

LOGAN CITY COUNCIL TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 In these Terms and Conditions, except to the extent that the context otherwise requires:

- "Agreement" means the agreement constituted under clauses 2.1;
- "Business Day" means a day on which banks (as the term is defined in the *Banking Act 1959* (Cth)) are open for business in Logan Central, Queensland;
- "Council" means the Logan City Council;
- "Cyber Security Incident" means circumstances involving unauthorised access, modification, or impairment of a computer, computer data, or a computer program, in accordance with the *Security of Critical Infrastructure Act 2018* (Cth);
- "Critical Security Incident" has the meaning given in the *Security of Critical Infrastructure Act 2018* (Cth);
- "Force Majeure Event" means any circumstance, other than an industrial dispute, that is not caused by or within the reasonable control of a party, and includes: acts of god, lightning strikes, earthquake, floods, droughts, mudslides, explosions, fires or other natural disasters, pandemics, epidemics, acts of war, acts of public enemies, riots, civil commotions, malicious damage, invasions, sabotage, blockades and revolution;
- "Goods" mean the goods specified in the Purchase Order or in a schedule attached to the Purchase Order and any ancillary goods and services required to supply the Goods;
- "Principal Contractor" means the principal contractor of the location where the Goods or Services are to be supplied, as defined in the *Work Health and Safety Act 2011* (Qld)
- "Purchase Order" means the purchase order which these Terms and Conditions apply, and includes these Terms and Conditions;
- "Services" means the services and ancillary goods specified in the Purchase Order or in a schedule attached to the Purchase Order and ancillary services and goods required in performing the Services;
- "Supplier" means the person specified in the Purchase Order as the supplier;
- "Terms and Conditions" means these terms and conditions, which form part of the Purchase Order.

1.2 Where the Supplier comprises 2 or more persons an agreement or obligation to be performed or observed by the Supplier binds those persons jointly and severally, and a reference to the Supplier includes a reference to any one or more of those persons.

1.3 A reference to the Supplier or Council includes its respective successors and permitted assigns.

1.4 In the interpretation of this Agreement, headings shall be disregarded.

2. Agreement Formation

2.1 A Purchase Order issued by Council will constitute an offer. The Supplier may accept the Purchase Order by notifying Council in writing within the timeframe specified in the Purchase Order.

2.2 For the purposes of clause 2.1, the Purchase Order applies to the exclusion of all other terms and conditions imposed in any manner by the Supplier at any time, unless otherwise agreed in writing by the Supplier and Council.

2.3 The Supplier shall familiarise itself with the requirements of Council's code of conduct, and where applicable, observe the standards of conduct set out therein. Council's code of conduct is available at its website on www.logan.qld.gov.au or upon request from Council.

3. Supply of Goods or Services

3.1 The Supplier will supply to Council the Goods or Services in accordance with the Purchase Order.

3.2 The Supplier must comply with all applicable laws, standards and Council policies (when on Council premises) including the *Human Rights Act 2019* (Qld).

3.3 Any customer facing document, website, portal or similar must comply with the *Disability Discrimination Act 1992* (Cth).

3.4 Where this Agreement relates to Goods, the Goods supplied must:

- (a) conform to all relevant Australian Standards;
- (b) be fit for purpose;
- (c) correspond with any sample of the Goods which has been provided by the Supplier to Council (except to the extent a variation to the sample has been expressly permitted by Council or any other description of the Goods provided by the Supplier to Council;
- (d) be provided with material safety data sheets if the Goods are hazardous substances.

3.5 Where this Agreement relates to Services, the Services supplied must:

- (a) be fit for purpose;
- (b) be provided punctually and with due care, skill and diligence; and
- (c) be provided in accordance with Council's reasonable requirements.

4. Delivery, Inspection and Rejection

4.1 Where this Agreement relates to Goods, the Supplier shall deliver the Goods during normal business hours to the location and in accordance with the delivery timetable set out in this Purchase Order or in a schedule attached to this Purchase Order. For delivery to be effective, the Supplier must obtain the signature of the Council's representative acknowledging receipt of the Goods.

4.2 Where this Agreement relates to Services, the Supplier shall supply the Services to the location and in accordance with the delivery timetable set out in this Purchase Order or in a schedule attached to this Purchase Order.

4.3 The time for delivery of the Goods or supply of the Services is of the essence in this Agreement.

4.4 If Council reasonably considers that all or any of the Goods and Services are unsatisfactory because of a breach of this Purchase Order, Council may notify the Supplier in writing, within five (5) Business Days of the delivery or performance of the relevant Goods or Services, setting out reasons for Council's opinion and the conditions or basis upon which Council will accept the Goods or Services, if any.

4.5 If Council does not notify the Supplier in accordance with clause 4.4, Council shall be deemed to have accepted that the Goods or Services comply with the terms of this Agreement. Such acceptance will not, however, constitute a waiver of any right which but for the acceptance, Council would have had arising from any defect in or want of compliance with the specifications for the Goods or Services later discovered by Council.

4.6 If:

- (a) Council notifies the Supplier in accordance with clause 4.4 that the Goods or Services are unsatisfactory; or
- (b) the Supplier has not delivered the Goods or supplied the Services to Council within the time limits prescribed in the Purchase Order,

Council may do any one or more of the following:

- (c) reject or accept all or some of the Goods or Services;
- (d) negotiate with the Supplier the alteration of any provision of this Agreement, including without limitation the price for the Goods and Services, the timing of delivery or supply, the quantity of Goods to be delivered and the extent of the Services to be supplied;
- (e) terminate this Agreement; or
- (f) avail itself of any other at law or in equity.

4.7 Termination of this Agreement under clause 4.6 relieves the Supplier of the obligation to deliver the Goods or supply the Services, but does not relieve the Supplier from the consequences of any breach by the Supplier of these Terms and Conditions which occurred before the Agreement was terminated.

4.8 If any of the Goods are rejected by Council under clause 4.4, the Supplier shall at its own cost within 7 days of rejection collect the rejected Goods from Council during normal business hours. The Supplier acknowledges that:

- (a) Council is not at any time the bailee of the Goods for the Supplier;
- (b) if the rejected Goods are not collected by the Supplier within that seven (7) day period, Council may return them to the address of the Supplier shown in this Purchase Order; and any cost incurred by Council in so doing will be paid by the Supplier to Council upon demand.
- (c)

4.9 If any of the Services are rejected by Council under clause 4.4, the Supplier shall at its cost carry out such rectifications and restorations concerning the rejected Services within such reasonable time as is specified by Council in its notice given under clause 4.4, or if not specified in that notice, at a later point in time.

5. Price and Payment

5.1 The price for the Goods or Services shall be the price set out in the Purchase Order.

5.2 After the end of the period specified in clause 4.4, the Supplier shall give to Council an invoice for the Goods delivered or the Services supplied as have not been rejected.

5.3 Council shall pay for the Goods or the Services invoiced under clause 5.2 within fourteen (14) days from invoice date.

5.4 Title and risk in the Goods shall pass to Council when Council accepts or is deemed to have accepted the Goods.

5.5 Where the effect of any law is that a lien over any of the Goods in favour of the Supplier is implied or given and it is not lawful to exclude the lien, then such lien shall (but only to the extent required by law) apply to this Agreement, but otherwise the right to any lien is excluded from this Agreement or waived by the Supplier.

6. Liabilities, Indemnities and Termination

6.1 All obligations and assurances which are or may be imposed upon a supplier of goods or services and all rights and benefits which are or may be conferred upon the recipient of goods or services by any law shall, to the extent they are not inconsistent with these Terms and Conditions, apply to the Supplier and Council respectively unless (but then only to the extent specified) otherwise agreed in writing between the Supplier and Council.

6.2 Council may terminate this Agreement by written notice to the Supplier if:

- (a) the Supplier has substantially breached a term of this Agreement and fails to remedy the breach within thirty (30) days after notice by Council or the breach is incapable of remedy;
- (b) the Supplier gives notice in accordance with clause 17.2 or Council otherwise identifies a conflict of interest;
- (c) the Supplier becomes insolvent, goes into liquidation or is wound up or dissolved or a receiver, receiver and manager, official manager, trustee, provisional liquidator or similar officer is appointed over any of its assets, or the Supplier enters into a scheme of arrangement, composition or compromise with or assignment for the benefit of any of its creditors or any inspector of all or any part of its affairs is appointed or if any steps or proceedings are taken against the Supplier for any such purpose;
- (d) the Supplier commits an act of bankruptcy, becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the *Bankruptcy Act 1966* (Cth) or enters into a personal insolvency agreement;
- (e) the Supplier commits any criminal offence which affects or compromises its ability to satisfactorily perform its obligations under this Agreement, or fails to observe the standards of conduct set out in Council's code of conduct, as required by clause 2.3;
- (f) the Supplier becomes a person of unsound mind or a person whose person or estate is liable to be dealt within any way under any law relating to mental health; or
- (g) execution, distress or other legal process is levied against any property of the Supplier and such process is not satisfied within thirty (30) days of being levied.

6.3 The Supplier shall indemnify Council against all losses, claims, liabilities, costs, demands and expenses, whether direct, indirect or consequential, sustained or incurred by Council arising out of

or in any way connected with a breach of this Agreement by the Supplier.

6.4 The Supplier's liability to indemnify Council shall be reduced proportionally to the extent an act or omission of Council or employees or agents of Council may have contributed to the loss, claim, liability, cost, demand or expense.

6.5 The Supplier shall pay, and shall indemnify Council against, all duties, taxes, levies, charges and impositions of whatever nature (whether parliamentary, municipal or otherwise) which may now or at any time be imposed or levied in respect of supply of the Goods or Services and all fines, penalties, losses, claims, costs, demands and expenses sustained or incurred by Council concerning any of them.

6.6 Council may, on giving thirty (30) days' notice in writing to the Supplier, terminate this Agreement. Council shall, within thirty (30) days of the date of termination, pay the Supplier:

- (a) the value of the Good supplied or the Services provided by the Supplier up until the date of termination; and
- (b) the costs (if any) that have been or will be incurred by the Supplier as a direct result of termination of this Agreement and which the Supplier cannot recoup from a third party or avoid, subject to the Supplier providing Council with satisfactory documentary evidence of such costs.

7. Workplace Health and Safety

7.1 The Supplier shall comply with all requirements under the *Work Health and Safety Act 2011* (Qld) that are applicable to this Agreement and the supply of the Goods or the performance of the Services, including, without limitation, its obligations as an employer.

7.2 All works shall be undertaken in accordance with Council's Workplace Health and Safety Policy (available upon request). The mandatory personal protective equipment required at all times whilst on site includes:

- (a) safety footwear;
- (b) solar protection e.g., long sleeve shirt and broad brimmed hat; and
- (c) high visibility vest

7.3 Prior to delivering the Goods or supplying the Services, the Supplier must enquire of Council whether there is a Principal Contractor responsible for the location to which the Goods are to be delivered or the Services supplied, as set out in this Purchase Order. The Supplier must comply at its cost with all health and safety directives given by the Principal Contractor when delivering the Goods or supplying the Services.

7.4 The Supplier must indemnify and keep indemnified Council against all costs, damages or liabilities which may be imposed under, or which may arise out of enforcement of, any section of the *Work Health and Safety Act 2011* (Qld) or its regulations, resulting from a breach of this clause by the Supplier.

7.5 All items supplied and/or services provided must comply with relevant Australia Standards

8. Intellectual Property

8.1 The Supplier grants Council a non-exclusive and non-transferable licence to exercise the intellectual property rights in the Goods and Services (and to sublicense these rights).

8.2 The Supplier warrants that the Goods and Services and the acts of Council or a person authorised by Council in relation to the Goods and Services, other than those prohibited by this Agreement, do not infringe the intellectual property rights or moral rights of any person. The Supplier warrants that it has the right to grant the rights under this clause.

9. Confidentiality

9.1 The Supplier must treat as confidential all information provided by or obtained from Council in relation to this Agreement, and not disclose this information to any person except: (i) to its personnel and advisors on a need to know basis; (ii) with Council consent; (iii) if required by law; or (iv) if it is in the public domain, other than due to a breach of this Agreement or other obligation of confidentiality.

10. Drug and Alcohol Testing

10.1 At its discretion and in accordance with relevant Council policies, directives or legislation, Council reserves the right to conduct drug

and/or alcohol testing to ensure staff, contractors and/or volunteers are fit for duty to ensure that the workplace remains safe.

11. Insurance

- 11.1 Before the Supplier commences the supply of the Goods or the Services, the Supplier shall obtain adequate and sufficient insurance to protect the interests of the Supplier and Council under this Agreement, including without limitation public liability insurance and workers' compensation insurance. The Supplier shall maintain such insurances for the duration of this Agreement, and if necessary thereafter for such time as is reasonable.
- 11.2 The Supplier shall effect and maintain any other insurances as Council may reasonably instruct, including without limitation, professional indemnity or any other insurance.
- 11.3 The Supplier must produce on demand by Council, evidence satisfactory to Council that the insurances referred to in clauses 11.1 and 11.2 have been obtained and are being maintained by the Supplier. If the Supplier fails to produce such evidence, Council may itself effect the insurance and the premium of such policies shall be a debt due and owing from the Supplier to Council.
- 11.4 If Council requests evidence of insurance from the Supplier under clause 11.3, no money shall be payable to the Supplier under this Agreement until such time as the request under clause 11.3 has been complied with by the Supplier.

12. Force Majeure

- 12.1 If either party becomes aware of a Force Majeure Event that is or is likely to materially prevent it either partially or wholly from complying with its obligations (except payment obligations) under this Agreement, it must as soon as reasonably practicable notify the other party of the Force Majeure Event.
- 12.2 A party is not liable for a failure to perform its obligations under this Agreement as a result of a Force Majeure Event, provided that party has given a notification under clause 12.1.
- 12.3 If either party is prevented from performing its obligations by a Force Majeure Event, either party may terminate this Agreement by thirty (30) days written notice to the other party.
- 12.4 If a party terminates this Agreement under clause 12.3, the rights and obligations of the parties under this Agreement cease provided that any accrued rights or remedies of the parties are not affected.

13. General

- 13.1 Neither the Supplier nor Council shall assign or purport to assign this Agreement or any right under this Agreement without the prior written consent of the other.
- 13.2 This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
- 13.3 The failure of the Supplier or Council at any time to require full or partial performance of any provision of this Agreement shall not affect in any way its full right to require that performance subsequently. The waiver by either the Supplier or Council of a breach of a provision of this Agreement shall not be deemed a waiver of all or part of that provision or of any other provision or of its right to avail itself of its rights subsequently. Any waiver of a breach of this Agreement shall be in writing signed by the party granting the waiver and shall be effective only to the extent specifically set out in the waiver.
- 13.4 This Agreement may only be altered in writing signed by both the Supplier and Council.
- 13.5 If any part of this Agreement is rendered invalid by any law or is held to be invalid or unenforceable, then that part shall be deleted but, to the extent the remainder is capable of being performed, neither the invalidity or unenforceability nor the deletion shall affect the validity or enforceability of the remaining parts of this Agreement.

14. GST

- 14.1 In this clause the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

- 14.2 Unless otherwise stated, all amounts payable under this Agreement include GST.

- 14.3 If this Agreement requires a party to reimburse or indemnify the other party for any expense, loss or outgoings ("reimbursable expense") the amount required to be paid by the first party will be the sum of:

- (a) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("net amount"); and
- (b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

- 14.4 If a GST inclusive price is charged or varied, the supplier will deliver to the recipient a valid tax invoice or adjustment note at or before the time of payment. The recipient can withhold payment of the GST until the supplier provides a valid tax invoice or adjustment note as appropriate.

15. Privacy

In this clause, "Personal Information" has the meaning given to that term by the *Information Privacy Act 2009* (Qld).

- 15.1 Where the Supplier and/or its agents and/or subcontractors have access to and/or are responsible for holding Personal Information, the Supplier shall:
- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* as if the Supplier was the Council (the Supplier acknowledges that the Information Privacy Principles with which it is required to comply are available on the Council's website at www.logan.qld.gov.au);
 - (b) ensure the Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
 - (c) not use Personal Information other than for the purpose of the Agreement, unless required or authorised by law;
 - (d) not disclose Personal Information without the written agreement of the Council, unless required or authorised by law;
 - (e) not transfer Personal Information outside of Australia without the consent of the Council;
 - (f) ensure that only authorised personnel who require access in order to perform their duties have access to Personal Information;
 - (g) ensure that its personnel do not access, use or disclose Personal Information other than in the performance of their duties;
 - (h) immediately notify the Council if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law;
 - (i) fully co-operate with the Council to enable the Council to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (j) comply with such other privacy and security measures as the Council reasonably advises the Supplier in writing from time to time.

- 15.2 Where the Council is not reasonably satisfied, on the basis of information provided to it by the Supplier, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Council may at any time require the Supplier to make its subcontractors aware of its obligations in accordance with this clause 15 including, when requested by the Council, requiring any subcontractors to promptly sign a privacy undertaking substantially in the form approved by Council.

- 15.3 Any Personal Information exchanged between the Supplier and any Department or Agency shall be dealt with in accordance with the *Information Privacy Act 2009* (Cth).

- 15.4 The Supplier must immediately notify the Council upon becoming aware of any breach of this clause 15.

- 15.5 This clause will survive the termination or expiry of this Purchase Order.

16. Cyber Security

- 16.1 The Supplier must immediately notify Council within twelve (12) hours of a Cyber Security Incidents, with a detailed report of the

Cyber Security Incident, as soon as it becomes aware of any Cyber Security Incident that is likely to impact the services or Council.

- 16.2 Without limiting clause 6.3, the Supplier shall indemnify and continue to indemnify Council from and against any and all claims, losses, liabilities, costs and expenses arising out of or in connection with the Agreement, relating to claims by any third party arising or resulting from or attributable to a Cyber Security Incident or a breach of clause 16.1.

- 16.3 The Supplier's liability to indemnify Council under clause 16.2 shall be reduced proportionally to the extent that the act or omission of Council may have contributed to the claim, loss, liability, cost or expense.

17. Conflict of Interests

- 17.1 The Supplier warrants that, to the best of its knowledge, as at the date of the Agreement, neither the Supplier nor any of its officers, employees, agents or subcontractors have, or are likely to have, a conflict of interest in the performance of the Supplier's obligations under this Agreement.

- 17.2 If a conflict of interest or risk of conflict of interest arises during the course of the Agreement the Supplier must immediately give a notice of the conflict of interest, or the risk of it, to Council.

- 17.3 The Supplier will comply with any reasonable direction of Council as to how to manage the conflict of interest.