

DAREBIN COUNCIL CONTRACT FOR SERVICES

Darebin City Council ABN 75 815 980 522 of 274 Gower Street, Preston, Victoria, 3072
("Council")

-and-

Insert Supplier Company name ABN XX of Insert address, Melbourne, Victoria, 3000
("Supplier")

The Supplier and Council agree that the Supplier must provide the **Services** in accordance with the attached Conditions and the following contract details ("**Contract Details**").

The **Services** to be provided by the Supplier are:

CTXX – Insert Project Name if relevant

Describe the Services (or copy and paste the deliverables from your Specification document)

The **Services** are to be provided over the following period (the Term) and the following delivery dates must be met:

Commencement date:

Completion date:

The **Fees** payable by Council for the satisfactory completion of the Services are as follows and are based upon the following Rates:

as set out in Schedule 1 [Supplier quoted fees]

Initial Requirements: \$ delete if not relevant and you're paying a lump sum

Council's Representative:

The Services must be provided by the following **Key Personnel** of the Supplier:

Public Liability and Professional Indemnity Insurance:

Insert the details from your Specification or as negotiated/agreed

Policy Type: Public Liability

Insurer Name:

Policy Number(s):

Expiry Dates:

Limit of liability: \$

Relevant exclusions:

Policy Type: Professional Indemnity

Insurer Name:

Policy Number(s):

Expiry Dates:

Limit of liability: \$

Relevant exclusions:

Supplier Details

Name (and ACN if applicable):	
Address:	
Tel:	
Fax:	
E-mail:	
Contract Person:	

EXECUTED AS AN AGREEMENT:

Signed by and on behalf, and under delegation
of **DAREBIN CITY COUNCIL** by

Insert General Manager/Financial Delegates name and title

Signature:

Date:

EXECUTED BY

Insert Supplier Company Name

Name & Title:

Signature:

Date:

General Conditions for the Provision of Services

1 Provision of Services

The Supplier must provide the Services to or for Council in accordance with the Agreement, and must:

- (a) complete the Services by the Completion Date and any other dates for delivery specified in the Contract Details and as per the attached Request for Quote and Fee Proposal;
- (b) provide the Services in a proper, timely, efficient, professional and workman-like manner using that 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;
- (c) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (d) act in good faith and in the best interests of Council; and
- (e) provide any and all equipment necessary for the performance of the Services.

2 Price for the Services

- (a) The Rates or Fees applicable to the Services are set out in the Contract Details and are fixed. Expenses may only be charged in accordance with the Contract Details.
- (b) Except as expressly provided otherwise in the Contract Details, the Rates and Fees set out in the Contract Details are inclusive of all labour, transport, insurance and other costs and expenses (including taxes) of the Supplier which may be incurred in connection with the performance of the Services.

3 Invoicing and payment

- (a) The Supplier must submit to Council a tax invoice in respect of the Services once they are completed, or at such other time or times as agreed by the parties. A tax invoice submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as Council may reasonably require and be sent to the address specified in the Contract Details.
- (b) Council will pay the invoiced amount within 30 days of receipt of an accurate invoice. However, if Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount Council believes is due for payment. The parties will endeavour to resolve any such dispute.
- (c) Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.

4 Failure to perform

- (a) Without limiting any other available remedy, if the Supplier fails to provide any of the Services in accordance with the Agreement, Council will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or re-perform the Services at the Supplier's cost within the time specified in a notice (which must be reasonable having regard to the nature of the Services).
- (b) If the default referred to in **clause 5(a)** is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, Council may either have the Services 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.

5 Termination

- (a) Council may terminate this Agreement immediately by notice in writing to the Supplier if the Supplier:
 - (i) fails to remedy, to the satisfaction of Council, any breach of this Agreement that is capable of remedy within 14 days after the date on which Council issues the Supplier a written notice requiring the Supplier to remedy the breach;
 - (ii) breaches any material provision of this Agreement and such breach cannot be remedied; or
 - (iii) suffers an insolvency event.
- (b) Council may terminate this Agreement without cause by giving the Supplier not less than 14 days' notice in writing.

6 Consequences of termination or expiry

- (a) Termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.
- (b) Where this Agreement is terminated:
 - (i) the Supplier must cease all work under this Agreement as soon as practicable following receipt of a termination notice and take all appropriate action to mitigate any loss and prevent additional costs being incurred; and
 - (ii) Council will pay to the Supplier all amounts owing in respect of the Services that, prior to the date of termination, have been accepted by Council or that have, in the reasonable opinion of Council, been delivered in accordance with this Agreement.

7 Warranties

The Supplier warrants to Council that:

- (a) **(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;
- (b) **(Conflict)** 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 the Agreement;
- (c) **(Laws)** the Supplier will, in performing its obligations under this Agreement, comply with all Laws; and
- (d) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services.

8 Liability

- (a) The Supplier must indemnify Council and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a result of or in connection with the Supplier's negligent or wrongful act or omission, any failure to provide the Services in accordance with these Conditions or any other breach of the Agreement.

- (b) The aggregate liability of the Supplier and its personnel to Council, its related bodies corporate and their respective personnel in respect of all losses, damages, liability, costs, expenses, suits and claims (where directly, indirectly or consequential) arising from breach of contract, tort or otherwise and including liability for negligence or under any indemnity under or in respect or any single cause of action or this Agreement is limited to (to the extent permitted by law) to an amount equal to ten (10) times the fees chargeable in relation to this Agreement, up to a maximum of \$20 million.

9 Intellectual Property Rights

- (a) Subject to **clause 8(c)**, all Contract Intellectual Property vests in and is the property of Council from the time of its creation and the Supplier irrevocably and unconditionally assigns to Council, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property. The Supplier must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (b) The Supplier warrants that it has or will procure from all relevant persons who are authors or makers of any Contract Intellectual Property a written assignment of all Intellectual Property Rights of such persons in the Contract Intellectual Property as necessary to give effect to **clause 8(a)** and a written consent from all individuals involved irrevocably consenting to Council exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.
- (c) All Pre-Existing Intellectual Property used by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property remains the property of the Supplier or its licensors. However, the Supplier hereby irrevocably and unconditionally grants to Council, free of additional charge, a non-exclusive, worldwide licence (including the right to sub-licence) to use any Pre-Existing Intellectual Property to the extent that it forms part of or is integral to any works or other items created by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property.

10 Insurance

- (a) The Supplier must obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of the Services including professional indemnity and, if applicable, public and products liability insurance.
- (b) The Supplier must obtain and maintain workers' compensation insurance coverage as required by Law.
- (c) On request, the Supplier must provide Council with evidence of the currency of any insurance it is required to obtain.

11 Confidentiality and privacy

- (a) The Supplier 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 Supplier hereby consents to Council publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as may be required:

- (i) to comply with Council's obligations under the Law with respect to publishing contract details;
- (ii) by the Auditor-General;
- (iii) to comply with the *Freedom of Information Act 1982 (Vic)*; or
- (iv) otherwise by Law.

- (c) The Supplier acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done, or practice engaged in, by the Supplier for the purposes of this Agreement in the same way and to the same extent as Council would have been bound by them in respect of that act or practice had it been directly done or engaged in by Council.

12 Access

When entering the premises of Council, the Supplier must and must ensure that its employees, agents and sub-contractors protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of Council (as notified to the Supplier).

13 Sub-contracting

- (d) 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 or withheld in its absolute discretion).
- (e) 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.

14 Compliance with Law

- (a) The Supplier must, in the provision of the Services, comply with all Laws and with the lawful requirements or policy of any governmental agency affecting or applicable to the provision of the Services.
- (b) Without limiting clause 14(a), the Supplier must in, in the provision of the Services:
- (i) comply with the Best Value Principles; and
- (ii) comply with the requirements of section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

15 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 the Contract Details or these Conditions are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with these Conditions, 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.

16 Dispute Resolution

- (a) Where a dispute arises between the parties in connection with this Agreement, the parties must enter into discussions in good faith to resolve the dispute or to agree on a process to resolve all or part of the dispute without court proceedings. Unless the parties otherwise agree, discussions between the parties under this clause must continue for 21 days unless resolved earlier.
- (b) If the dispute is not resolved under clause (a), either party may refer the dispute for mediation administered by the Australian Disputes Centre Limited (**ADC**) in accordance with the ADC's current guidelines for commercial mediation.
- (c) The mediator must be appointed by agreement between the parties but, failing agreement, will be appointed by the Chairman of the ADC or the Chairman's authorised representative.
- (d) Where a dispute is not resolved within 30 days of referral to mediation (or such longer period agreed by the parties in writing), either party may commence court proceedings in respect of the dispute.
- (e) For the purposes of this clause 16, 'dispute' includes any disagreement, difference of opinion, or failure to agree on any matter related to this Agreement or its performance.
- (f) Nothing in this clause 16 will prejudice the right of a party to seek urgent injunctive or declaratory relief in respect of any matter arising out of this Agreement.
- (g) The parties must continue to perform their obligations under this Agreement during the resolution of any dispute(s).

17 General

- (a) The Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably 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 Services.
- (c) Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this document.
- (d) Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it.
- (e) A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (f) No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (g) The Supplier must not:
 - (i) sell, transfer, novate, delegate, assign, licence; or
 - (ii) mortgage, charge or otherwise encumber,

any right or obligation under this Agreement to any person without the prior written consent of Council.

- (h) No party to this document has the power to obligate or bind any other party. Nothing in this document 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 document will be deemed to authorise or empower any of the parties to act as agent for or with any other party.
- (i) The warranties, undertakings, agreements and continuing obligations in this document do not merge on completion.
- (j) In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this document or any part of it.
- (k) The Supplier acknowledges and agrees that its engagement under this Agreement is non-exclusive and that Council may acquire services the same as or similar to the Services at any time from any other supplier or service provider.

18 Interpretation

In these Conditions, unless the context otherwise requires:

Agreement means the agreement for the provision of the Services of which these Conditions and the Contract Details form part.

Best Value Principles means the principles described in section 208B of the *Local Government Act 1989* (Vic).

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

Conditions means these General Conditions for the Provision of Services.

Completion Date means the date set out in the Contract Details by which provision of the Services must be effected by the Supplier.

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:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (b) which the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) which the Supplier can demonstrate was independently developed by the Supplier; or
- (d) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

Contract Details means the part of the Agreement describing the Services, which incorporates these Conditions.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any materials created by or on behalf of the Supplier in the course of providing the Services.

Council means Darebin City Council ABN 75 815 980 522.

Fees means a fixed fee payable to the Supplier for the provision of the Services.

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

Information Privacy Principles means the information privacy principles set out in 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:

- (a) the law in force in the State of Victoria and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and
- (b) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems which are the property of the Supplier and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

Rates means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services.

Services means the services (or any of them) specified in the Contract Details.

Supplier means the person supplying the Services under these Conditions.