

1. Definitions

“**Contract**” means the agreement in between the Contractor and Council for the execution of work under the Contract.

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

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

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

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

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

(i) if by hand, on the date of delivery,

(ii) if by prepaid post on the second business day after posting;

(iii) if by facsimile or email, when the senders facsimile or email system confirms the Notice or communication has been transmitted in its entirety to the facsimile number or email address of the addressee, as the case may be.

“**Practical Completion**” means the Works complete in accordance with the Contract.

“**Site**” means the location nominated by Council where the Contractor is to perform the Works.

“**Works**” means the whole of the works and services that are to be performed and completed under the Contract, including any variations.

2. Provision of Works

2.1 The Contractor shall undertake the Works in accordance with the Contract and any other document issued by Council. Unless otherwise provided, the Contractor is responsible for all things, including items not expressly mentioned

in the Contract, necessary for satisfactory completion of the Works.

2.2 The Contractor shall comply with the requirements of legislation and public or other authorities affecting the Works, and unless otherwise specified pay all fees, give all notices and obtain necessary consents.

3. Time for commencement and completion

3.1 The Contractor will commence on Site on the date agreed between the Contractor and Council and after Council has given Site possession.

3.2 The works must be completed by the time specified by the Council and if not specified, within a reasonable time having regard to normal commercial practice.

4. Materials and workmanship

4.1 Materials used in completing the Works and the standards of workmanship shall be in conformity with the provisions of the Contract. In the absence of such provisions, the materials and workmanship shall be a kind which is suitable for its purpose.

4.2 Unless otherwise specified, all materials must be new and the workmanship must be in accordance with the relevant manufacturer's recommendations or, if none, the relevant Australian Standard where applicable.

4.3 The Contractor will comply with any direction by Council to remedy any work not in accordance with the Contract within the period of time stipulated in writing by Council. If the Contractor fails to comply with such a direction to carry out rectification work within the time stipulated, Council may have the rectification work carried out by others at the Contractor's expense or may accept the work at a reduced value. Council may deduct the cost of rectification work or a reduced value deducted from payments to the Contractor.

5. Protection of persons and property

5.1 The Contractor must take effective measures for the protection and safety of the public, personnel and property and to avoid any injury, loss, or damage while carrying out all Works.

5.2 In carrying out the Works, the Contractor is to minimise inconvenience to others, and ensure appropriate access is available along any public thoroughfare including footpaths taking into account the disabled including mobility, vision and hearing impaired persons.

5.3 If the Contractor damages any property, the Contractor must provide temporary protection for, and repair it at its own cost.

5.4 Any excavation work must only be carried out subsequent to undertaking appropriate Dial Before You Dig inquiries and any excavation where services are identified with appropriate supervision and guidance by the relevant utility authority.

6. Assignment and Subcontracting

6.1 The Contractor shall not assign any part of the Works under the Contract without the prior written approval of Council. The Contractor shall provide to Council all information required in order to consider giving such consent.

6.2 No subcontracting of any rights or obligations of the Contractor under this Contract shall relieve the Contractor from any liability or obligation under this Contract or at law.

7. Variations

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

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

8. Latent Conditions

8.1 If the Contractor discovers physical conditions on the Site or its surroundings, excluding weather conditions, which differ materially from those which should reasonably have been anticipated at the time of Offer if it had:

- (i) examined all information made available in writing by Council to the Contractor for the purpose of tendering; and

- (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Offer and obtainable by the making of reasonable enquiries; and

- (iii) inspected the Site and its surroundings,

The Contractor shall immediately notify Council in writing and may request that a variation be directed pursuant to clause 7.

8.3 Council may issue a direction in respect of the latent condition, and the Contractor may be entitled to claim an extension of time for delays, and may be entitled to reimbursement of costs incurred as a consequence of the latent condition and directions issued in respect thereof.

9. Workplace Health and Safety

9.1 For the purposes of this clause:

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

‘Regulation’ means the *Work Health and Safety Regulation 2011 (NSW)*, as amended from time to time;

‘workplace’, ‘inspector’, ‘notifiable incident’, ‘principal contractor’ and ‘regulator’ have the same meaning as in the Act.

9.2 The Contractor will:

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

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

- (i) any breach of this clause by the Contractor;

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

9.4 If a notifiable incident occurs at the workplace the Contractor must:

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

10. Payment

10.1 The Contractor acknowledges that the majority of works to be undertaken under this contract are minor in nature and will generally require less than a month to complete. As such, in most cases, progress claims under the Building and Construction Industry Security of Payments Act 1999 (“BCISPA”) will not be applicable.

10.2 The Contract agrees to promptly issue Council with a tax invoice for works performed under this contract, following the completion of each project for which the contractor is engaged.

10.3 Council agrees to promptly pay such invoices as and when they are received, and in any case as may be required by legislation.

10.4 The Contractor is required to submit with their valid tax invoice a copy of the Safe Work Method Statement for the Works performed under the Contract.

10.5 For works in which subcontractors have been engaged, tax invoices or payment claims issued to Council pursuant to this agreement are to include a statutory declaration stating that all subcontractors have been paid all moneys due and payable to them, and a completed Subcontractor’s Statement regarding Workers Compensation, Payroll Tax and Remuneration as required by the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial

Relations Act 1996 (as amended).

10.6 The parties acknowledge that, from time to time, projects may increase in scope. In such cases, and where Part 2 and Part 3 of the BCISPA applies:

- (i) A contractor may make a payment claim pursuant to s.8(2)(b) and s.13 of the BCISPA.
- (ii) If no payment claims are received before the completion of the project, the contractor may invoice Council for the full sum of the works at the completion of the project, or alternatively, issue a payment claim at that time.
- (iii) The amount the Contractor is entitled to claim is an amount equal to the value of the Works completed at the reference date less the sum of;
 - A. previous payments made by Council;
 - B. the estimated cost of rectifying any defects;
 - C. costs payable by the Contractor to Council;
 - D. any other deductions that Council is entitled to make under or in connection with this Contract.

10.7 Within 10 business days after service of the Contractor’s payment claim, Council’s will provide the Contractor with a payment schedule identifying the payment claim to which it relates and stating the payment that Council will be making. If the scheduled amount is less than the amount claimed by the Contractor, the payment schedule will indicate the reasons(s) for the discrepancy.

10.8 Following the issuing of a Payment Schedule by Council, the Contractor consents to Council generating a Recipient Created Tax Invoice (RCTI), and making payment on such invoice on or before the fifteenth day following the receipt of the Contractor’s payment claim.

10.9 Council and the Contractor agree that Council will issue RCTIs in respect of Payment Schedules issued by Council under this agreement. The Contractor will not issue tax invoices in respect of these Payment Schedules. The Contractor acknowledges that it is registered for GST and that it will notify the Council if it ceases to be registered. The Council acknowledges that it is registered for GST and that it will notify the Contractor if it ceases to be registered. Acceptance of RCTIs under this agreement

constitutes acceptance of the terms of this written agreement. Both parties to this supply agree that they are parties to an RCTI agreement as outlined in GSTR 2000/10. The Contractor agrees to notify the Council if the Contractor does not wish to accept additional RCTIs during the term of the agreement.

11. GST and PAYG Withholding

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

11.2 The Contractor must issue a tax invoice or adjustment note (as the case may require) within five (5) business days after each of the following occurring in relation to that taxable supply:

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

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

12. Insurance

12.1 The Contractor warrants that it will hold and maintain for the duration of the Contract the following insurances to cover its obligations under the Contract:

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

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

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

13. Indemnity by the Contractor

13.1 The Contractor will indemnify the Council against:

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

16. Defects Liability

16.1 The Contractor is liable to rectify any omission or defect in the Works for a period specified by the Council. If nothing specified, a defects liability period of six (6) months applies.

16.2 If the Contractor fails to do so, Council may have the omission or defect remedied by other persons and the cost so incurred will be a debt due to Council which may be deducted from payments or pursued as a debt owed to Council in any Court of competent jurisdiction.

17. Cleaning of the Site

17.1 The Contractor shall keep the Site clean and tidy when completing the Works. The Contractor shall clear away and remove from Site all construction plant, surplus material, rubbish and temporary works of every kind.

18. Termination by convenience

- 18.1 Council may terminate the whole or part of the Works at any time, by Notice to the Contractor.
- 18.2 Council shall pay the Contractor the fees and expenses reasonably incurred by the Contractor in carrying out the Works under the Contract to the date of termination
- 18.3 Council will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to termination.
- 18.4 Council will not be liable to pay for any Works performed after the termination date as specified in the Notice.

19. Breach of Contractor

- 19.1 Breach of the Contract occurs when the Contractor:
- (i) fails to commence the Works within the period specified by Council; or
 - (ii) fails to carry out the Works at a rate of progress satisfactory to Council; or
 - (iii) has neglected or omitted to carry out any instructions of Council; or
 - (iv) has failed to complete the whole of the Works by the Practical Completion Date; or
 - (v) has intimated that it is unwilling or unable to complete the works by the Practical Completion Date; or
 - (vi) has committed an act of bankruptcy, becomes insolvent or Council reasonably considers that the Contractor is likely to become insolvent;
- 19.2 Council may, by giving Notice in writing within seven (7) days' notice, terminate the Contract and engage with others to complete the Works. Council shall prepare a certificate on its completion setting out the costs of the new Contractors and all costs and losses incurred by Council. If the amount in the certificate is greater than the amount payable to the Contractor under the Contract, then the Contractor is liable to pay the difference to Council.

20. Disputes

- 20.1 If a dispute arises out of or relates to this Contract, or the breach, termination, validity or subject matter thereof, or to any related claim in restitution or law, in equity or pursuant to any statute, the parties to the agreement and the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to litigation.
- 20.2 The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC.
- 20.3 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- 20.4 The terms of the Guidelines are hereby deemed incorporated into this Contract.
- 20.5 This clause shall survive termination of this Contract.

21. General Provisions**21.1 Entire Agreement**

- 21.1.1 In the event that Council and the Contractor have legally executed a written contract for the provision of the Services ("the Formal Contract") that differs from this Contract, the terms of the Formal Contract shall prevail over the terms of this Contract to the extent of any inconsistency.
- 21.1.2 Subject to clause 21.1.1 above, this Contract:
- (i) Is the entire agreement between the parties about its subject matter; and
 - (i) In relation to its subject matter, supersedes any prior;
 - (i) understanding or agreement between parties; and
 - (ii) communication, condition, warranty, promise, inducement, indemnity or representation imposed, given or made by a party.

21.2 Waiver

- 21.2.1 Any failure by a party at any time to enforce a clause of this Contract, or any forbearance,

delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.

21.2.2 No provision of this Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving party.

21.2.3 A waiver by a party of a breach of any part of this Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

21.3 Severability

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

21.4 Code of Conduct

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

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

21.5.1 When requested in writing by Council, the Contractor must provide Council with immediate access to any information in its possession that Council may be required to release under the GIPA at no expense to Council.

21.5.2 The Contractor must supply the information in the format as requested by Council.

21.6 Governing Law

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