

Conditions for the Provision of IT Goods and Services

1 Introductory - Definitions

In this Contract, the following terms have the meanings indicated, unless inconsistent with the context:

"Code of Practice" means a code of practice as defined in, and approved under, *the Privacy and Data Protection Act 2014* (Vic).

"Commencement Date" means the date specified as such in the Specification or as agreed between Council and the Contractor.

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

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Contract;
- (b) which the Contractor can demonstrate was in its possession prior to the date of the Contract without any obligation of confidentiality;
- (c) which the Contractor can demonstrate was independently developed by the Contractor; or
- (d) which is lawfully obtained by the Contractor from another person entitled to disclose such information without any confidentiality restriction.

"Contract" means the contract evidenced by the Contract Documents.

"Contractor" means the party specified as the supplier in this Purchase Order.

"Contract Documents" means the Specification, the Contractor's Quotation and these Purchase Order Conditions for the Provision of Goods and Services.

"Contractor's Quotation" means the Contractor's response in writing to Council's Specification which must include a Purchase Price.

"Contractor's Representative" means the person nominated in writing by the Contractor from time to time.

"Council" means Knox City Council A.B.N. 24 477 480 661.

"Council Data" means all data, information, text or other materials which are embodied in any electronic or tangible medium, and which are:

- (i) supplied by or on behalf of the Council to the Contractor;
- (ii) generated, collected, processed, stored or transmitted by or on behalf of the Contractor under this Contract; or
- (iii) collected by, processed by, stored in or transmitted or uploaded to the Contractor's systems by the Council or the Contractor, and includes any Council materials and Personal Information.

"Council Systems" means the Council's technology systems owned or licensed by the Council and made available to the Contractor, and as appropriate any sub-contractor, for the purposes of the performance by the Contractor of its obligations under this Contract.

"Defective" in respect of any Supply (or any part of it), means that the Supply is not in conformity with this Contract or breaches any of the warranties in clause 5 or is damaged, faulty or incomplete.

"Goods" means the goods (including computer software and hardware) described on or to be supplied under the Contract Documents.

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

"Harmful Code" means "back door", "time bomb", "Trojan Horse", "worm", "drop dead device", "virus" or other computer software routine intended or designed to:

- (i) permit unauthorised access to or use of any systems or data;
- (ii) disable, damage, erase, disrupt or impair the normal operation of any software or data on computer systems; or
- (iii) otherwise affect the confidentiality, integrity or availability of systems or data.

"Information Privacy Principles" means the Information Privacy Principles under the *Privacy and Data Protection Act 2014* (Vic).

"Intellectual Property Rights" includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including 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.

"Laws" means the law in force in the State of Victoria and the Commonwealth of Australia, including common law and legislation.

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

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a tax invoice properly rendered by the Contractor in accordance with this Contract; and
- (c) 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).

"Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by the Contractor from any source as a consequence of the performance of its rights and obligations under this Contract.

"Privacy Laws" means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information, and includes the Information Privacy Principles, the *Privacy and Data Protection Act 2014* (Vic), the *Privacy Act 1988* (Cth), the *SPAM Act 2003* (Cth) and *Do Not Call Register Act 2006* (Cth) and any additional privacy law by which the Contractor is bound or which the Council notifies the Contractor that the Council is bound, as if the Contractor were bound by it.

"Services" means:

- (a) the performance of work (including professional services in relation to Council Systems, other information technology or Council Data);
- (b) the supply of materials; and
- (c) all other things required to be done -

under this Contract by the Contractor, as indicated in the Contract Documents and includes any matters reasonably to be inferred from the Contract Documents.

"Specification" means Council's requirements specified in writing outlining the required Supplies.

"Supplies" means Goods, Services or both.

"Term" means the term of this Contract commencing on the Commencement Date and expiring on the date specified as the date of expiry in the Specification.

"Warranty Period" means:

- (a) in the case of Goods:
 - i. a period for which the manufacturer or supplier of the Goods (if not the Contractor) warrants them; or
 - ii. a period of twenty-four (24) months from the date of delivery; or
- (b) in the case of Services, a period of twelve (12) months from the date the Services are completed.

2. This Contract prevails

By submitting a quotation (the Contractor's Quotation) the Contractor agrees that this Contract prevails over any claimed contrary conditions submitted by the Contractor in connection with the Contractor's Quotation or at any other time unless such contrary conditions have been accepted by the Council as evidenced by an authorised signature on the contrary conditions.

3. Provision of Supplies

- (a) The Contractor must provide the Supplies to the Council in accordance with this Contract.
- (b) The Contractor must provide any and all equipment (including computer hardware and software and any ancillary support) necessary for the provision of the Supplies.

4. Invoicing and Payment

- (a) The Contractor must submit to the Council a tax invoice following the provision of Supplies which contains the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as the Council may reasonably require. The tax invoice must be sent to the address specified in this Purchase Order.
- (b) The Council will pay the invoiced amount within 30 days of receipt of an accurate invoice. However, if the Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Contractor of the amount in dispute. The parties will endeavour to resolve any such dispute.
- (c) Payment of an invoice is not to be taken as evidence that the Supplies have been supplied in accordance with this Contract but must be taken only as payment on account.
- (d) The Council will, on demand by the Contractor, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the *Penalty Interest Rates Act*

1983 (Vic). This clause does not apply to any disputed amounts withheld by the Council under clause 3 (b).

5. Warranties

- (a) The Contractor represents and warrants to the Council that:
 - (i) the provision of the Supplies will be carried out with all due care and skill, in a professional manner, and will comply with and be performed in accordance with all applicable industry / regulatory standards, principles and practices;
 - (ii) it is entitled to use and deal with (as contemplated in this Contract):
 - (A) any Intellectual Property Rights which may be used by it in connection with the Supplies; and
 - (B) any materials it provides to the Council as part of the Supplies,
 and their provision or use (including by the Council, where comprising Supplies) will not breach the Intellectual Property Rights of any third party; and
 - (iii) it and its employees, agents and contractors 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 this Contract.

The Contractor indemnifies and holds harmless the Council in respect of any loss, claim or liability suffered or incurred by the Council as a result of any breach of the warranty in sub-clause 5(a)(ii).

- (b) Where the Contractor is required to provide Services, the Contractor warrants that:
 - (i) the Contractor has the tools, capabilities, skill, facilities and resources to provide the Services in accordance with this Contract;
 - (ii) the Contractor has the accreditation or membership of any relevant industry good practice professional or other bodies in relation to the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership during this Contract;
 - (iii) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill, experience and expertise to provide the Services in accordance with this Contract;
 - (iv) the Services will be fit for the purpose for which services of that type are commonly acquired; and
 - (v) where the Council has, either expressly or by implication, made known to the Contractor any particular purpose for which the Services are required, the Services will be performed by the Contractor in such a way as to achieve that result.
- (c) Where the Contractor is required to provide Goods, the Contractor warrants that the Goods it supplies:
 - (i) are fit for the purpose for which goods of the same kind are commonly supplied or purchased;
 - (ii) match the description set out in the Contract Documents and are of the same quality and type as any samples or demonstrations provided by the Contractor;

- (iii) are, and will be for the duration of the Warranty Period, free from defects (including defects in installation) in performance, materials and workmanship;
 - (iv) are of merchantable quality and are new (unless otherwise specified in the Contract Documents);
 - (v) conform to the manufacturer's or the supplier's published specifications or any other specifications provided by the Contractor; and
 - (vi) are supplied free of any liens, charges and encumbrances (including any security interest registered on the Personal Property Securities Register).
- (d) The representations and warranties contained in this Contract are in addition to any separate representation, warranty or guarantee given by the Contractor in respect of the Supplies or any representation, warranty, guarantee or term implied by law.
- (e) The Contractor must obtain and ensure that for the Warranty Period the Council has the full benefit of any manufacturers or supplier's warranties. The Council may require the Contractor to:
- (i) assign to the Council any rights it has against its suppliers or manufacturers; or
 - (ii) pursue any reasonable claim against a supplier or manufacturer.

6. Supply of Goods

- (a) The Contractor agrees to deliver the Goods by the date specified in the Contract Documents and to the delivery address specified by the Council in writing to the Contractor.
- (b) The Contractor must package Goods to ensure maximum protection against theft or damage during transit, storage, delivery, loading and unloading.
- (c) Subject to clause 6(e), title to and risk in the Goods passes to the Council on delivery.
- (d) The Contractor must ensure that no portion of the Goods contain any Harmful Code.
- (e) If, at any time prior to the Council paying for the Goods, the Council becomes aware that any of them are Defective, it may accept or reject them and either return such Goods to the Contractor or require the Contractor to collect such Goods at the Contractor's risk and expense. The Council will not be liable to pay for any Defective Goods returned to or collected by the Contractor under this clause. If the Council accepts Defective Goods, the Contractor agrees to negotiate in good faith with the Council to reduce the price.
- (f) If, during the Warranty Period, the Council becomes aware that any of the Goods are Defective, without prejudice to its other rights it may have against the Contractor under this Contract or general law, the Contractor must:
 - (i) repair or replace the Defective Goods at its own cost; or
 - (ii) pay the Council the cost of having the Defective Goods repaired or replaced.

7. Supply of Services

- (a) The Contractor must perform the Services in accordance with any timetable notified by the Council and complete them by the date specified for their completion in the Specification or as reasonably specified by the Council in writing.

- (b) The Contractor must promptly notify the Council when the Services are completed. If the Council is of the reasonable opinion that the Services are not complete, the Council will notify the Contractor of its reasons for that opinion and the date by which the Contractor must complete them.
- (c) The Council may at any time, and for any reason, direct the Contractor to suspend providing all or part of the Services by providing 5 business days' written notice. If the Council provides the Contractor with notice that all or part of the Services must be suspended, the Contractor must promptly comply with any direction that the Council may give, and within 5 business days comply with any direction to remove any Contractor personnel and plant from the Council's Premises.
- (d) If, at any time prior to or during the Warranty Period, the Council becomes aware that the Services performed are Defective, the Council may, without prejudice to any other remedy:
 - (i) require the Contractor to re-perform or remedy the Defective Services at the Contractor's risk and expense; or
 - (ii) terminate the Contract and claim damages for any losses and costs incurred by the Council (and if the Council has paid any fees in advance under this Contract, they must be refunded to the Council within 10 business days of such termination).

8. Liability

The Contractor must indemnify the Council and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense on a solicitor-client basis) which any of them suffers as a direct result of any failure to provide the Supplies in accordance with this Contract or any other breach of this Contract.

9. Intellectual Property Rights

- (a) Subject to subclauses (b) to (d) of this clause 9, the Contractor grants to the Council a non-exclusive, perpetual, royalty-free licence to use, copy and modify any materials (including software and data) the Contractor provides or makes available to the Council as part of, or in connection with, the Supplies, to the extent necessary to allow the Council the full use and enjoyment of those Supplies.
- (b) For pre-existing proprietary software that is subject to agreed end user licence terms ("EULA") attached to the Contract Documents, the Council's licence rights are as set out in the EULA, subject to any amendments to those terms as agreed and set out in the Contract Documents.
- (c) The Contractor assigns to the Council (on creation in material form) all Intellectual Property Rights in materials (including software and data) created or developed by or on behalf of the Contractor, to meet the Council's requirements under this Contract or otherwise in the course of providing the Services ("Developed IP"). To the extent the Contractor is not the owner of Developed IP, it must procure, at its own cost, that the owner assigns its rights in the Developed IP to the Council.
- (d) The Council is and will remain the owner of all Council Data (and all Intellectual Property Rights and other rights subsisting in it). The assignment in sub-clause 9(c) above will apply to any Council Data that is generated or otherwise created by the Contractor in connection with the Supplies and their provision. The Contractor may only use Council Data

for the purposes of performing its obligations under this Contract.

- (d) To the extent permitted by law, the Contractor will obtain, at the Council's request, from the Contractor's personnel whose Moral Rights (as defined in the *Copyright Act 1968* (Cth)) may be affected, all irrevocable consents necessary to allow the Council to exercise its rights in the Developed IP.
- (e) The Contractor must, upon request by the Council, do all things as may be necessary (including executing any documents) to give full effect to the licences and assignments set out in this clause.

10. Default by Contractor

- (a) If the Contractor defaults in the performance or observance of any obligation it has under this Contract, the Council may give notice to the Contractor specifying the default and requiring that such default be remedied within 14 days.
- (b) If, within 14 days after receipt of the notice, the Contractor fails to remedy the default, to the satisfaction of the Council, the Council (without prejudice to any other rights that it may have under this Contract or at common law against the Contractor) may:
 - (i) suspend payment under this Contract; or
 - (ii) terminate this Contract and any other Contract between the parties.

11. Insolvency of the Contractor

If the Contractor -

- (a) being a person, commits any act of bankruptcy; or
- (b) being a company, commits any act of insolvency - then the Council may terminate this Contract immediately.

12. Termination for convenience

The Council may, at any time, by giving written notice to the Contractor, terminate this Contract and the Contractor must on receipt of such notice immediately cease all work in connection with the provision of the Supplies and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event the Council will pay the reasonable fees and expenses of the Contractor in accordance with this Contract but not any loss of prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had this Contract been completed.

13. Variation to the specified Supplies

The Council may at any time give written notice to the Contractor proposing a variation to the specified Supplies. The Contractor must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied price that will apply for the provision of the varied Supplies. The Council may accept the varied price proposal within 7 days of receipt from the Contractor but in the absence of such acceptance this Contract will continue as if no proposal under this clause had been made.

14. No Relationship

Nothing in this Contract will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Contract will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

15. Insurance

- (a) The Contractor must obtain and maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Contractor is liable in connection with the provision of the Supplies including, if applicable, public liability insurance (minimum \$20 million per occurrence) and professional indemnity insurance (minimum \$10 million per occurrence).
- (b) On request, the Contractor must provide the Council with evidence of the currency of any insurance it is required to obtain.

16. Confidentiality and Privacy

- (a) The Contractor and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Contractor consents to the Council publishing or otherwise making available information in relation to the Contractor (and the provision of the Supplies) as may be required:
 - (i) to comply with the Local Government Act;
 - (ii) by the Auditor-General; or
 - (iii) to comply with the *Freedom of Information Act 1982* (Vic).

17. Privacy and Security

- (a) The Contractor must comply with all Privacy Laws. The Contractor acknowledges that it will be bound by the Privacy Laws (and in particular, but without limitation, the Information Privacy Principles and any applicable Code of Practice) with respect to any act done in connection with the provision of the Supplies in the same way as the Council would have been bound had the relevant act been done or engaged in by the Council.
- (b) The Contractor must, during and after the term of this Contract:
 - (i) comply with any applicable policies, directions, instructions or guidelines of the Council (as notified to the Contractor or referred to in the Contract Documents), including those in relation to data security, information classification and access, and personnel due diligence screening;
 - (ii) not transfer or disclose any Personal Information outside Victoria, Australia without the Council's prior written consent;
 - (iii) not do anything with any Personal Information that will cause the Council to breach any Privacy Laws;
 - (iv) apply prudent, industry accepted measures and tools designed to prevent the introduction of Harmful Code into the Council Systems as a result of the provision of the Supplies;
 - (v) use all reasonable measures to protect Council Systems and Council Data from security breaches that may arise as a result of, or in the course of, the Contractor's provision of the Supplies (and in any case, apply security measures no less robust than those it applies to its own systems and data);

- (vi) ensure that its personnel comply with all applicable access controls relating to Council Systems and Council Data and only use and access Council Systems and Council Data for the purposes of performing the Services;
- (vii) if requested by the Council in connection with the supply of the Supplies, co-operate with the Council to resolve any complaint made under any Privacy Laws, and provide other reasonable assistance required for the Council to comply with any applicable Privacy Laws; and
- (viii) promptly notify the Council of any suspected, threatened or actual data security breach or breach of this clause 17 immediately.

18. Access to Council premises

When entering the premises of the Council, the Contractor must:

- (a) ensure that its employees, agents and sub-contractors use reasonable endeavours to safeguard, protect and avoid injury or damage to people, property and the environment;
- (b) prevent unreasonable noise, disturbance and nuisance;
- (c) act in a safe and lawful manner and comply with the safety standards and policies of the Council (as notified to the Contractor);
- (d) not interfere with the Council's activities or those of any other person on the Council's premises and comply with, and ensure that its personnel comply with all directions while on the premises, including those regarding workplace health and safety and security, and ensure that the premises are left secure, clean and fit for immediate use;
- (d) immediately notify the Council of any health and safety incident occurring on the Council's premises; and
- (e) co-operate and confer with other contractors and consultants of the Council who may be at the Council's premises.

19. Sub-contracting

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

20. Compliance with Law

The Contractor must, in the provision of the Supplies, comply with all Laws and with the lawful requirements or policy of any governmental agency applicable to the provision of the Supplies by the Contractor.

21. GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Contract are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Contract, the recipient of the taxable supply must pay

to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.

22. Records

The Contractor must keep accurate and detailed financial records and other information relevant to the Supplies and must give the Council reasonable access to, and copies of, such records and information if requested to do so. The Contractor must provide progress reports to the Council at such times and containing such information as the Council may reasonably direct.

23. Documentation

The Contractor must provide to the Council all reference manuals (including specifications) and any other documents or materials which explain the operation and use of the Goods and outcomes of the Services ("**Documentation**") (including any updates or additions to the Documentation) at no additional charge. The Council is licensed to use the Documentation as required to receive the full benefit of the relevant Supplies.

24. General

- (a) This Contract is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria 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.
- (b) Time is of the essence in relation to the provision of the Supplies.