

Date 27 August, 2017

Services General Conditions – Short Form

**HINDMARSH SHIRE COUNCIL
SUPPLY OF MEALS ON WHEELS SERVICE
CONTRACT NO. 2017-2018-03**

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Services General Conditions – Short Form

1. INTRODUCTORY ISSUES

1.1 Definitions

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

the Annexure means the Annexure to these Services General Conditions - Short Form;

the Commencement Date means the date specified as such in the Annexure;

Confidential Information means all information and materials, in any form, not lawfully in the public domain, in the possession of or under the control of the Contractor or to which the Contractor gains access at any time (including the period preceding the execution of this Contract):

1.1.1 concerning the Council, its business, systems, customers, ratepayers, residents, properties, assets and affairs;

1.1.2 concerning the terms and subject matter of this Contract; or

1.1.3 which the Council nominates in writing to be confidential.

this Contract means the contract evidenced by the Contract Documents;

the Contract Documents means the documents specified as such in the Annexure;

Contract Material means all material in any form at all that is, pursuant to this Contract, produced by or provided to the Contractor (including material provided by or to an employee, agent or sub-contractor of the Contractor);

the Contractor means the party specified as such in the Annexure;

the Contractor's Representative has the meaning ascribed to it by sub-clause 2.6;

the Contract Term has the meaning ascribed to it by sub-clause 2.4.1;

the Council means the party specified as such in the Annexure;

Council Information means any database or records created by or for the Council in connection with the subject-matter of this Contract;

the Council Mark means the name and each and every trademark (whether registered or not) of, or used by, the Council from time to time during the Contract Term;

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person (engaged in the same type of undertaking as that of the Contractor) or any sub-contractor under the same or similar circumstances.

Information Privacy Principles means the Information Privacy Principles under the *Privacy and Data Protection Act 2014*;

the Initial Contract Term means the period specified as such in the Annexure;

Municipal District means the municipal district of the Council;

OH&S means occupational health and safety;

OH&S Management System has the meaning ascribed to it by sub-clause 7.3;

Option Terms means the terms specified as such in the Annexure;

Party's Representative means:

1.1.4 the Supervisor in respect of the Council; and

1.1.5 the Contractor's Representative in respect of the Contractor;

Personal Information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Public Holiday means a public holiday, within the meaning of the *Public Holidays Act 1983*, applying in the Municipal District;

the Services means:

1.1.6 the performance of work;

1.1.7 the supply of materials; and

1.1.8 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 or trade usage; and

the Supervisor means:

1.1.9 the person specified as such in the Annexure; or

1.1.10 any other person nominated in writing by the Council -

and includes any person:

1.1.11 to whom powers, duties or functions have been delegated by a person referred to in sub-clause 1.1.9 or sub-clause 1.1.10;

1.1.12 the authority of whom the Contractor has been notified; and

1.1.13 in respect of whom no notice of the revocation of his or her authority has been given to the Contractor.

1.2 Construction Of Terms

In this Contract, unless inconsistent with the context:

1.2.1 headings and underlinings are for convenience only and do not affect interpretation;

1.2.2 words expressed in the singular include the plural and vice versa;

1.2.3 a reference to a gender includes a reference to each other gender;

- 1.2.4 where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- 1.2.5 a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa;
- 1.2.6 a reference to any Act, regulation, proclamation, planning scheme, local law or by-law includes all Acts, regulations, proclamations, planning schemes, local laws or by-laws amending, consolidating or replacing same;
- 1.2.7 a reference to an Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act;
- 1.2.8 a reference to a party in a document includes that party and its successors, permitted assigns, receivers, receivers and managers, liquidators and legal personal representatives; and
- 1.2.9 a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document.

1.3 Interpretation

1.3.1 Amendment

This Contract may be amended only by a written instrument duly executed by the parties.

1.3.2 Precedence

Should the Contract Documents contain any discrepancy or inconsistency, then, for the purpose of removing the discrepancy or resolving the inconsistency, the Contract Documents shall take precedence in the order in which they are listed in the Annexure.

If the discrepancy is not removed or the inconsistency is not resolved by this method, the Supervisor must make a determination removing the discrepancy or resolving the inconsistency.

No determination by the Supervisor under this sub-clause 1.3.2 shall be construed as giving rise to a variation under sub-clause 4.1.

1.3.3 Whole Understanding

This Contract constitutes the whole understanding between the parties and embodies all terms and conditions under which the Services are to be performed by the Contractor. All previous negotiations and understandings between the parties on this subject matter shall cease to have effect from the date of this Contract.

1.3.4 Governing Law

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

1.3.5 Counting of Days

Where under any provision of this Contract, any notice is to be given, any payment made or anything else must be done:

- (a) in a stated period of days, the stated number of days will exclude Saturdays, Sundays and Public Holidays. Any period of days is deemed to be consecutive if interrupted only by days which are not to be taken into account under this clause; and
- (b) on a Saturday, Sunday or Public Holiday the notice may be given, the payment made or anything else done on the next day which is not a Saturday, Sunday or Public Holiday.

1.3.6 Several and Joint Liability

If the Contractor consists of 2 or more parties, this Contract binds each of them severally and jointly.

1.3.7 No Waiver

No:

- (a) time or other indulgence granted by the Council to the Contractor;
- (b) variation of the terms and conditions of this Contract; or
- (c) judgment or order obtained by the Contractor against the Council -

will in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Contract.

1.3.8 No Restriction of Council's Powers

This Contract does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Services, the Contractor or the Municipal District.

1.3.9 The Supervisor

The Supervisor must exercise any powers or functions conferred, and perform any duties imposed, on the Supervisor under sub-clauses 1.3.2, 4.2 and 5.3 reasonably and independently of the parties. Except as expressly provided in this clause or elsewhere in this Contract, the Supervisor may exercise other powers conferred, and perform any other duties imposed or functions conferred, on the Supervisor in the Council's interests.

1.3.10 Survival of Rights and Obligations

The rights and obligations of the parties under sub-clauses 2.10, 2.11, 2.12.2, 2.14, 5.3 and 6.1.2, clause 7, sub-clause 8.6 and clause 9 shall survive the termination or expiry of this Contract.

1.4 Notices

1.4.1 Method of Giving Notices

A notice required or permitted to be given by one party to another under this Contract must be in writing, addressed to the party to receive it and:

- (a) handed to that Party's Representative;
- (b) delivered to that party's address;

- (c) sent by pre-paid mail to that party's address;
- (d) transmitted by facsimile to that party's facsimile number; or
- (e) sent by email to that party's email address.

1.4.2 Time of Receipt

A notice given to a party in accordance with sub-clause 1.4.1 must be treated as having been duly given and received:

- (a) if handed to the Party's Representative, immediately;
- (b) if delivered to a party's address, on the day of delivery;
- (c) if sent by pre-paid mail, on the third day after posting;
- (d) if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission; or
- (e) if sent by email, only upon acknowledgement that the email has been received.

1.4.3 Addresses and Facsimile Numbers of Parties

For the purposes of sub-clauses 1.4.1 and 1.4.2, an address (including an email address) or facsimile number of a party is the address or facsimile number stated in the Annexure unless notice of a new address or facsimile number has been given to the other party.

1.5 No Exclusivity

Nothing in this Contract affects the Council's right to:

- 1.5.1 itself; or
- 1.5.2 engage a third party

to perform services which are similar to the Services.

2. THE SERVICES

2.1 Work To Be Performed

The Contractor must perform the Services during the Contract Term in accordance with the Contract Documents.

2.2 Warranty and Representations

The Contractor warrants, represents and undertakes to the Council that it will perform the Services in accordance with:

- 2.2.1 the terms of this Contract; and
- 2.2.2 Good Industry Practice.

2.3 The Contractor's Representations

To the extent to which the Contractor's tender, proposal or quotation included a representation as to:

2.3.1 the capacity and capabilities of the Contractor to perform the Services; or

2.3.2 the skills and experience of the Contractor's staff and sub-contractors,

then the Contractor must ensure that the Services are performed in accordance with such representations. The Contractor acknowledges that the Council will have relied upon any such representations in engaging the Contractor to perform the Services.

2.4 Contract Term

2.4.1 Extent of Contract Term

The Contract Term is the Initial Contract Term and any period for which the operation of the Contract is extended under sub-clause 2.4.2, if any.

2.4.2 Extension of Contract Term

The Council may, at its option, extend the operation of this Contract beyond the Initial Contract Term for a period not longer than the period stated in the Annexure from the expiration of the Initial Contract Term, if it gives notice of its intention to extend this Contract at least that period specified in the Annexure prior to the end of the Initial Contract Term.

2.4.3 Extension of Contract – Modified Term

Any extension of this Contract is on the same terms and conditions as the Initial Contract Term, except that after Council has exercised each option there will only be left such number of options as, when combined with each option exercised, equals the total of the Option Terms.

2.5 Fees

The Contractor must pay all fees, charges and costs incurred in its performance of the Services, except as expressly stated otherwise in this Contract.

2.6 Reports

The Contractor must provide the Supervisor with written reports on any aspect of the Services if reasonably requested to do so by the Supervisor in writing.

2.7 Contractor's Representative

The Contractor must appoint a competent person to be responsible for the day to day performance of the Services and the supervision of all persons employed or engaged in carrying out the Services (**the Contractor's Representative**).

The Contractor must notify the Supervisor of the name of the Contractor's Representative prior to the Commencement Date and must notify the Supervisor immediately should a new Contractor's Representative be appointed.

2.8 Statutory Requirements

The Contractor must:

2.8.1 obey; and

2.8.2 ensure that its employees, sub-contractors and agents obey -

any Acts, regulations, local laws and by-laws in any way applicable to the performance of the Services or this Contract.

2.9 The Media

The Contractor must:

2.9.1 not either itself or through its employees, agents or sub-contractors make any statement to the media on behalf of the Council or in relation to the performance of the Services;

2.9.2 refer all enquiries from the media relating to the performance of the Services to the Supervisor; and

2.9.3 notify the Supervisor immediately of any event arising in the course of performing the Services which may receive media attention.

2.10 Conflicts of Interest

2.10.1 Contractor Warranty

The Contractor warrants that, at the time of executing this Contract, it:

- (a) does not hold any office or possess any property;
- (b) is not engaged in any business, trade or calling; and
- (c) does not have any obligations by virtue of any contract

whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, its duties and interests under this Contract.

2.10.2 Ongoing Obligation

The Contractor must immediately make a full disclosure in writing to the Council of the existence, nature and extent of any actual or potential conflict of interest that the Contractor, or any of its employees, agents or sub-contractors, may have between the Contractor's obligations under this Contract and the interests of the Contractor, or any of its employees, agents or sub-contractors, under another contract.

2.10.3 Breach of Ongoing Obligation

If the Contractor fails to comply with its obligations under sub-clause 2.10.2, the Council may immediately terminate this Contract. If this Contract is terminated under this clause, sub-clause 5.3 will operate, to the extent that it is applicable, as if the termination had been made by the Council under sub-clause 5.1.

2.11 Use of the Council's Name or Logo

The Contractor must not use a Council Mark without the prior written consent of the Supervisor, which may be given subject to such conditions as the Supervisor considers appropriate.

2.12 Confidentiality

2.12.1 The Contractor must:

- (a) keep confidential;
- (b) maintain proper and secure custody of; and
- (c) not use or reproduce in any form

the Confidential Information without the written consent of the Supervisor, or as required by law.

2.12.2 If the Contractor breaches sub-clause 2.12.1 or this Contract comes to an end, the Contractor must:

- (a) deliver to the Council all Confidential Information in its possession that is capable of being delivered; and
- (b) delete, erase, or otherwise destroy all Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the Council.

2.13 Intellectual Property

2.13.1 Subject to this clause, the property and copyright in all Contract Material will vest in the Council. The Contractor must ensure that any person, including employees, agents and sub-contractors, engaged by it in the provision of the Services agrees to assign to the Council all the property and copyright in the Contract Material.

2.13.2 Subject to this clause, the Contractor acknowledges that the Council has property and copyright in any discoveries, inventions, patents, designs or other rights arising out of or in performance of this Contract.

2.13.3 Notwithstanding sub-clauses 2.13.1 and 2.13.2 nothing in this Contract affects or in any way alters the Contractor's ownership of or rights to any pre-existing intellectual property specified in the Annexure.

2.13.4 Except to the extent that the Contract Material contains the Contractor's rights arising from sub-clause 2.13.3, the Contractor will not use, reproduce or publish, other than for the Council, the Contract Material, without the prior written consent of the Supervisor.

2.13.5 The Contractor, in performing the Services, must use its best endeavours not to breach the intellectual property rights of any third party.

2.13.6 If the Contractor is using any pre-existing or third party intellectual property in the performance of its obligations under this Contract, and the existence of such rights affects or limits the benefit which the Council derives from the performance of the Contractor's obligations under this Contract, then the Contractor:

- (a) grants the Council, without further condition, an irrevocable, non-exclusive, global, fee and royalty free licence to use for the purposes of this Contract the Contractor's intellectual property used in relation to this Contract as the

Council deems necessary to enable it to derive the full benefit the Council reasonably expected from the Contract; and

- (b) must, at its cost, obtain for the Council from any third party whose intellectual property the Contractor is using in connection with this Contract a licence in equivalent terms to the form of licence stipulated in sub-clause 2.13.6(a).

2.14 Information Privacy

- 2.14.1 The Contractor must, in respect of Personal Information held in connection with this Contract:
 - (a) comply with the Information Privacy Principles with respect to any act done, or practice engaged in, by the Contractor, its employees and agents including, without limitation, using Personal Information only for the purposes of fulfilling the Contractor's obligations under this Contract and not disclosing Personal Information without the Supervisor's written authority except for the purpose of fulfilling the Contractor's obligations under this Contract; and
 - (b) immediately notify the Supervisor where it becomes aware of a breach of sub-clause 2.14.1(a) by the Contractor, its employees or agents.
- 2.14.2 If, during the Contract Term, the Council gives notice to the Contractor that it proposes to audit, either directly or through its auditors, the Contractor's information handling practices, the Contractor must provide all reasonable assistance to the party conducting such an audit.

2.15 Maintenance of and Access to Council Information

2.15.1 Application of Clause

This sub-clause 2.15 applies if, in this Contract, provision is made for the Contractor to have access to Council Information.

2.15.2 Council Information System

The Contractor must:

- (a) maintain the existing Council Information in an accurate and up-to-date condition;
- (b) not change the form or structure of the Council Information without the prior written consent of the Council; and
- (c) provide the Council with access to the Council Information in a form (whether electronic or otherwise) required by the Council, upon demand, on the termination or expiry of the Contract or as otherwise agreed from time to time.

- 2.15.3 The property in the existing Council Information is and will remain property of the Council.

- 2.15.4 The property in additions to or modifications of the Council Information by the Contractor vests in the Council.

2.15.5 Protection of Information

The Contractor must protect the Council Information from harm, including, but not limited to:

- (a) preventing unauthorised update;
- (b) employing appropriate back-up and recovery processes (of which the detail of the back-up regime, the off-site storage environment and the security and documentation of the back-up process must be approved in advance by the Supervisor);
- (c) minimising the risk of accidental damage, including the introduction of errors; and
- (d) returning all of the Council Information to the Council at the end of the Contract Term in a form or forms (whether electronic and/or otherwise), format and reasonable time specified by the Council. The return of the Council Information under this sub-clause 2.15.5(d) must be done in a manner that reasonably facilitates the ongoing use of the Council Information by Council or the New Contractor of the Services in the ongoing delivery of the Services after the end of this Contract.

2.15.6 Inspection of the Council Information

- (a) The Contractor must:
 - (i) allow any person authorised by the Council to inspect and verify from time to time during the ordinary business hours of the Contractor all or any part of the Council Information and the Contractor must give any assistance necessary for the carrying out of such an inspection and verification and permit the taking of copies of any information or related documents or data; and
 - (ii) enable any person authorised by the Council to review the contents of the Council Information and the processes for using and maintaining the Council Information.
- (b) For the purposes of sub-clause 2.15.6(a)(ii), review of the contents of the Council Information may include access to and analysis of:
 - (i) manual records;
 - (ii) databases;
 - (iii) application programs; and
 - (iv) back-up processes and documentation.
- (c) For the purposes of sub-clause 2.15.6(a)(ii), review of the processes for using and maintaining the Council Information includes observation testing and the conduct of interviews regarding processes and standards for:
 - (i) granting and revoking access to data and application;
 - (ii) password usage;
 - (iii) data entry, including audit trails; and
 - (iv) analysis and correction of data errors.

2.16 Audit and Inspection

- 2.16.1 The Contractor will, at its own cost, co-operate fully and in a timely manner with any auditor (whether internal or external) of the Council or any government

inspection agency which wishes to audit the Contractor's performance of its obligations under this Contract. The Contractor will not be required to participate in any such audit initiated by the Council more frequently than twice in any year during the Contract Term unless the Council agrees to pay the Contractor's reasonable costs incurred in relation to any third or subsequent audit. Nothing in this sub-clause 2.16.1 will, however, require the Council to pay any costs incurred by the Contractor in relation to any audit which:

- (a) is required by law; or
- (b) arises from an irregularity detected by or on behalf of the Council which would cause any prudent person to conduct a further audit.

2.16.2 Except as mentioned in sub-clause 2.16.3, the Contractor will provide to any auditor described in sub-clause 2.16.1 all information (including any documents relating to the performance of the Services) and staff to which such auditor requires access in discharging the auditor's responsibilities under the audit. For the avoidance of doubt, the obligations of the Contractor extend to:

- (a) ensuring that any members of its staff, any sub-contractor and any staff of any sub-contractor attend any interview reasonably required by the auditor;
- (b) supplying copies to the auditor of all documents to which access has been provided to the auditor; and
- (c) providing such assistance and access as the auditor may reasonably require.

2.16.3 Nothing in this sub-clause 2.16 entitles the Council or any auditor (whether internal or external) engaged by it to have access to or obtain originals of any documents unrelated to the performance of the Services.

2.16.4 To facilitate the Council's monitoring of the Contractor's performance of the Services, the Contractor agrees that an agent of the Council may, at any time, enter upon any property used by the Contractor to perform the Services under this Contract, and there inspect or observe the performance of the Services and monitor compliance by the Contractor of its obligations under this Contract.

2.16.5 If the Council exercises the right conferred by sub-clause 2.16.4, it must ensure that:

- (a) any disruption caused to the Contractor and the performance of the Services is minimised;
- (b) its agent at all times complies with any OH&S requirements reasonably imposed by the Contractor; and
- (c) if its agent has caused any material damage to any property belonging to the Contractor then all reasonable costs directly caused by such damage are paid to the Contractor.

3. PAYMENTS

3.1 Obligation to Pay

If the Contractor complies with its obligations under this Contract, the Council must make the payment or payments specified in the Annexure on the basis stated in the Annexure.

3.2 Goods and Services Tax

3.2.1 In this sub-clause 3.2:

adjustment has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*;

adjustment note has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*;

GST means a Goods and Services Tax, Value Added Tax, Consumption Tax or tax of similar effect, whether authorised by *A New Tax System (Goods and Services Tax) Act 1999* or otherwise;

taxable supply has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*; and

taxable income has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*.

3.2.2 To the extent that the performance of the Services constitutes a taxable supply:

- (a) if the payment or payments described in sub-clause 3.1 has or have been described as exclusive of GST, the payment or payments will be increased by the applicable amount of GST (GST Amount) which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST;
- (b) the Contractor must provide to the Council a valid tax invoice at or prior to the time of payment of any GST Amount; and
- (c) and any adjustment occurs in relation to the taxable supply, the Contractor must issue an adjustment note to the Council within 7 days of becoming aware of the adjustment and any payment necessary to give effect to such adjustment must be made within 7 days after the date of receipt of the adjustment note.

4. VARIATIONS

4.1 Direction of Variations

During the Contract Term, the Supervisor may, if it is reasonable to do so, direct the Contractor to:

- 4.1.1 alter the extent of the Services;
- 4.1.2 alter the character, quality or mode of performance of the Services; or
- 4.1.3 carry out any work of a character similar to the Services.

4.2 Valuation Of Variations

The value, if any, of any variation must be added to or subtracted from any payment to the Contractor under sub-clause 3.1. The value of each variation must be determined by the Supervisor by applying:

- 4.2.1 any relevant rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause; or
- 4.2.2 reasonable rates or prices if there are no relevant rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause. If the variation involves a decrease in the Services or the omission of part of the Services, the Supervisor must make a reasonable allowance for the Contractor's profit and overheads.

5. DEFAULTS AND TERMINATION

5.1 Default By Contractor

If the Contractor defaults in the performance or observance of any obligation it has under this Contract, the Supervisor may, without limiting any other rights that the Council may have, give notice to the Contractor to show cause why the powers contained in this clause should not be exercised.

Such notice must:

- 5.1.1 not be unreasonably given;
- 5.1.2 state that it is a notice under this clause; and
- 5.1.3 specify the default on the part of the Contractor upon which it is based.

If, within 7 days after receipt of the notice, the Contractor fails to show, to the satisfaction of the Supervisor, that the default will be rectified and this Contract will be satisfactorily completed in accordance with its terms, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may:

- 5.1.4 suspend payment under this Contract; or
- 5.1.5 terminate this Contract.

5.2 Contractor's Right To Terminate

If, within 14 days of any period for payment stated in the Annexure, the Council has failed to pay to the Contractor any amount due under sub-clause 3.1 (other than an amount being the subject of a dispute or difference under this Contract), the Contractor may by notice to the Council either suspend the Services or terminate this Contract.

5.3 Payments On Termination

If this Contract is terminated under sub-clause 5.1 or 5.2, or otherwise, the Council is liable to make payments to the Contractor only in respect of any portion of the Services which have been properly performed and not paid for at the date of termination, as determined by the Supervisor.

5.4 Insolvency Of Contractor

If the Contractor:

- 5.4.1 being a person:
 - (a) becomes bankrupt or files or is served with a petition in bankruptcy;

- (b) is served with a bankruptcy notice;
- (c) makes an assignment for the benefit of his or her creditors;
- (d) becomes bound as a debtor by any scheme of arrangement;
- (e) executes as a debtor any deed of assignment or deed of arrangement; or
- (f) has a mortgagee or other creditor take possession of any of his or her assets;

5.4.2 being a partnership:

- (a) is dissolved;
- (b) any of the partners becomes bankrupt, or files, or is served with, a petition in bankruptcy;
- (c) any of the partners is served with a bankruptcy notice;
- (d) any of the partners makes an assignment for the benefit of his or her creditors;
- (e) any of the partners becomes bound by any scheme of arrangement;
- (f) any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or
- (g) any of the partners has a mortgagee or other creditor take possession of any of his or her assets; or

5.4.3 being a company or other body corporate:

- (a) takes, or has taken or instituted against it, any action or proceeding, whether voluntary or compulsory, having as its object the winding-up of the company or other body corporate;
- (b) an administrator is appointed, or steps are taken for the appointment of an administrator, under the *Corporations Act 2001* in respect of it;
- (c) enters into a composition or other arrangement with its creditors, other than a voluntary winding-up by members for the purpose of reconstruction or amalgamation;
- (d) has a mortgagee or other creditor take possession of any of its assets;
- (e) a receiver or receiver and manager is appointed, or steps are taken for the appointment of a receiver or receiver and manager, in respect of it; or
- (f) in the case of an incorporated association, takes or institutes, or has taken or instituted against it, any action or proceeding having as its object the cancellation of the incorporation of the incorporated association -

the Council may terminate this Contract immediately and sub-clause 5.3 shall, to the extent that it is applicable, operate as if the termination had been made by the Council under sub-clause 5.1.

6. SUB-CONTRACTING AND ASSIGNMENT

6.1 Sub-Contracting

6.1.1 General

The Contractor must not sub-contract the whole or any portion of its rights and obligations under this Contract, except with the prior written consent of the Supervisor, which may be given subject to such conditions as the Supervisor considers appropriate. Except in so far as any consent given by the Supervisor under this sub-clause 6.1.1 expressly provides otherwise, no sub-contractors will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council.

6.1.2 Contractor still to be Liable

Unless otherwise agreed in writing by the Supervisor, no sub-contracting of any rights or obligations of the Contractor under this Contract will relieve the Contractor from any liability under this Contract or at law in respect of the performance or purported performance of this Contract and the Contractor will be responsible for the acts and omissions of any sub-contractor, or any sub-contractor's employees and agents, as if they were the acts or omissions of the Contractor.

6.2 Assignment

6.2.1 General

The Contractor must not assign the whole or any of its rights under this Contract, except with the prior written consent of the Supervisor, which may be given subject to such conditions as the Supervisor considers appropriate. Except in so far as any consent given by the Supervisor under this sub-clause 6.2.1 expressly provides otherwise, no assignees will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council.

6.2.2 Change in Beneficial Ownership

For the purpose of this clause, an assignment of this Contract includes any change in the beneficial ownership of the share capital of the Contractor, if it is a company, which alters the effective control of the Contractor.

7. OCCUPATIONAL HEALTH AND SAFETY

7.1 General Occupational Health and Safety

The Council is obliged to provide and maintain, so far as is practicable, a working environment for its employees and members of the public that is safe and without risk to health.

The Contractor must itself, and must ensure that any sub-contractors of the Contractor, at all times identify and take all necessary precautions for the health and safety of all persons, including the Contractor's employees and sub-contractors, staff of the Council and members of the public, who may be affected by the performance of the Services.

The Contractor must inform itself of all OH&S policies, procedures or measures implemented or adopted by the Council. The Contractor must comply with all such policies, procedures or measures.

The Contractor must immediately comply with any and all directions by the Supervisor relating to OH&S.

7.2 Legislative Compliance

The Contractor must:

7.2.1 comply with; and

7.2.2 ensure that its employees, sub-contractors and agents comply with -

any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the Services.

7.3 Contractor OH&S Management System

The Contractor must establish and implement an OH&S management system which ensures compliance with all duties of an employer under the *Occupational Health and Safety Act 2004* (the **OH&S Management System**).

The OH&S Management System must be:

7.3.1 submitted to the Supervisor for approval prior to the Commencement Date; and

7.3.2 updated during each year of the Contract Term, and such updated OH&S Management System submitted to the Supervisor for approval prior to each anniversary of the Commencement Date.

The Contractor must make any amendments to the OH&S Management System, or any update of the OH&S Management System, submitted for the approval of the Supervisor, which the Supervisor may direct.

The Contractor must implement the OH&S Management System or updated OH&S Management System, as the case may be, throughout the Contract Term.

The OH&S Management System must at least include:

7.3.3 the Contractor's OH&S policy and objectives;

7.3.4 the Contractor's organisational structure and responsibilities;

7.3.5 details of safe work practices and procedures to be implemented by the Contractor;

7.3.6 the Contractor's OH&S training and induction;

7.3.7 the Contractor's OH&S auditing and inspection procedures;

7.3.8 the Contractor's OH&S consultation procedures;

7.3.9 the Contractor's OH&S performance monitoring; and

7.3.10 the Contractor's assessment of all risks arising from its performance of its obligations under this Contract.

7.4 OH&S Performance Reporting

The Contractor must, when requested by the Supervisor, provide evidence of the Contractor's ongoing implementation of the OH&S Management System. The Contractor must also provide the following information to the Supervisor monthly:

- 7.4.1 the number of 'lost time' injuries suffered by the Contractor's employees or sub-contractors;
- 7.4.2 the number of working days lost due to injury;
- 7.4.3 the status of the implementation and outcomes of corrective actions undertaken as a result of OH&S inspections and risk assessments; and
- 7.4.4 the status of OH&S Management System audits undertaken by the Contractor.

The Contractor must, when requested by the Supervisor, provide reports on OH&S inspections, audits or assessments undertaken during the Contract Term.

7.5 Incident Notification

If the Contractor is required by the *Occupational Health and Safety Act 2004*, or by any other Act or regulation, to give any notice of an accident occurring during the performance by the Contractor of its obligations under this Contract, the Contractor must, at the same time, or as soon thereafter as is possible in the circumstances, give a copy of the notice to the Council.

The Contractor must promptly notify the Council of any accident, injury, property damage or environmental damage which occurs during the performance of the Services. The Contractor must, within 3 days after any such incident, provide a report giving complete details of the incident, including:

- 7.5.1 results of investigations into its cause; and
- 7.5.2 any recommendations or strategies for future prevention.

7.6 Non-Compliance

If, during the Contract Term, the Supervisor gives the Contractor notice that, in the opinion of the Supervisor, the Contractor is:

- 7.6.1 not performing the Contractor's obligations under the Contract in compliance with the OH&S Management System or any other obligation contained in this clause 7; or
- 7.6.2 performing the Contractor's obligations under the Contract in such a way as to endanger the health or safety of the Contractor's employees or sub-contractors, the Council's staff or the public -

the Contractor must promptly:

- 7.6.3 rectify the Contractor's failure to comply with its obligations; or
- 7.6.4 ensure that it performs its obligations under this Contract so as not to endanger the health or safety of the Contractor's employees, sub-contractors, the Council's staff or the public -

as appropriate.

7.7 Suspension

7.7.1 Procedure

The Supervisor may, without limiting any right that the Council or the Supervisor may have under this Contract, direct the Contractor to suspend the Contractor's performance of the Services until such time as the Contractor satisfies the Supervisor that the Contractor is willing and able to perform the Services:

- (a) in accordance with its obligations under this clause 7; and
- (b) without endangering the health and safety of the Contractor's employees or sub-contractors, the Council's staff or the public.

The Council is not required to make any payment to the Contractor in respect of any period for which the performance of the Services is suspended in accordance with this clause.

7.7.2 Council's Rights

If the Contractor's performance of the Services has been suspended under clause 7.7.1, the Council may:

- (a) itself, or by employing or engaging any other person, perform:
 - (i) the Services; or
 - (ii) such part of the Services as the Council considers it desirable to perform -

which, so far as practicable, must be carried out in accordance with this Contract, provided that the Council is not required to use the least expensive means of performing the Services; or

- (b) do any other thing which the Council, in its absolute discretion, considers necessary in the circumstances.

7.7.3 Payments

The Contractor must pay to the Council the amount of:

- (a) all costs incurred by the Council in exercising any power or performing any function conferred on it under sub-clause 7.7.1 or 7.7.2; and
- (b) any other losses and expenses incurred by the Council due to, or in connection with (including, without limitation, indirect losses, consequential losses and all legal costs on a full indemnity basis), any breach of the Contractor's obligations under this clause 7 or the suspension of the performance of the Services -

as determined by the Supervisor, within 7 days of receiving notice of the Supervisor's determination.

8. INSURANCE AND INDEMNITY

8.1 WorkCover Insurance

The Contractor must:

- 8.1.1 itself effect; and
- 8.1.2 ensure that each of its sub-contractors effects -

a WorkCover policy of insurance complying with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* in respect of all of its employees.

8.2 Public Liability Insurance

The Contractor must, at all times during the Contract Term, be the holder of a current public liability policy of insurance (**the Public Liability Policy**) containing a principal's indemnity extension, providing coverage for an amount per event of at least that stated in the Annexure.

The Public Liability Policy must:

- 8.2.1 be effected with an insurer authorised to conduct insurance business in Australia; and
- 8.2.2 cover such risks, and be subject only to such conditions and exclusions, as are commonly found in a public liability policy of insurance.

8.3 Professional Indemnity Insurance

The Contractor must, at all times during the Contract Term, be the holder of a current professional indemnity policy of insurance (**the Professional Indemnity Policy**) providing coverage for an amount per event of at least that stated in the Annexure.

The Professional Indemnity Policy must:

- 8.3.1 be effected with an insurer authorised to conduct insurance business in Australia; and
- 8.3.2 cover such risks, and be subject only to such conditions and exclusions, as are commonly found in a public liability policy of insurance.

8.4 Provision Of Evidence

8.4.1 Proof of Payment

The Contractor must produce to the Supervisor policies of insurance and receipts evidencing that the premiums for the insurances referred to in sub-clauses 8.1, 8.2 and 8.3 have been paid not less than 7 days before the Commencement Date.

8.4.2 Certificates of Currency

The Contractor must provide the Council with certificates of currency in respect of the insurances referred to in sub-clauses 8.1, 8.2 and 8.3 within 2 days of a written request by the Supervisor.

8.5 Failure To Insure

If the Contractor fails to comply with its obligations under sub-clause 8.1, 8.2, 8.3 or 8.4, the Council may immediately terminate this Contract.

If this Contract is terminated under this sub-clause 8.5, sub-clause 5.3 will, to the extent that it is applicable, operate as if the termination had been made by the Council under sub-clause 5.1.

8.6 The Council Indemnified and Held Harmless

The Contractor must indemnify, keep indemnified and hold harmless the Council, and its Councillors and staff, from and against all liability for any injury, loss or damage and all actions, claims, losses, damage, penalties, demands or costs consequent upon, occasioned by, arising from or connected with the Contractor's performance or purported performance of its obligations under this Contract. The Contractor's obligation to indemnify and hold harmless under this sub-clause 8.6 will not apply to the extent that the liability, action, claim,

loss, damage, penalty, demand or cost is caused by any negligence or act of default of the Council, a Councillor or a member of Council staff.

9. SECURITY

Upon the execution of this Contract, the Contractor must deliver to the Supervisor an irrevocable bank guarantee or insurance bond payable to the Council for the sum stated in the Annexure and in a form approved by the Council (**the Performance Security**).

If the Contractor fails to carry out and complete its obligations under this Contract, the Council may have recourse to the Performance Security in respect of any moneys for which the Contractor may be liable to the Council under this Contract or otherwise.

10. DISPUTE RESOLUTION

10.1 Notice of Dispute

In the event of any dispute or difference arising between the Council and the Contractor, either during the period of this Contract or after the termination, abandonment or breach of this Contract, as to any matter or thing connected with this Contract or arising under this Contract, the Council or the Contractor may give to the other party notice of the dispute or difference.

Such notice must:

- 10.1.1 not be unreasonably given;
- 10.1.2 indicate that it is a notice under this sub-clause 10.1; and
- 10.1.3 give sufficient details of the dispute or difference as to enable the party receiving the notice to ascertain the nature of the dispute or difference alleged.

10.2 Alternative Dispute Resolution

Within seven (7) days of the receipt of any notice of dispute under sub-clause 10.1 by either party, a representative of each party must meet to discuss ways of resolving the dispute or difference. The representatives may resolve the dispute or difference themselves or refer the dispute or difference to any form of alternative dispute resolution procedure on which they agree. The representatives must be authorised by the parties to resolve the dispute or difference on their behalf should this prove to be practicable.

10.3 Referral to Mediation

Unless a dispute or difference of which notice has been given under sub-clause 10.1 is settled, either party may, not less than seven (7) days after the notice of dispute or difference was given, give notice referring the dispute or difference to mediation. The mediator must be agreed between the parties within fourteen (14) days from the date of the receipt of the notice referring the dispute to mediation by the Contractor or the Council, as the case may be, or, failing agreement, must be nominated by the person stated in the Annexure.

10.4 No Obligation to Refer

Sub-clause 10.3 does not in any way require the Council or the Contractor to refer to mediation any dispute or difference or in any way act as a bar to the bringing of legal proceedings by the Council or the Contractor, except that no dispute or difference must be the subject of legal proceedings, except for legal proceedings concerning the conduct of the

mediation itself or a question of law, from the time it is referred to mediation under sub-clause 10.3 to the end of any subsequent mediation.

10.5 Work to Continue

If reasonably possible, performance of obligations under the Contract must continue during mediation or legal proceedings, and no payment due or payable by the Council that is not in dispute must be withheld on account of the mediation or legal proceedings, unless so authorised by the Contractor or by this Contract.

Schedule 1 Annexure

The Council is (sub-clause 1.1):

The Contractor is (sub-clause 1.1):

The Commencement Date is (sub-clause 1.1):

The Contract Documents are (sub-clause 1.1):

- 1. The Form of Agreement;
- 2. These Services General Conditions – Short Form;

The Supervisor is (sub-clause 1.1):

The postal address of the Council is (sub-clause 1.4.3):

The facsimile transmission of the Council is (sub-clause 1.4.3):

The email address of the Council is (sub-clause 1.4.3):

The postal address of the Contractor is (sub-clause 1.4.3):

The facsimile transmission of the Contractor is (sub-clause 1.4.3):

The email address of the Contractor is (sub-clause 1.4.3):

The Initial Contract Term is (sub-clause 2.4):

The Option Terms are (sub-clause 2.4):

Period (eg number of days or months) before Expiry by which Option must be exercised is (sub-clause 2.4):

Fees, charges and costs for which the Contractor is not to be responsible (sub-clause 2.5):

Pre-existing Intellectual Property is (sub-clause 2.13):

The payments to be made to the Contractor are (sub-clause 3.1):

The basis of payments to the Contractor is (sub-clause 3.1):

The minimum amount of coverage under the Public Liability Policy is (sub-clause 8.2):

The minimum amount of coverage under the Professional Indemnity Policy is (sub-clause 8.3):

The amount of the Performance Security is (clause 9):

The person to nominate a mediator is (sub-clause 10.3):
