | |
| Further Terms | | |

1 DEFINITIONS

In these Terms and Conditions, the following terms have the following meanings:

In this Agreement, unless the context otherwise requires:

Anti-slavery Commissioner means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

Agreement means the agreement between Council and the Supplier for the provision of the Services consisting of these Terms and Conditions and the Purchase Order.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 2010* (NSW)) in Sydney.

Commencement Date means the date on which the provision of the Services will commence, as specified in the Purchase Order or if no date is specified, the date that the Purchase Order is made by Council.

Completion Date means the date by which the provision of the Services must be completed by the Supplier, as specified in the Purchase Order or in the RFQ.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in anyway related to, Council, including any information designated by Council as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which:

- (1) is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
- (2) the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (3) the Supplier can demonstrate was developed by it independently of any disclosures previously made by Council;
- (4) is lawfully obtained by the Supplier on a non- confidential basis from a person who is not bound by a confidentiality agreement with Council or otherwise prohibited from disclosing the information to the Supplier; or
- (5) is required to be disclosed pursuant to Law, court order or other legal process.

Contract Materials means any materials (including any Intellectual Property) which the Supplier creates (whether alone or jointly with any other person) in performing the Services.

Council means Lachlan Shire Council. Party to this Agreement

Council's Policies means any of Council's policies as provided to the Supplier by Council or as detailed in the RFQ or as published on Council's website at:
<https://www.lachlan.nsw.gov.au/council/council-policies.aspx>

Data means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- (1) supplied by or on behalf of Council in connection with this Agreement (Input Data); or
- (2) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Goods, the Services or the deliverables.

Delivery Point means the place where Goods are required to be delivered to by the Supplier as specified in the Purchase Order or detailed in the RFQ.

Delivery Time means the time that Goods are required to be delivered by, by the Supplier as specified in the Purchase Order or detailed in the RFQ.

Fees mean a fixed fee payable to the Supplier for the provision of the Goods and/or Services, as specified in the Agreement.

Force Majeure Event means an event that is beyond the reasonable control of the Supplier, including any natural disaster, fire, flood, accident, war, riot, act of terrorism, biohazard, a serious epidemic, or a change in legislation, but only to the extent that such events were beyond the Supplier's reasonable control. A force majeure event does not however include any obligation to pay money, a labour dispute or shortage of materials or labour.

Goods means the goods specified in the Purchase Order and as provided under this Agreement.

GSE Act means the Government Sector Employment Act 2013 (NSW).

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Health Privacy Principles means the health privacy principles set out in the *Health Records and Information Privacy Act 2002* (NSW).

ICAC means the commission established under the *Independent Commission against Corruption Act 1988* (NSW) and includes any other organisation that may, from time to time, perform the functions of the commission.

Information Protection Principles has the meaning given in the *Privacy and Personal Information Protection Act 1998* (NSW).

Insolvency Event means, in relation to the Supplier, any of the following:

- (1) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- (2) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- (3) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Law means:

- (1) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State or local or other government in force in the State of New South Wales, irrespective of where enacted including the WHS Laws; and
- (2) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

Modern Slavery Information may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of,

Modern Slavery but excludes “personal information” as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals.

Modern Slavery has the same meaning as in the Modern Slavery Laws.

Modern Slavery Laws means, as applicable, the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth).

Modern Slavery Offence has the same meaning as in the Modern Slavery Act 2018 (NSW).

Modern Slavery Statement means a modern slavery statement as required or volunteered under the Modern Slavery Act 2018 (Cth).

Moral Rights has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

Overdue Amount means an amount (or part thereof) that:

- (1) is not, or is no longer, disputed;
- (2) is due and owing under a tax invoice properly rendered by the Supplier in accordance with this Agreement; and
- (3) which has been outstanding for more than 30 days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

Pre-Existing Intellectual Property means all materials owned by or licensed to a party as at the date of the Agreement or developed by or on behalf of a party independently of the Agreement.

Privacy Code of Practice means a privacy code of practice as defined in, and compliant with, the *Privacy and Personal Information Protection Act 1998* (NSW).

Privacy Management Plan means any plan issued under Part 3 of the *Privacy and Personal Information Protection Act 1998* (NSW) and any policies or protocols issued by Council to ensure compliance with those standards.

Purchase Order means any form of order for purchase issued by Council for the provision of Goods and/or Services, made under or incorporating these Terms and Conditions.

Rates means:

- (1) the monetary amount (whether charged on an hourly, daily, weekly or other time or quantity-related basis) payable to the Supplier for the provision of the Services, as specified in the Purchase Order; or
- (2) the price per item of Goods supplied by the Supplier to Council pursuant to a Purchase Order.

RFQ means a Request For Quotation made by Council (if applicable).

Self-Assesses means self-assesses using a methodology that is satisfactory to the Customer, acting reasonably.

Services means the services, and includes any deliverables provided as part of the services, specified in the Purchase Order and as provided under this Agreement.

State means the Crown in right of the State of New South Wales.

Supplier means the entity specified in the Purchase Order supplying the Goods or Services under the Agreement.

Supplier Code of Conduct means the Code of Conduct issued by the NSW Government for suppliers providing goods or services to the NSW Government (as amended from time to

time).

Term means the duration of this Agreement from the Commencement Date to the Completion Date or otherwise as extended in accordance with clause 2.

Terms and Conditions means this document.

WHS Laws means each of:

- (1) Work Health and Safety Act 2011 (NSW);
- (2) Workers Compensation Act 1987 (NSW);
- (3) Workers Compensation Amendment Act 2015 (NSW);
- (4) Workers Compensation Legislation Amendment Act 2012 (NSW);
- (5) Workers Compensation Legislation Amendment Act 2018 (NSW);
- (6) Workplace Injury Management and Workers Compensation Act 1998 (NSW);
- (7) Work Health and Safety Regulation 2017;
- (8) Workers Compensation (Indexation of Amounts) Order 2013;
- (9) Workers Compensation (Indexation) Order 2019;
- (10) Workers Compensation Regulation 2016; and
- (11) Workers' Compensation (Dust Diseases) Regulation 2018.

2 TERM OF AGREEMENT

- (1) Each Purchase Order:
 - (a) sets out the terms of an agreement between Council and the Supplier in relation to its subject matter and incorporates these Terms and Conditions (**Agreement**); and
 - (b) constitutes a separate binding Agreement between the parties in relation to its subject matter.
- (2) Subject to 2(3) and (4) below, the Agreement begins on the Commencement Date and continues until the Completion Date or earlier termination in accordance with this document.
- (3) If no Completion Date is specified, the Agreement will end when all Goods and/or Services have been received, delivered or completed (as the context may require), and all payments required to be made under the Agreement have been made.
- (4) A party may submit a written request to the other party to extend the Agreement beyond the Completion Date. Any extension of the Agreement agreed to between the parties must be in writing.

3 SUPPLY OF GOODS

3.1 Supply and Delivery of Goods

- (1) The Supplier must supply the Goods to Council in accordance with:
 - (a) this Agreement;
 - (b) any variations to this Agreement agreed in writing by Council;
 - (c) any relevant Australian standards and Laws; and
 - (d) any reasonable directions given by Council.
- (2) The Supplier must deliver the Goods to the Delivery Point by the Delivery Time as set out in the Purchase Order.

Acceptance of the Goods will not be taken to have occurred until either:

- (a) Acceptance is acknowledged in writing by Council; or
- (b) Acceptance is deemed to have occurred in accordance with clause 3.2.

3.2 Acceptance or rejection of Goods

- (1) If Council does not give written notification of either acceptance or rejection of the Goods within 30 days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
- (2) If the Goods:
 - (a) do not conform with this Agreement; or
 - (b) on delivery are damaged, unfit for purpose or not of merchantable quality,

Council may reject the Goods by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery. Council is not obliged to pay for any Goods that are rejected in accordance with this clause.

- (3) The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect and remove the rejected Goods within a reasonable time, Council may return the Goods to the Supplier at the Supplier's expense, or, following further notification, destroy the rejected Goods or otherwise dispose of the rejected Goods in its discretion.

4 PROVISION OF SERVICES

4.1 Provision of Services to Council

- (1) The Supplier must provide the Services to Council in accordance with:
 - (a) this Agreement;
 - (b) any variations to this Agreement agreed in writing by Council;
 - (c) any relevant Australian standards and Laws; and
 - (d) any reasonable directions given by Council from time to time.
- (2) The Supplier must:
 - (a) complete the Services by the Completion Date and any other date(s) for delivery of the Services specified in the Purchase Order;
 - (b) promptly notify Council as soon as it becomes aware of any delay or possible delay in the supply of Services in accordance with the Agreement;
 - (c) provide fitful purpose Services in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent expert and experienced provider of services that are similar to the Services; and
 - (d) used appropriately skilled and qualified Personnel to provide the Services.

4.2 Acceptance or rejection of Services.

- (1) After performance of the Services or delivery of any deliverable provided as part of the Services, Council will undertake such reviews as it considers necessary to determine whether the Services or deliverables are fit for purpose and comply with this Agreement. After reviewing the Services or deliverables, Council may notify the Supplier in writing:

- (a) of its acceptance of the Services or deliverables if it is satisfied that the Services or deliverables are fit for purpose and comply with this Agreement; or
- (b) if the Services or deliverables are not fit for purpose or do not comply with this Agreement, in which case clause 4.2(2) will apply.

- (2) If Council notifies the Supplier that the Services or deliverables are not fit for purpose or do not comply with this Agreement, the Supplier must promptly rectify the non-compliance following which Council will undertake further review of the Services or deliverables under clause 4.2(1). This process will continue until, at Council's discretion, Council:
 - (a) waives, in writing, the requirement for the Services or deliverables to comply with this Agreement;
 - (b) is satisfied that the Services or deliverables comply with this Agreement and accepts the Services or deliverables in accordance with clause 4.2(1)(a);
 - (c) conditionally accepts the Services or deliverables, subject to the Supplier agreeing to rectify the non-compliance within a reasonable time frame and on such terms as Council specifies; or
 - (d) subject to Council having provided the Supplier with at least two opportunities to rectify the non-compliance under clause 4.2(1)(b), immediately terminate the Agreement by written notice to the Supplier.
- (3) If Council terminates this Agreement under clause 4.2(2)(d), Council will be entitled to a full refund of all monies paid to the Supplier in respect of the Services or deliverables which Council is unable to use following termination.

5 PRICE FOR THE GOODS AND/OR SERVICES

- (1) The Rates and Fees payable for the Goods and/or Services are fixed, and inclusive of all taxes (excluding GST), for the duration of the Agreement.
- (2) The Rates and Fees are inclusive of all transportation, courier and postage costs.
- (3) The Supplier must not charge Council for any additional fees or charges, or recover any expenses or other costs from Council over and above the Rates and the Fees set out in a Purchase Order.

6 TITLE AND RISK

- (1) Title in the Goods will pass to Council upon acceptance of the Goods.
- (2) Risk in the Goods will pass to Council when the Goods are delivered to the Delivery Point.

7 INVOICING AND PAYMENT

- (1) Upon completion of the Services and/or delivery of the Goods, or as otherwise specified in the Purchase Order, the Supplier must submit an invoice to Council at the address specified in the Purchase Order. Each invoice submitted by the Supplier must contain all information required in a tax invoice for the purposes of the GST Act, together with such other information as Council may reasonably require.
- (2) On or following acceptance of the Goods and/or Services, Council will pay the invoiced amount, less any amount required by Law, within 30 days of receipt of an accurate invoice.

- (3) If Council disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 20.
- (4) Council may withhold, from any amount payable to the Supplier pursuant to an invoice issued to Council in compliance with clause 7(1), any amount Council reasonably claims is payable by the Supplier to Council whether in relation to the Agreement, or any other matter.
- (5) Payment of an invoice is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with the Agreement but must be taken only as payment on account.
- (6) Simple interest, at the total rate of interest (market rate plus premium rate) fixed for the time being by Revenue NSW, accrues on a daily basis on any Overdue Amount and is payable by Council to the Supplier on demand.

8 FAILURE TO PERFORM

- (1) If the Supplier fails to perform any Services or deliver any deliverable(s) and/or Goods in accordance with this Agreement, Council:
 - (a) will not be required to pay for those Services, deliverable(s) and/or Goods until they are provided in accordance with the Agreement; and
 - (b) may issue a notice to the Supplier requiring the Supplier to remedy any default or re-perform the Services or deliverable(s) within the time specified by Council (which time must be reasonable having regard to the nature of the relevant Services or deliverable(s)).
- (2) If:
 - (a) the default referred to in clause 8(1) above is incapable of being remedied or re-performed; or
 - (b) the Supplier fails to remedy the default or re-perform the non-compliant Service(s) or deliverable(s) within the time specified in the notice issued under clause 8 (1) (b),

Council may either have the Services or deliverable(s) remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by Council in doing so.
- (3) Nothing in this clause 8 derogates or otherwise limits any other remedy available to Council at Law.

9 INTELLECTUAL PROPERTY RIGHTS

- (1) The Supplier irrevocably and unconditionally grants to Council a non-exclusive, perpetual, royalty free, worldwide and transferable licence (including the right to sub-license) to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow the Council the full use and enjoyment of those Goods and the Supplier must, upon request by Council, do all things as may be necessary (excluding executing any documents) to give full effect to such rights.
- (2) Ownership of any Contract Materials will vest in the Supplier from the time of its creation. The Supplier irrevocably and unconditionally grants to Council a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to exercise all Intellectual Property Rights in the Contract Materials to the extent necessary to allow Council the full use and enjoyment of the Services.
- (3) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Services or the delivery

of the Goods or the creation of Contract Materials remains the property of the relevant party or its licensors.

- (4) The Supplier hereby irrevocably and unconditionally grants to Council a perpetual, non-exclusive, royalty- free, worldwide and transferable licence (including the right to sub-license) to use any of the Supplier's Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or the Services.
- (5) Council grants to the Supplier a non-exclusive, non-transferable, royalty-free licence to use Council's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the Services and comply with its obligations under the Agreement during the Term.
- (6) The Supplier undertakes that the Goods and/or Services may be used in any way by Council, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.
- (7) The Supplier must, upon request by Council, do all things necessary (including executing any documents) to give full effect to this clause 9.

10 DATA

- (1) Data will remain (and, if necessary, will become) the property of Council.
- (2) The Supplier will assign to Council from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier.
- (3) The Supplier must only use the Data to the extent necessary to perform its obligations under the Agreement.

11 INDEMNITY

- (1) The Supplier indemnifies, and will at all times keep Council and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
 - (a) personal injury, including sickness and death;
 - (b) property damage;
 - (c) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (d) fraudulent acts or omissions;
 - (e) wilful misconduct or unlawful act or omission;
 - (f) breaches of logical or physical security;
 - (g) loss or corruption of Data;
 - (h) failure to comply with the WHS Laws or other Laws;
 - (i) third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
 - (j) infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,

for which Council or any of Council's Personnel may become liable which was caused, or contributed to by, any act or omission of the Supplier or any of the Supplier's Personnel.

- (2) The Supplier's liability to indemnify Council under clause 11(1) is reduced to the extent that any wilful, unlawful or negligent act or omission of Council or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.
- (3) To the extent that the indemnity in clause 11(a) refers to persons other than Council, this Agreement operates as a deed poll in relation to those third parties.

12 WARRANTIES

The Supplier represents and warrants to Council that:

- (1) **(Capacity)** it has the right to enter into the Agreement and perform the Services;
- (2) **(Purpose)** where Council has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (3) **(Conflict)** it and its Personnel do not hold any office or possess any property, are not engaged in any business or 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 Agreement.
- (4) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the supply of Goods and the provision of the Services and to grant to Council the licences contemplated by this Agreement;
- (5) **(Trust)** it has not entered into the Agreement on behalf of a trust; and
- (6) **(No infringement)** the receipt of the Services and the possession or use of any Goods or deliverables by Council will not infringe the Intellectual Property Rights or other rights of any person.
- (7) **(Legal Compliance)** the provision of all Goods and Services to Council under this Agreement will be in strict compliance with all Laws including the WHS Laws.
- (8) **(Descriptions are accurate)** all Data, measurements, specifications and details quoted in catalogues, brochures, descriptive literature, quotations, offers or tenders provided or shown to Council before entering into a Purchase Order are accurate and correct.
- (9) **(No encumbrance)** the provision of all Services and deliverables and the supply of all Goods to Council under this Agreement will include the transfer of free and unencumbered legal and equitable title in those Goods and/or Services to Council, except where this Agreement specifically provides otherwise.

13 TERMINATION

- (1) Council may terminate the Agreement with immediate effect (or with effect from a specified date), by giving notice in writing to the Supplier if the Supplier:
 - (a) fails to provide the Goods and/or Services in accordance with the Agreement;
 - (b) breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
 - (c) breaches any provision of the Agreement that is not capable of remedy;

- (d) or any of its Personnel involved in the provision of the Goods/or Services commits fraud, dishonesty or any other serious misconduct or breaches Council's Policies or fails to follow any reasonable direction made on Council's behalf including any site specific work health and safety rules or requirements;
- (e) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of Council; or
- (f) suffers from an Insolvency Event.

- (2) Council may terminate the Agreement without cause by notice to the Supplier.
- (3) If the Agreement is terminated pursuant to clause 13(2), Council will pay the Supplier:
 - (a) for the Goods/or Services performed or delivered in accordance with the Agreement up to the date of the termination; and
 - (b) the unavoidable and substantiated out-of-pocket costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit, and Council has no other liability to the Supplier in relation to that termination.
- (4) When Council issues a notice under clause 13(2), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.
- (5) The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to Council if Council fails to pay amounts due under this Agreement.
- (6) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (7) On termination or expiry the Supplier must immediately, following instructions by Council, cease using all materials that contain any Data or Confidential Information by either destroying the materials or returning the materials at no additional cost to Council.

14 INSURANCE

- (1) The Supplier must obtain and maintain insurance cover during the Term and, if requested by Council, for a period of up to 7 years after the Services have been completed, sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including professional indemnity and, if applicable, public and product liability insurance to the value specified in the Purchase Order or, if no value is specified, twenty million dollars (\$20,000,000) for each event.
- (2) The Supplier must obtain and maintain insurance cover, at the time of delivery of the Goods and, if requested by Council, for a period of up to 7 years after the Goods are delivered, sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including product liability insurance to the value specified in the Purchase Order or, if no value is specified, to the value sufficient to cover any loss or costs that may be incurred, and, if applicable, public liability insurance. Product liability insurance must be maintained for the longer of any warranty period and three years from acceptance of the Goods.
- (3) On request, the Supplier must, within 10 Business Days, provide Council with evidence of the currency of any insurance it is required to obtain under this Agreement.

- (4) Where the required insurance is due to expire, on request by Council, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

15 CONFIDENTIALITY, PRIVACY AND DATA PROTECTION

- (1) The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (2) The Supplier consents to Council publishing or otherwise making available information in relation to the Supplier (and the provision of the Services);
- (a) as may be required to comply with requirements of the Office of Local Government or other governmental entity requiring such disclosure;
- (b) to other NSW public entities or Ministers of the State in connection with the use of the Goods and/or Services;
- (c) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
- (d) to comply with Law; or
- (e) to the ICAC.
- (3) The Supplier acknowledges that it will be bound by the Information Protection Principles, Health Privacy Principles and any applicable Privacy Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to Council in respect of that act or practice had it been directly done or engaged in by Council.

16 ACCESS

When at Council's premises, the Supplier must, and must ensure that its Personnel:

- (1) protect people and property;
- (2) prevent nuisance;
- (3) act in a courteous, safe and lawful manner;
- (4) comply with Council's Policies.
- (5) comply with any site specific safety requirements of Council (as notified to the Supplier); and
- (6) comply with any lawful directions of Council or its Personnel.

17 SUBCONTRACTING

- (1) The Supplier must not sub-contract to any third person any of its obligations in relation to the Services without the prior written consent of Council (which may be given conditionally or withheld in its absolute discretion).
- (2) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.
- (3) The Supplier must satisfy itself and warrant to Council that any subcontractor it engages in accordance with this document has the necessary suitability, reliability, safety

systems, expertise and financial standing to carry out the work to be subcontracted.

- (4) Notwithstanding any other provision of this Agreement, Council will not be required to make a payment to the Supplier unless prior to the due date of each payment the Supplier has provided to Council a statement in the form required by Council stating that all remuneration payable to the Supplier's employees and subcontractors in relation to work done in connection with the Purchase Order has been paid.

18 COMPLIANCE WITH LAW AND POLICY

- (1) The Supplier must, in performing its obligations under the Agreement, comply with the Laws relevant to the provision of Goods and/or Services by the Supplier under the Agreement.
- (2) Where, in the course of providing the Services, the Supplier or its Personnel:
- (a) supervise or work with Council's Personnel;
- (b) undertake work that is of a similar nature to the work undertaken by Council's Personnel at a premises or location generally regarded as a public sector workplace; or
- (c) use or have access to public sector resources or information that are not normally accessible or available to the public,
- the Supplier must (and must ensure that its Personnel) comply with the core values identified in section 7 of the GSE Act.
- (3) The Supplier acknowledges that:
- (a) Council has a wide range of policies which may apply to the Supplier and which will either be provided directly to the Supplier by Council in connection with the Agreement or are available for review at <https://www.lachlan.nsw.gov.au/council/council-policies.aspx> (**Council's Policies**);
- (b) The following of Council's Policies may be of particular relevance to the Supplier:
- (i) Fraud and Corruption Policy;
- (ii) Gifts, Benefits and Bribes Policy;
- (iii) Local Preference Purchasing Policy;
- (iv) Conflict of Interest Policy;
- (v) Contract Management Policy;
- (vi) Code of Conduct;
- (vii) Procurement Policy;
- (viii) Statement of Business Ethics Policy; and
- (ix) Work Health and Safety Policy.
- (c) Council's Policies listed in clause 3(b) are an important part of Council's approach to procurement and describe Council's minimum expectations regarding the conduct of Suppliers;
- (d) it has read and aspires to comply with Council's Policies, to the extent they apply to the Supplier; and
- (e) the expectations set out in Council's Policies are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.

19 GST

- (1) The terms used in this clause have the same meanings given to them in the GST Act.
- (2) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (3) If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply.
- (4) Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

20 DISPUTE RESOLUTION

- (1) If any dispute arises under or in connection with this Agreement (Dispute), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute in good faith.
- (2) If the Dispute is not resolved in 15 Business Days it will be referred to mediation (**Mediation**) conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**) with each party bearing their own cost.
- (3) If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
- (4) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

21 FORCE MAJEURE

- (1) Subject to clause 21(2), neither party will be liable to the other to the extent that a party is prevented from complying, or its ability to comply with this Agreement is delayed due to a Force Majeure Event.
- (2) Clause 21(1) does not apply to the extent that a failure to comply with this Agreement is caused by:
 - (a) the wrongful act or wrongful omission of the Supplier or the Suppliers failure to act in a proper and prudent manner;
 - (b) a circumstance or its effects which could have been prevented, overcome or remedied by the Supplier exercising reasonable precautions and the standard of care and diligence expected of an experienced and competent Supplier;
 - (c) breakdown or unavailability of the Suppliers plant and equipment; or
 - (d) failure by the Supplier to reach agreement with any third party necessary to enable the Supplier to perform its obligations under this Agreement.
- (3) If the Supplier's ability to comply with its obligations under this Agreement is affected by a Force Majeure Event the Supplier must:
 - (a) promptly notify Council as soon as it becomes aware that it is (or is likely to be) so affected, giving reasonable details of the Force Majeure Event and the obligations that will be affected;

- (b) take all reasonable steps to prevent, limit and minimise the effect of the Force Majeure Event on its obligations and comply again with its obligations as soon as reasonably possible, and
- (c) keep Council informed of the expected duration of the effect of the Force Majeure Event and the steps it takes to comply with clause 21(3)(b).

22 MODERN SLAVERY

22.1 Compliance

The Supplier warrants that, as at the date of its execution of this Agreement and thereafter, neither the Supplier, nor any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery Offence.

22.2 Modern Slavery Information

- (1) The Supplier must:
 - (a) subject to any restrictions under any applicable laws, provide to Council within 30 days of a request by Council, any Modern Slavery Information and other assistance, as reasonably requested by Council, to enable Council to meet any obligations it may have under the Modern Slavery Act 2018 (NSW), the Local Government Act 1993 (NSW) and associated regulatory requirements, including cooperating in any Modern Slavery audit undertaken by or on behalf of Council and provide reasonable access to Council's auditors to interview the Supplier's staff;
 - (b) within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to Council; and
 - (c) notify Council in writing as soon as reasonably practicable after it becomes aware of either or both of the following:
 - (i) a material change to any of the Modern Slavery Information it has provided to Council in relation to Modern Slavery; and
 - (ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

(2) The Supplier may provide any Modern Slavery Information or report requested by Council in the form of a previously-prepared statement or re-purposed report or refer Council to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Modern Slavery Information as that sought by Council.

(3) The Supplier acknowledges that any Modern Slavery Information provided by it to Council may be used in accordance with the Modern Slavery Laws and the Local Government Act 1993 (NSW) and the Supplier indemnifies Council against loss the Supplier may suffer as a consequence of such use.

22.3 Modern Slavery due diligence

The Supplier must take reasonable steps to ensure that:

- (1) Modern Slavery is not occurring in the operations and supply chains of the Supplier and any entity that it owns or controls;
- (2) it does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery;
- (3) it develops and implements appropriate procedures including appropriate prevention plans and other policies in

order to demonstrate that it has exercised due diligence to prevent Modern Slavery in the Supplier's operations and supply chains, and to identify and respond to an actual or suspected case of Modern Slavery. The Supplier must if requested by Council provide Council within a reasonable time such information as Council may seek to demonstrate that it has such procedures in place.

22.4 Subcontractors

The Supplier must take reasonable steps to ensure that all subcontracts of the whole or part of this Agreement contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 22 (Modern Slavery).

22.5 Response to Modern Slavery incident

- (1) If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to and address the occurrence in accordance with any plans, policies and guidance identified in clause 22.3.
- (2) Any action taken by the Supplier under clause 22.5(1) will not affect any rights of Council under this Agreement, including its rights under clause 22.6.

22.6 Termination on ground of Modern Slavery

- (1) In addition to any other right or remedy of Council under this Agreement or at law, including rights of termination, or rights to damages, Council may, in its sole discretion, terminate this Agreement, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Supplier under this Agreement and unpaid up until the date of termination), on any one or more of the following grounds:
 - (a) A breach of the warranty in clause 22.1;
 - (b) The Supplier, or any entity owned or controlled by the Supplier, is convicted of a Modern Slavery Offence during the term of this Agreement;
 - (c) In Council's reasonable view, the Supplier has:
 - (i) failed to notify Council as soon as reasonably practicable after it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
 - (ii) in Council's reasonable view, the Supplier has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or
 - (iii) otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause 22.1 (Compliance) or clause 22.2 (Modern Slavery Information).

23 GENERAL

- (1) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (2) Time is of the essence in relation to the provision of the Services.

- (3) The Agreement may only be varied or replaced by a written document executed by the parties.
- (4) A waiver of any right, power or remedy under the Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.
- (5) Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- (6) Council may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to Council.
- (7) Subject to clause 22(8), a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.
- (8) Council may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement to any NSW governmental entity in the event of any local government restructure or other re-organisation or change in policy.
- (9) A Purchase Order does not imply or represent an exclusive arrangement for the provision of Goods and/or Services by the Supplier to Council.

24 ENTIRE AGREEMENT

- (1) In the event and to the extent of any inconsistency between these Terms and Conditions and the Purchase Order, the Purchase Order will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Terms and Conditions without otherwise diminishing the enforceability of the remaining provisions of the Terms and Conditions.
- (2) This Agreement contains everything the parties have agreed in relation to the Services. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

25 SURVIVAL

Clauses 1, 5, 7, 9, 10, 11, 12, 13(3), 13(4), 13(6), 13(7), 14, 15, 17(2), 20, 22, 23, 24, and 25 of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of Services and may be enforced at any time.

26 INTERPRETATION

Unless expressed to the contrary, in this Agreement:

- (1) words in the singular include the plural and vice versa;
- (2) any gender includes the other genders;
- (3) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (4) 'includes' and 'including' are not words of limitation;
- (5) 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;
- (6) the obligations of the Supplier, if more than one person, under the Agreement are joint and several and each person

constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of the Agreement, of the other as if those acts or omissions were its own;

- (7) the rights of the Supplier, if more than one person, under the Agreement, including the right to payment, jointly benefit each person constituting the Supplier (and not severally or jointly and severally); and
- (8) a reference to:
 - (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (b) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (c) any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision; and
 - (d) a party or parties is a reference to Council and the Supplier (as the case requires).