

TERMS

1. DEFINITIONS

The following terms will, if not inconsistent with the context, have the meanings indicated:

"AI System" means an engineered or machine-based system that generates outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives, and includes any generative artificial intelligence or large language model.

"Business Day" means a day that is not a Saturday, Sunday or public holiday within the Council's municipal district.

"Intellectual Property" means any and all technology and information existing at the date of this Purchase Order which relates to the Services including but not limited to:

- (a) any confidential information, copyright, patent and trademarks, and includes any right to apply for registration of these intellectual property rights; and
- (b) any processes, formulae, designs, reports, drawings, specifications, software, blue-prints, patent applications, know-how and research data.

"Modern Slavery Legislation" means the *Modern Slavery Act 2018* (Cth) and any similar legislation in force in Victoria.

"Personal Information" has the same meaning as in the *Privacy and Data Protection Act 2014*.

"Services" means the services described in this Purchase Order.

"Supplier" means the party described as such in this Purchase Order.

2. COMPLETION

The Supplier must complete the Services on or before the Delivery Date in accordance with this Purchase Order.

3. WARRANTIES

In addition to other warranties in this Purchase Order or implied by law, it is a condition of the Council's purchase of the Services that:

- 3.1 the Services will be supplied with all due care;
- 3.2 the Supplier has the qualifications, experience and expertise represented to the Council;
- 3.3 the Supplier has no conflict of interest in supplying the Services; and
- 3.4 the Services will conform to the reasonable requirements of the Council.

4. PARTICULAR OBLIGATIONS

The Supplier agrees that:

- 4.1 in supplying the Services, it will comply with the Information Privacy Principles set out in the *Privacy and Data Protection Act 2014*;
- 4.2 it will immediately inform the Council if there has been any unauthorised access to or disclosure of Personal Information or data provided by the Council; and
- 4.3 it will immediately take all action necessary to minimise the impact of any unauthorised access to or disclosure of Personal Information or data provided by the Council, and at its own expense comply with all reasonable directions of the Council designed to minimise such impact or to mitigate any loss or damage suffered by the Council or any other person.

5. VARIATION OR TERMINATION

- 5.1 The Council may, at any time, by giving written notice to the Supplier, terminate this Purchase Order and the Supplier must on receipt of such notice immediately cease all work 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 Supplier incurred in connection with this Purchase Order 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 the Purchase Order been completed.
- 5.2 The Council may at any time give written notice to the Supplier proposing a variation to the scope of the Services. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Services. The Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance this Purchase Order will continue as if no proposal under this sub-clause had been made.

6. STATUS OF SERVICES

Upon request by the Council, the Supplier will promptly provide the Council with a written report giving details of the status of the Services, including tasks completed, tasks yet to be completed and estimated completion dates.

7. CONFIDENTIALITY

The Supplier will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to the Council or its affairs which may come to its or their knowledge during the term covered by this Purchase Order.

8. INTELLECTUAL PROPERTY

8.1 Warranty by Supplier

The Supplier warrants that it is entitled to use any Intellectual Property which may be used by it in connection with the supply of the Services.

8.2 Material Created

The ownership of all Intellectual Property created as a result of the supply of the Services will vest in the Council. The Supplier assigns ownership of all such Intellectual Property rights to the

Council and will ensure that its employees, sub-contractors and agents execute all documents necessary to assign to the Council all such rights.

8.3 Indemnity

Without limiting Term 16, the Supplier indemnifies and will at all times keep the Council indemnified against any action, claim, suit or demand, including an action, claim, suit or demand for or liability to pay compensation or damages and costs or expenses, arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the supply of the Services.

9. REJECTION OF SERVICES

The Council may reject any of the Services which do not comply in all respects with this Purchase Order. The Council is not required to make payment for any rejected Services.

10. PAYMENT

If the Supplier complies with its obligations under this Purchase Order, the Council must pay the Purchase Price to the Supplier by the method specified in this Purchase Order.

11. GOODS AND SERVICES TAX ("GST")

The Purchase Price is inclusive of GST. Where the Council is required to pay the Supplier any amount under this Purchase Order on account of GST, the amount representing GST will only be payable by the Council to the Supplier where the Supplier supplies to the Council a tax invoice for GST purposes, in a form approved by the Council.

12. DEFAULT BY SUPPLIER

- 12.1 If the Supplier defaults in the performance or observance of any obligation it has under this Purchase Order, the Council may give notice to the Supplier specifying the default and requiring that such default be remedied within 14 days.
- 12.2 If, within 14 days after receipt of the notice, the Supplier 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 Purchase Order or at common law against the Supplier) may:
 - 12.2.1 suspend payment under this Purchase Order; or
 - 12.2.2 terminate this Purchase Order and any other purchase order between the parties.

13. INSOLVENCY OF SUPPLIER

If the Supplier:

- 13.1 being a person, commits any act of bankruptcy; or
- 13.2 being a company, commits any act of insolvency - the Council may terminate this Purchase Order immediately. If the Supplier is a company the Council's right of termination is subject to anything to the contrary in the *Corporations Act 2001* (Cth).

14. SUB-CONTRACTING AND ASSIGNMENT

The Supplier must not, except with the written consent of the Council, sub-contract or assign the whole or any portion of its rights and obligations under this Purchase Order, and no sub-contractors or assignees will have any rights under this Purchase Order against the Council or be entitled to receive any payments under this Purchase Order from the Council. Where the Council gives its consent to the Supplier in accordance with this Term, the Supplier remains fully responsible for performance under this Purchase Order.

15. LEGISLATIVE REQUIREMENTS

- 15.1 The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations and local laws in any way applicable to the performance of this Purchase Order, including, without limitation, any occupational health and safety legislation.
- 15.2 Without limiting Term 15.1, the Supplier acknowledges and agrees that it must:
 - 15.2.1 comply with the Modern Slavery Legislation to the extent that such legislation is applicable to the Supplier;
 - 15.2.2 assist the Council to comply with Modern Slavery Legislation to the extent that such legislation is applicable to the Council, by providing information (as may reasonably be requested by the Council) concerning the risk of modern slavery practices affecting the Supplier's operations and supply chain and the actions taken by the Supplier to address such risks, within 30 days of being requested to do so; and
 - 15.2.3 ensure that such information is accurate, complete and in such form as the Council reasonably requires.

16. INDEMNITY AND ADVANCE RELEASE

The Supplier indemnifies and holds harmless the Council, its Councilors and staff from and against all liability for any injury, loss or damage and all actions, claims, losses, damages, penalties or demands consequent upon, occasioned by any default in its obligations under this Purchase Order, including, without limitation, any acts of default of the Supplier's agents and employees. The Supplier's obligation to indemnify and hold harmless will not apply to the extent that the liability, action, claim, loss, damage, penalty or demand is caused by any negligence or act of default of the Council, any Councilor or any member of Council staff.

17. USE OF AI SYSTEM

- 17.1 The Supplier must not use an AI System in connection with the supply of the Services without the prior written consent of the Council.
- 17.2 If the Council has given its written consent to the use of an AI System in connection with the supply of the Services, the Supplier must:

- 17.2.1 comply with any conditions imposed by the Council;
- 17.2.2 ensure that the use of the AI System is effectively overseen and monitored by humans;
- 17.2.3 implement reasonable measures to identify the occurrence of and minimise the impact of hallucinations, factual errors and unfair bias in the AI System;
- 17.2.4 ensure that the AI System has been trained and validated on accurate, representative, authenticated and reliable datasets that are suitable for the specific use case, and that its generated or assisted outputs are reviewed and verified for reliability and accuracy;
- 17.2.5 ensure that its use of the AI System does not infringe the intellectual property rights of any other person;
- 17.2.6 immediately notify the Council of any incident involving the lack of performance, malfunctioning, misuse or failure of the AI System when used in connection with the performance of the Services;
- 17.2.7 maintain records relating to the use of the AI System in connection with the performance of the Services, including records of:
 - (a) the steps taken by it to test and verify AI System generated or assisted outputs;
 - (b) any data collected, processed and stored in the AI Systems; and
 - (c) any systems with which the AI System interacts when used in connection with performance of the Services;
- 17.2.8 when requested by the Council to do so, provide the Council with:
 - (a) details of how the AI System has been used to generate or assist any output or class of outputs specified by the Council; and
 - (b) details of what steps have been taken to test and verify any AI System generated or assisted outputs or classes of outputs specified by the Council; and
 - (c) access to the records described in Term 17.2.7.
- 17.3 Any written consent given by the Council under this Term 17 will not affect any other obligation imposed on the Supplier by this Purchase Order, including but not limited to the obligations imposed by Terms 7 and 8.

18. AMENDMENT

This Purchase Order may only be varied or replaced by a document duly executed by the parties.

19. FURTHER ASSURANCE

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 Purchase Order.

20. TIME OF THE ESSENCE

Time is of the essence as regards all dates, periods of time and times specified in this Purchase Order.

21. NO RELATIONSHIP

Nothing in this Purchase Order 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 Purchase Order will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

22. NUMBER AND GENDER

In this Purchase Order, a reference to:

- 22.1 the singular includes the plural and vice versa; and
- 22.2 a gender includes the other genders.

23. WHOLE UNDERSTANDING

This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Services are to be supplied by the Supplier. If the Supplier's acceptance or supply of this Purchase Order contains any terms in conflict with this Purchase Order, this Purchase Order will have precedence unless otherwise agreed by the Council in writing.

24. GOVERNING LAW

The law of the State of Victoria governs this Purchase Order and any legal proceedings under this Purchase Order.

25. JOINT AND SEVERAL OBLIGATIONS

If the Supplier consists of two or more parties, this Purchase Order binds each of them severally and jointly.

26. METHOD OF GIVING NOTICES

A notice required or permitted to be given by one party to another under this Purchase Order must be in writing, addressed to the other party and:

- 26.1 delivered to that party's address; or
- 26.2 sent by email to that party's email address.

27. RECEIPT OF NOTICES

A notice given to a party in accordance with Term 26 must be treated as having been duly given and received:

- 27.1 if delivered to a party's address, on the day of delivery; or
- 27.2 if sent by email, and the sender's electronic equipment reports that the email has been sent, at 5pm on the next Business Day after the day on which it was sent.