



Maddocks

Date / /

Lawyers
140 William Street
Melbourne Victoria 3000 Australia
Telephone 61 3 9288 0555
Facsimile 61 3 9288 0666
Email info@maddocks.com.au
www.maddocks.com.au
DX 259 Melbourne

Services General Conditions – Long Form

##Name of Council
##General Description of Contract
##Number of Contract

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Services General Conditions – Long Form

1. INTRODUCTORY ISSUES

1.1 Definitions

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

the Affected Party has the meaning ascribed to it by sub-clause 6.6.3.

the Annexure means the Annexure to these Services General Conditions – Long Form.

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

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 Contract Term has the meaning ascribed to it by sub-clause 2.2.1.

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

the Contractor's Representative has the meaning ascribed to it by sub-clause 2.5.1.1.

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.

Force Majeure Event means the occurrence of:

- 1.1.4 war, armed conflict or an act of terrorism;
- 1.1.5 nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Contractor; or
- 1.1.6 pressure waves caused by devices travelling at supersonic speeds

which directly causes either party to be unable to comply with all or a material part of its obligations under this Contract.

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 *Information Privacy Act 2000*.

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

Municipal District means the municipal district of the Council.

the New Contractor has the meaning ascribed to it by sub-clause 12.1.

Normal Contact Hours has the meaning ascribed to it by sub-clause 2.5.1.4.

OH&S means occupational health and safety.

the OH&S Management System has the meaning ascribed to it by sub-clause 8.3.

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

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.

Party's Representative means:

- 1.1.7 the Supervisor in respect of the Council; and
- 1.1.8 the Contractor's Representative in respect of the Contractor.

the Professional Indemnity Policy has the meaning ascribed to it by sub-clause 9.3.

Public Holiday means a public holiday, within the meaning of the *Public Holidays Act 1993*, applying in the Municipal District.

the Public Liability Policy has the meaning ascribed to it by sub-clause 9.2.1.

the Services means -

- 1.1.9 the performance of work;
- 1.1.10 the supply of materials; and
- 1.1.11 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 or Good Industry Practice.

subsidiary has the meaning ascribed to it by the *Corporations Act 2001*.

the Supervisor means -

- 1.1.12 the person appointed to, or anyone acting in, the position nominated as the Supervisor in the Annexure, or if the position nominated or its title changes, the person appointed to or anyone acting in the equivalent new or renamed position; or
- 1.1.13 any other person nominated in writing by the Council -

and includes any person:

- 1.1.14 to whom powers, duties or functions have been delegated by a person referred to in sub-clause 1.1.12 or 1.1.13;
- 1.1.15 the authority of whom the Contractor has been notified; and
- 1.1.16 in respect of whom no notice of the revocation of his or her authority has been given to the Contractor by Council or by a person referred to in sub-clause 1.1.12 or 1.1.13.

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, administrators and legal personal representatives;
- 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;
- 1.2.10 a reference to 'includes', 'include' and 'including' is to be read as if followed by '(without limitation)';
- 1.2.11 if there is any cost associated with an obligation created by or in relation to this Contract and this Contract is silent or unclear as to which party is to bear that cost, then the cost is to be borne by the Contractor. In addition, the cost of meeting any obligation imposed on the Contractor by this Contract is to be borne by the Contractor unless this Contract expressly provides otherwise; and
- 1.2.12 where there is an obligation placed on the Contractor to comply with legislation that, but for this Contract, would not apply to the Contractor but that legislation does apply to the Council, then the Contractor must comply with those obligations as though it were the Council.

1.3 Interpretation

1.3.1 Contract Interpretation

No rule of contract interpretation must be applied in the interpretation of this Contract to the disadvantage of one party on the basis that it prepared or put forward any document comprising part of this Contract.

1.3.2 Amendments

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

1.3.3 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 must 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 1.3.3 must be construed as giving rise to a variation under sub-clause 5.1.

1.3.4 Severance

If a provision, or part of a provision, in this Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision, or part of a provision, must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

If it is not possible to read down a provision, or part of a provision, as required in this sub-clause 1.3.4, that provision, or part of a provision, is severable without affecting the validity or enforceability of the remainder of this Contract.

1.3.5 **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.

1.3.6 **Governing Law**

The law of the State of Victoria governs this Contract and any legal proceedings or arbitration under this Contract. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

1.3.7 **Counting of Days**

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

1.3.7.1 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 sub-clause 1.3.7.1; and

1.3.7.2 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.

1.3.8 **Counterparts**

This Contract may be executed in any number of counterparts, all of which taken together constitute one (1) instrument.

1.3.9 **Currency**

In this Contract, a reference to '\$' or 'dollars' is a reference to Australian dollars.

1.3.10 **Survival of Rights and Obligations**

The rights and obligations of the parties under sub-clauses 2.1.6, 2.6, 2.8, 2.9, 2.13, 4.2, 4.3, 6.2, 6.3, 6.5.2 and 7.1.3, clause 8, sub-clauses 9.1.3, 9.6, 10.1.2, 11.1.2 and 11.1.4.2 and clauses 12 and 13 shall survive the termination or expiry of this Contract.

1.4 Relationship between the Parties

1.4.1 No Partnership

Nothing in this Contract shall operate or be deemed to create a partnership between any of the parties to this Contract.

1.4.2 Several and Joint Liability

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

1.4.3 Agency

The Contractor must not:

1.4.3.1 hold itself out as being an agent of the Council or being in any other way entitled to make any contract on behalf of the Council or to bind the Council to the performance, variation, release or discharge of any obligation; or

1.4.3.2 hold out its employees, sub-contractors or agents, or allow its employees, sub-contractors or agents to hold themselves out, as being employees or agents of the Council.

1.4.4 No Restriction of the 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.

1.4.5 Contractor to Examine Information

The Contractor is deemed to have examined all information and to have made all enquiries relevant to its obligations under this Contract and to be aware of all risks, contingencies, costs, difficulties and other circumstances in any way connected with the performance of its obligations under this Contract.

1.4.6 No Waiver

No -

1.4.6.1 time or other indulgence granted by the Council to the Contractor;

1.4.6.2 variation of the terms and conditions of this Contract; or

1.4.6.3 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.

1.4.7 **The Supervisor**

The Supervisor must exercise any powers or functions conferred, and perform any duties imposed, on the Supervisor under sub-clauses 1.3.3, 2.1.6, 4.3, 5.3, 6.3.3, 6.5.2, 8.7 and 10.1.2 reasonably and independently of the parties. Except as expressly provided in this sub-clause 1.4.7 or elsewhere in this Contract, the Supervisor may exercise any other powers conferred, and perform any other duties imposed or functions conferred, on the Supervisor in the Council's interests.

1.4.8 **No Exclusivity**

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

1.4.8.1 itself; or

1.4.8.2 engage a third party to

perform services which are similar to the Services.

1.5 Notices

1.5.1 **Method of Giving Notices**

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

1.5.1.1 handed to that Party's Representative;

1.5.1.2 delivered to that party's address;

1.5.1.3 sent by pre-paid mail to that party's address; or

1.5.1.4 transmitted by facsimile to that party's facsimile number.

1.5.2 **Time of Receipt**

A notice given to a party in accordance with sub-clause 1.5.1 must be treated as having been duly given and received:

1.5.2.1 if handed to the Party's Representative, immediately;

1.5.2.2 if delivered to a party's address, on the day of delivery;

1.5.2.3 if sent by pre-paid mail, on the third day after posting; or

1.5.2.4 if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission.

1.5.3 **Addresses and Facsimile Numbers of Parties**

For the purposes of sub-clauses 1.5.1 and 1.5.2, the address or facsimile number of a party is the address or facsimile number stated in the

Annexure unless notice of another address or facsimile number has been given to the other party.

2. THE SERVICES

2.1 Work to be Performed

2.1.1 The Contractor's Obligation

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

2.1.2 Warranty and Representation

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

2.1.2.1 the terms of this Contract; and

2.1.2.2 Good Industry Practice.

2.1.3 The Contractor's Representations and Council Reliance

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

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

2.1.3.2 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.

2.1.4 Notice of Default

If the Contractor fails to meet any of its obligations under sub-clause 2.1.1 or 2.1.2 for any reason, the Supervisor may, without limiting any other power of the Supervisor or the Council under this Contract or otherwise, give notice to the Contractor to remedy the default. Any notice given by the Supervisor under this sub-clause 2.1.4 may specify a time within which the default must be remedied.

2.1.5 Remediating of Default

If the Contractor fails to remedy a default in accordance with a notice issued by the Supervisor under sub-clause 2.1.4, the Supervisor may arrange for the default to be remedied by others.

2.1.6 Cost of Remediating Default

Any costs or charges incurred by the Council in the remediating of a default under sub-clause 2.1.5, as determined by the Supervisor, must be

paid on demand by the Contractor to the Council or may be deducted either from any moneys due or becoming due to the Contractor under this Contract or from the Performance Security, at the option of the Council.

2.1.7 **Better Performance**

The Supervisor may give such directions for the better performance of this Contract as the Supervisor considers appropriate. The Contractor must give effect to such directions as if they constituted express terms of this Contract, provided, however, that any directions giving rise to variations must be given under sub-clause 5.1.

2.2 **Contract Term**

2.2.1 **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 2.2.2.

2.2.2 **Extension of Contract – the Council's Options**

The Council may, at its option, extend the operation of this Contract beyond the Initial Contract Term for the period of the Option Terms. If the Council intends to exercise any of its options to extend the operation of this Contract then it must give the Contractor written notice of its intention to do so at least that period prior to the expiration of the Initial Contract Term or the next Option Term (if any), as the case may be, set out in the Annexure.

2.2.3 **Extension of Contract – Modified Terms**

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.

2.3 **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.

2.4 **Reports**

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

2.5 **The Contractor's Representative**

2.5.1 **Appointment of Representative**

The Contractor must:

- 2.5.1.1 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 (**Contractor's Representative**);

- 2.5.1.2 notify the Supervisor of the name of the Contractor's Representative prior to the Commencement Date;
- 2.5.1.3 notify the Supervisor immediately should a new Contractor's Representative be appointed; and
- 2.5.1.4 ensure that the Contractor's Representative is available and able to be contacted by the Supervisor during the hours specified in the Annexure (**Normal Contact Hours**).

2.5.2 **Address and Telephone Numbers**

The Contractor must:

- 2.5.2.1 prior to the Commencement Date, provide the Supervisor with:
 - 2.5.2.1.1 the address and telephone number of the Contractor's Representative during Normal Contact Hours; and
 - 2.5.2.1.2 a telephone number on which the Contractor's Representative may generally be contacted outside Normal Contact Hours; and
- 2.5.2.2 notify the Supervisor immediately of any change of address or telephone number of the Contractor's Representative.

2.5.3 **Directions to Representative**

Any direction, instruction, notice, determination, approval or other communication given to the Contractor's Representative is deemed to have been given to the Contractor.

2.5.4 **Knowledge of Representative**

Any matter within the knowledge of the Contractor's Representative is deemed to be within the knowledge of the Contractor.

2.6 **The Media**

The Contractor must:

- 2.6.1 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;
- 2.6.2 refer all enquiries from the media relating to the performance of the Services to the Supervisor; and
- 2.6.3 notify the Supervisor immediately of any event arising in the course of performing the Services which may receive media attention.

2.7 Conflicts of Interest

2.7.1 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 interest of:

2.7.1.1 the Contractor, its employees, agents or sub-contractors;

2.7.1.2 an associate of the Contractor, its employees, agents or sub-contractors;

2.7.1.3 a company in which the Contractor, its employees, agents or sub-contractors are involved, whether as an officer, shareholder, employee or otherwise; or

2.7.1.4 any other person with whom or which the Contractor or its employees, agents or sub-contractors have a financial or business association, whether directly or indirectly.

2.7.2 If the Contractor fails to comply with its obligations under sub-clause 2.7.1, the Council may immediately terminate this Contract. If this Contract is terminated under this sub-clause 2.7.2, sub-clauses 6.2 and 6.3 will operate, to the extent that they are applicable, as if the termination had been made by the Council under sub-clause 6.1.1.

2.7.3 Contractor Warranty

The Contractor warrants that it:

2.7.3.1 does not hold any office or possess any property;

2.7.3.2 is not engaged in any business, trade or calling; and

2.7.3.3 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.

2.8 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.

2.9 Confidentiality

2.9.1 The Contractor must:

2.9.1.1 keep confidential; and

2.9.1.2 not use or reproduce in any form

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

- 2.9.2 If disclosure of any of the Confidential Information is required by law then the Contractor must notify the Supervisor either prior to such disclosure or otherwise at the first available opportunity after such disclosure of its obligation to make such disclosure or of the actual disclosure, as the case may be.
- 2.9.3 Immediately upon receipt of the Supervisor's written request to do so, the Contractor must:
 - 2.9.3.1 deliver to the Council all Confidential Information in its possession that is capable of being delivered; and
 - 2.9.3.2 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.

2.10 Intellectual Property

- 2.10.1 Subject to this sub-clause 2.10, 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.
- 2.10.2 Subject to this sub-clause 2.10, the Contractor acknowledges that the Council has the property and copyright in any discoveries, inventions, patents, designs or other rights arising out of or in performance of this Contract.
- 2.10.3 Notwithstanding sub-clauses 2.10.1 and 2.10.2, 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.
- 2.10.4 Except to the extent that the Contract Material contains the Contractor's rights arising from sub-clause 2.10.3, the Contractor will not use, reproduce or publish, other than for the Council, the Contract Material, without the prior written consent of the Supervisor.
- 2.10.5 The Contractor, in performing the Services, must use its best endeavours not to breach the intellectual property rights of any third party.
- 2.10.6 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:
 - 2.10.6.1 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

2.10.6.2 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 2.10.6.1.

2.10.7 Nothing in sub-clause 2.10.6.1 or sub-clause 2.10.6.2 entitles the Council to sublicense or assign in any manner or form any licence granted to the Council pursuant to those clauses, unless such right to sublicense or assign is reasonably necessary to enable the Council to derive the full benefit the Council reasonably expected from this Contract.

2.11 Maintenance of and Access to Council Information

2.11.1 Application of Clause

This sub-clause 2.11 applies if, in this Contract, provision is made for the Contractor to have access to Council Information.

2.11.1.1 Council Information System

The Contractor must:

2.11.1.1.1 maintain the existing Council Information in an accurate and up-to-date condition;

2.11.1.1.2 not change the form or structure of the Council Information without the prior written consent of the Council; and

2.11.1.1.3 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.

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

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

2.11.2 Protection of Information

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

2.11.2.1 preventing unauthorised update;

2.11.2.2 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);

2.11.2.3 minimising the risk of accidental damage, including the introduction of errors; and

2.11.2.4 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 2.11.2.4 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.

2.11.3 **Inspection of the Council Information**

2.11.3.1 The Contractor must:

2.11.3.1.1 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

2.11.3.1.2 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.

2.11.3.2 For the purposes of sub-clause 2.11.3.1.2, review of the contents of the Council Information may include access to and analysis of:

2.11.3.2.1 manual records;

2.11.3.2.2 databases;

2.11.3.2.3 application programs; and

2.11.3.2.4 back-up processes and documentation.

2.11.3.3 For the purposes of sub-clause 2.11.3.1.2, review of the processes for using and maintaining the Council Information includes observation testing and the conduct of interviews regarding processes and standards for:

2.11.3.3.1 granting and revoking access to data and application;

2.11.3.3.2 password usage;

2.11.3.3.3 data entry, including audit trails; and

2.11.3.3.4 analysis and correction of data errors.

2.12 Best Value Principles

2.12.1 The Contractor must, in performing or purporting to perform the Services, comply with the Best Value Principles.

2.12.2 The Contractor must indemnify and keep indemnified and hold harmless Council and its Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Councillors or members of staff arising out of the Contractor's failure to comply with the Best Value Principles when performing or purporting to perform the Services.

2.12.3 If, during the Contract Term, the Council gives notice to the Contractor that it proposes to

2.12.3.1 evaluate the Contractor's performance of the Services by reference to the Best Value Principles; or

2.12.3.2 review what future options exist for the procurement of services of the kind performed under this Contract,

the Contractor must, upon receipt of a request from the Council so to do, supply the Council with such information as the Council reasonably requires to carry out the evaluation or review (as the case may be).

2.13 Information Privacy

2.13.1 The Contractor must, in respect of Personal Information held in connection with this Contract:

2.13.1.1 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;

2.13.1.2 immediately notify the Supervisor where it becomes aware of a breach of sub-clause 2.13.1.1 by the Contractor, its employees or agents; and

2.13.1.3 indemnify and keep indemnified and hold harmless the Council and its Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Councillors or members of staff arising out of or in connection with a breach of sub-clause 2.13.1.1 by the Contractor, its employees or agents.

2.13.2 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.

2.14 Audit and Inspection

- 2.14.1 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 who 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 2.14.1 will, however, require the Council to pay any costs incurred by the Contractor in relation to any audit which:
 - 2.14.1.1 is required by law; or
 - 2.14.1.2 arises from an irregularity detected by or on behalf of the Council which would cause any prudent person to conduct a further audit.
- 2.14.2 Except as mentioned in sub-clause 2.14.3, the Contractor will provide to any auditor described in sub-clause 2.14.1 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:
 - 2.14.2.1 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;
 - 2.14.2.2 supplying copies to the auditor of all documents to which access has been provided to the auditor; and
 - 2.14.2.3 providing such assistance and access as the auditor may reasonably require.
- 2.14.3 Nothing in this sub-clause 2.14 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.
- 2.14.4 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.
- 2.14.5 If the Council exercises the right conferred by sub-clause 2.14.4, it must ensure that:
 - 2.14.5.1 any disruption caused to the Contractor and the performance of the Services is minimised;

2.14.5.2 its agent at all times complies with any OH&S requirements reasonably imposed by the Contractor; and

2.14.5.3 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.

2.15 Charter of Human Rights

2.15.1 The Contractor must, in performing the Services, comply with the requirements of section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006*.

2.15.2 The Contractor must indemnify and keep indemnified and hold harmless Council and its Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Councillors and all members of Council staff arising out of the Contractor's failure to comply with the requirements of section 38(1) of the *Charter of Human Rights and Responsibilities Act* when performing or purporting to perform the Services.

3. STATUTORY AND AWARD OBLIGATIONS

3.1 Statutory Requirements

The Contractor must -

3.1.1 obey; and

3.1.2 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.

3.2 Awards and Agreements

Without limiting its obligations under sub-clause 3.1, the Contractor must:

3.2.1 comply with the terms of any relevant Commonwealth and State awards in respect of its employees;

3.2.2 comply with any applicable certified agreement or Australian workplace agreement; and

3.2.3 ensure that any agents and sub-contractors of the Contractor also comply with the obligations imposed by sub-clauses 3.2.1 and 3.2.2.

4. PAYMENTS

4.1 Payment

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, provided that the Council is not required to make any payment to the Contractor in respect of any of the Services which are not performed or are not performed in accordance with this Contract.

4.2 Certification of Payments

Prior to receiving every payment under this Contract, the Contractor must certify to the Supervisor that it has:

- 4.2.1 paid all wages and allowances owing to any of its employees;
- 4.2.2 paid all amounts due to any party to which it has sub-contracted any of its rights and obligations under this Contract; and
- 4.2.3 made any payments that it is required to make in respect of the Contractor's Plant.

The Supervisor may require that any such certification by the Contractor is confirmed by a statutory declaration to the same effect by a person authorised to make such a declaration on the Contractor's behalf prior to the making of any payment to the Contractor under this Contract.

4.3 The Council Power to Pay Employees and Sub-Contractor

If the Supervisor is of the opinion that -

- 4.3.1 any wages or allowances due to the Contractor's employees are unpaid; or
- 4.3.2 the Contractor has failed to pay any amounts due to any party to which it has sub-contracted any of its rights and obligations under this Contact -

the Council may:

- 4.3.3 deduct such amounts as appear to be due to the Contractor's employees or sub-contractors; and
- 4.3.4 withhold the moneys until it has been provided with evidence to the satisfaction of the Supervisor that all wages and allowances due to the Contractor's employees or amounts due to the Contractor's sub-contractors have been paid. The Supervisor must give notice to the Contractor of the withholding of any moneys by the Council under this sub-clause 4.3.4. If no such evidence is provided to the Supervisor within seven (7) days of the Council giving notice to the Contractor that it is withholding payment, the Council may pay to the Contractor's employees any wages and allowances, or to the sub-contractors any amounts, which appear to be unpaid, to the extent of the moneys which have been withheld from payments to the Contractor.

Nothing in this sub-clause 4.3 in any way obliges the Council to make any payment to any of the Contractor's employees or sub-contractors or any other parties. Any payments that are made by the Council under this sub-clause 4.3 are deemed to have been made on behalf of the Contractor and the amount of the payments may be deducted by the Council from any amounts due to the Contractor under this Contract.

4.4 Goods and Services Tax

- 4.4.1 This sub-clause 4.4 applies if:
 - 4.4.1.1 GST is or will be payable by; or

4.4.1.2 an input tax credit arises or will arise in favour of

either of the parties in respect of any supply or acquisition made under or in connection with this Contract.

4.4.2 If either party makes a taxable supply under or in connection with this Contract for consideration, then, unless this Contract expressly provides to the contrary, the recipient of the taxable supply must also pay, at the time and in the same manner as the value of the consideration otherwise payable, the amount of any GST payable in respect of that taxable supply.

4.4.3 The Contractor's right to payment under this clause 4 is subject to receipt by the Council of a valid tax invoice relating to the performance of the Services to which the tax invoice refers.

4.4.4 If the Contractor has to pay GST in relation to the performance of the Services to the Council, and the Contractor applies for, requests or otherwise seeks a refund of the whole or any portion of the GST so paid, the Contractor must:

4.4.4.1 immediately give notice to the Supervisor of the application, request or seeking of the refund, and the amount which the Contractor has applied for, requested or sought to be refunded; and

4.4.4.2 if all or any portion of the GST is refunded to the Contractor, immediately pay to the Council an amount equal to the amount so refunded.

4.4.5 In this sub-clause 4.4:

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

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*;

consideration has the meaning set out in section 195-1 of the *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;

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

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

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

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

- 4.4.6 To the extent that the performance of the Services constitutes a taxable supply:
- 4.4.6.1 if the payment or payments described in this sub-clause 4.1 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;
 - 4.4.6.2 the Contractor must provide to the Council a valid tax invoice at or prior to the time of payment of any GST Amount; and
 - 4.4.6.3 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 of such adjustment must be made within 7 days after the date of receipt of the adjustment note.

4.5 Right of Set Off

Notwithstanding anything else contained in this Contract, the Council may deduct from any amount otherwise payable to the Contractor any money which is due from the Contractor to the Council, whether due under this Contract or otherwise.

5. VARIATIONS

5.1 Direction of Variations

During the Contract Term, the Supervisor may direct the Contractor to:

- 5.1.1 alter the extent of the Services;
- 5.1.2 alter the character, quality or mode of performance of the Services;
- 5.1.3 carry out any work of a character similar to the Services;
- 5.1.4 make any other change that the Supervisor reasonably deems is necessary; or
- 5.1.5 make any other change which the parties agree to make.

5.2 Variations not to Vitate Contract

The direction of a variation by the Supervisor under sub-clause 5.1 will not in any way vitiate or invalidate the Contract.

5.3 Valuation of Variations

The value, if any, of any variation must be added to or subtracted from any payment to the Contractor under clause 4. The value of each variation must be determined by the Supervisor by applying:

- 5.3.1 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 sub-clause 5.3; or
- 5.3.2 reasonable rates or prices, if there are no 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 sub-clause 5.3. 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.

6. DEFAULTS AND TERMINATION

6.1 Default by the Contractor - Show Cause Notice and Suspension of Payment

Should the Contractor -

- 6.1.1 default in the performance or observance of any obligation it has under this Contract; or
- 6.1.2 refuse or neglect to carry out or give effect to any order, instruction, direction or determination which the Council or the Supervisor is empowered to give or make under this Contract and which is given or made in writing to the Contractor -

the Council 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 sub-clause 6.1 should not be exercised.

Such notice must:

- 6.1.3 not be unreasonably given;
- 6.1.4 indicate that it is a notice under this sub-clause 6.1; and
- 6.1.5 specify the default, refusal or neglect on the part of the Contractor upon which it is based.

If, within seven (7) days after receipt of the notice, the Contractor fails to show cause which in the opinion of the Council offers reasonable assurance that -

- 6.1.6 the default will be rectified; or
- 6.1.7 the Council's or Supervisor's order, instruction, direction or determination will be carried out or given effect to -

and this Contract 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 -

6.1.8 suspend payment under this Contract; or

6.1.9 terminate this Contract -

by notice to the Contractor.

The suspension of payment under this sub-clause 6.1 by the Council will not in any way affect the continuing obligations of the Contractor under this Contract. Suspension of payment may be continued until the default has been rectified or the order, instruction, direction or determination is carried out or given effect to.

6.2 Termination of Contract by the Council

If this Contract is terminated by the Council under sub-clause 6.1 or otherwise:

6.2.1 the Council may itself or by engaging or employing any other person -

6.2.1.1 complete the performance of the Services; or

6.2.1.2 complete such part of the performance of the Services as the Council considers it desirable to complete -

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

6.2.2 the Council may take possession of and permit other persons to use such of the Contractor's Plant as it considers necessary for the completion of:

6.2.2.1 the performance of the Services; or

6.2.2.2 such part of the performance of the Services as the Council considers it desirable to complete.

6.3 Payments on Termination

6.3.1 Limit of Payments

If this Contract is terminated by the Council under sub-clause 6.1 or otherwise, the Council is liable to make payments to the Contractor only in respect of any part of the Services which have been properly performed and not paid for at the date of termination.

6.3.2 Payment for Losses and Expenses

If this Contract is terminated by the Council under sub-clause 6.1 or otherwise, the Contractor must pay to the Council the amount of the loss 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), the termination.

6.3.3 Supervisor's Determination

The amounts payable by the Contractor and the Council under sub-clauses 6.3.1 and 6.3.2 must be determined by the Supervisor. The Supervisor must give notice of his or her determination under sub-

clause 6.3 to the Contractor. Subject to sub-clause 6.3.4, any amounts payable under sub-clause 6.3 must be paid within fourteen (14) days of the receipt of notice of the Supervisor's determination.

6.3.4 **The Council May Retain Moneys**

The Council may retain any moneys payable to the Contractor under sub-clause 6.3.1 until any amount payable by the Contractor to the Council under sub-clause 6.3.2 has been determined by the Supervisor and paid by the Contractor.

6.4 Insolvency

If the Contractor -

6.4.1 being a person:

- 6.4.1.1 becomes bankrupt, or files or is served with a petition in bankruptcy;
- 6.4.1.2 is served with a bankruptcy notice;
- 6.4.1.3 makes an assignment for the benefit of his or her creditors;
- 6.4.1.4 becomes bound as a debtor by any scheme of arrangement;
- 6.4.1.5 executes as a debtor any deed of assignment or deed of arrangement; or
- 6.4.1.6 has a mortgagee or other creditor take possession of any of his or her assets;

6.4.2 being a partnership:

- 6.4.2.1 is dissolved;
- 6.4.2.2 any of the partners becomes bankrupt, or files or is served with, a petition in bankruptcy;
- 6.4.2.3 any of the partners is served with a bankruptcy notice;
- 6.4.2.4 any of the partners makes an assignment for the benefit of his or her creditors;
- 6.4.2.5 any of the partners becomes bound by any scheme of arrangement;
- 6.4.2.6 any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or
- 6.4.2.7 any of the partners has a mortgagee or other creditor take possession of any of his or her assets; or

6.4.3 being a company or other body corporate:

- 6.4.3.1 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;
- 6.4.3.2 an administrator is appointed, or steps are taken for the appointment of an administrator, under the *Corporations Act* 2001 in respect of it;
- 6.4.3.3 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;
- 6.4.3.4 has a mortgagee or other creditor take possession of any of its assets;
- 6.4.3.5 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
- 6.4.3.6 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-clauses 6.2 and 6.3 will operate, to the extent that they are applicable, as if the termination had been made by the Council under sub-clause 6.1.

6.5 Termination of the Contract by the Contractor

6.5.1 The Contractor's Right to Terminate

If the Council has failed to pay to the Contractor any amount due under sub-clause 4.1, other than an amount being the subject of a dispute or difference under this Contract or any legal proceedings commenced in respect of this Contract, within fourteen (14) days of any period for payment stated in the Annexure, the Contractor may give notice in writing to the Council stating that notice of termination under this Contract may be served if payment is not made within a further fourteen (14) days. If the Council fails to make payment within fourteen (14) days of the receipt of such notice, the Contractor may, by notice to the Council, either suspend the performance of the Services or terminate this Contract. Any suspension of the Services by the Contractor under this sub-clause 6.5.1 will not prevent it terminating this Contract during the period that the performance of the Services is suspended.

6.5.2 Payments upon Termination

Upon termination of this Contract by the Contractor under sub-clause 6.5.1, without prejudice to the accrued rights or remedies of either party or the other liabilities of the parties under this Contract which may have accrued prior to termination, the Council must, after taking into account amounts previously paid under this Contract, make payments to the Contractor in respect of:

- 6.5.2.1 any portion of the Services which have been properly performed and not paid for at the date of the termination; and
- 6.5.2.2 the cost of materials or goods properly ordered for the performance of the Services by the Contractor for which the Contractor has paid, or for which the Contractor is legally bound to pay, provided that such goods and materials must, on the making of the payment by the Council, become the property of the Council and be transferred to the Council's ownership and possession by the Contractor.

The amount of any payments to be made by the Council under this sub-clause 6.5.2 and any steps required to effectively transfer ownership and possession of any materials or goods referred to in sub-clause 6.5.2.2 (including the proportions in which each party to this Contract is to bear the costs of the taking of any such steps) must be determined by the Supervisor. Each party must take any steps determined by the Supervisor to effectively transfer ownership and possession of the material or goods under sub-clause 6.5.2.2.

6.6 Termination On Force Majeure

6.6.1 Effect of Force Majeure

Neither party may bring a claim for breach of this Contract by the other party, or incur any liability to the other party for any injury, loss or damage incurred by that other party, to the extent that a Force Majeure Event occurs and it is prevented from performing its obligations by that Force Majeure Event.

6.6.2 Good Faith Consultation

As soon as practicable after a Force Majeure Event occurs, the parties must consult with each other in good faith and use all reasonable endeavours to:

- 6.6.2.1 agree on appropriate terms to mitigate the effect of the Force Majeure Event; and
- 6.6.2.2 facilitate the continued performance of this Contract.

6.6.3 Termination

If the parties are unable to agree on appropriate terms to mitigate the effect of the Force Majeure Event and the continued performance of this Contract cannot be facilitated, then if the Force Majeure Event is continuing or its effect remains such that one party is unable to comply with its obligations under this Contract for a period of more than thirty (30) days (**the Affected Party**), then, subject to sub-clause 6.6.4, either party may terminate this Contract by giving thirty (30) days' written notice to the other party.

6.6.4 Contractor Notice

If the Contractor gives notice to the Council under sub-clause 6.6.3 that it wishes to terminate this Contract then the Council has the option either to accept the notice or, within ten (10) days of receipt of the notice, respond in writing to the Contractor that it requires this Contract to continue. If the Council responds that it wishes this Contract to continue then:

6.6.4.1 the Contractor must perform so much of the Services as are reasonably capable of being performed;

6.6.4.2 the Council must pay to the Contractor any payment which is due under sub-clause 4.1 as if the Services were being fully performed; and

6.6.4.3 this Contract will not terminate until thirty (30) days after the Council gives written notice to the Contractor that it wishes this Contract to terminate or upon the completion of the Contract Term (whichever is the earlier).

6.6.5 **Minimizing Effects**

Following the occurrence of a Force Majeure Event, the parties must use all reasonable endeavours to prevent and mitigate the effect of any delay, and the Affected Party must, at all times during which a Force Majeure Event is existing, take all steps in accordance with Good Industry Practice to overcome or minimise the effect of the Force Majeure Event.

6.6.6 **Cessation of Force Majeure Event**

The Affected Party must give notice to the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following the giving of such notice, this Contract will continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

7. SUB-CONTRACTING, ASSIGNMENT AND EMPLOYEES

7.1 Sub-Contracting

7.1.1 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 7.1.1 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.

7.1.2 The Contractor to Provide Information

With any application for the consent of the Supervisor to any sub-contracting, the Contractor must provide any information required by the Supervisor, including, but not limited to, evidence that a proposed sub-

contractor will be capable of performing any obligations of the Contractor under this Contract that it may be required to perform.

7.1.3 **The 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.

7.2 **Assignment**

7.2.1 **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 7.2.1 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.

7.2.2 **Change in Beneficial Ownership**

For the purpose of this sub-clause 7.2.2, 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.

7.3 **Employees and Sub-Contractors**

7.3.1 **Employees**

The Contractor must engage sufficient employees with adequate skills and training to perform the Services in an efficient manner.

7.3.2 **Prohibited Behaviour**

The Contractor must ensure that no employee, agent or sub-contractor of the Contractor -

7.3.2.1 consumes any alcoholic beverage;

7.3.2.2 is intoxicated; or

7.3.2.3 is under the influence of any drug which could impede his or her ability to safely or efficiently perform the Services -

while engaged in the performance of the Services or any related activities.

7.3.3 **Conduct of Employees**

The Contractor must ensure that all employees, agents and sub-contractors of the Contractor:

- 7.3.3.1 conduct themselves towards Councillors of the Council, the Council's staff and all members of the public in a civil and inoffensive manner; and
- 7.3.3.2 carry out their duties at all times with as little inconvenience and disturbance to others as possible and without causing any nuisance.

7.3.4 **Directions of Supervisor**

The Supervisor may, by notice to the Contractor, direct that any employee, agent or sub-contractor of the Contractor not be employed or engaged or continue to be employed or engaged in the performance of the Services or any related activities. The Contractor must immediately comply with any such direction.

7.3.5 **Appearance of Employees**

The Contractor must ensure that all employees, agents and sub-contractors of the Contractor:

- 7.3.5.1 are attired in any manner specified in the Contract Documents;
- 7.3.5.2 comply with any directions of the Supervisor in respect of their personal appearance or attire concerned with matters of neatness, health or safety; and
- 7.3.5.3 carry an identity card, in a form approved by the Supervisor, and present the identity card for inspection on demand by any member of the Council's staff or member of the public.

8. OCCUPATIONAL HEALTH AND SAFETY

8.1 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, agents and sub-contractors, Councillors and 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.

8.2 Legislative Compliance

The Contractor must -

8.2.1 comply with; and

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

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

8.3 The Contractor's 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:

8.3.1 submitted to the Supervisor for approval prior to the Commencement Date;

8.3.2 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; and

8.3.3 audited for its relevance, currency, completeness, practical application and comparison to Good Industry Practice by an independent third party with expertise in OH&S at least once every two (2) years with the first audit to be completed before the first anniversary of the Commencement Date.

A copy of the audit brief and proposed auditor must be submitted to the Supervisor for approval prior to any audit commencing. The Contractor must make any changes to the proposed audit brief or auditor reasonably required by the Supervisor. The auditor is to provide a full and unedited copy of its audit report directly to the Council at the same time the audit report is provided to the Contractor. The Contractor must ensure that it is a condition of the engagement of any auditor for the purposes of this sub-clause 8.3 that the auditor must make available to the Council on demand copies of any field notes or other documents the auditor has made in connection with the conduct of an audit.

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 the Contractor's:

8.3.4 OH&S policy and objectives;

- 8.3.5 organisational structure and responsibilities;
- 8.3.6 safe work practices and procedures it will implement in the performance of the Services;
- 8.3.7 OH&S training and induction;
- 8.3.8 OH&S auditing and inspection procedures;
- 8.3.9 OH&S consultation procedures;
- 8.3.10 OH&S performance monitoring; and
- 8.3.11 assessment of all risks arising from its performance of its obligations under this Contract.

8.4 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:

- 8.4.1 the number of 'lost time' injuries suffered by the Contractor's employees, agents or sub-contractors;
- 8.4.2 the number of working days lost due to injury;
- 8.4.3 details of any WorkCover claims made against the Contractor;
- 8.4.4 the status of the implementation and outcomes of corrective actions undertaken as a result of OH&S inspections and risk assessments;
- 8.4.5 the status of OH&S Management System audits undertaken by the Contractor; and
- 8.4.6 details of any investigation, inquiry, notification, prosecution, conviction, fine, penalty or similar event involving WorkCover, WorkSafe, the Environment Protection Agency or any other Government agency connected with the OH&S of the Contractor whether in relation to this Contract or otherwise.

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

8.5 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 three (3) days after any such incident, provide a report giving complete details of the incident, including:

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

8.6 Non-Compliance

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

- 8.6.1 not performing the Contractor's obligations under the Contract in compliance with the OH&S Management System or any other obligation contained in clause 8; or
- 8.6.2 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 -

- 8.6.3 rectify the Contractor's failure to comply with its obligations; or
- 8.6.4 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.

8.7 Suspension

8.7.1 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:

- 8.7.1.1 in accordance with its obligations under clause 8; and
- 8.7.1.2 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 sub-clause 8.7.1.

8.7.2 The Council's Rights

If the Contractor's performance of the Services has been suspended under sub-clause 8.7.1, the Council may:

- 8.7.2.1 itself, or by employing or engaging any other person, perform -
 - 8.7.2.1.1 the Services; or

8.7.2.1.2 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

8.7.2.2 do any other thing which the Council, in its absolute discretion, considers necessary in the circumstances.

8.7.3 **Payments**

The Contractor must pay to the Council the amount of -

8.7.3.1 all costs incurred by the Council in exercising any power or performing any function conferred on it under sub-clause 8.7.1 or 8.7.2; and

8.7.3.2 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 clause 8 or the suspension of the performance of the Services -

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

9. INSURANCE AND INDEMNITY

9.1 Insurances and Indemnities

9.1.1 Accident Compensation Act

The Contractor must -

9.1.1.1 itself effect; and

9.1.1.2 ensure that each of its sub-contractors effects -

a WorkCover policy of insurance complying with the provisions of the *Accident Compensation Act 1985* and *Accident Compensation (WorkCover Insurance) Act 1993* in respect of all of its employees.

9.1.2 Other Legislation

The Contractor must -

9.1.2.1 itself comply; and

9.1.2.2 ensure that each of its sub-contractors complies -

with any other workers' compensation legislation in force from time to time and must, in the absence of any such legislation, or if so directed by

the Supervisor, insure against any claims that may be made in respect of the death of or injury to any of their employees.

Any such insurance must be -

9.1.2.3 for an amount;

9.1.2.4 with an insurer; and

9.1.2.5 in a form -

to the satisfaction of the Supervisor.

9.1.3 **Indemnity**

The Contractor must indemnify, keep indemnified and hold harmless the Council and its Councillors and all of the Council's staff, sub-contractors or agents against any liabilities, costs, penalties or additional premiums they may incur arising, whether directly or indirectly, from any provision of the *Accident Compensation Act 1985* (including, without limitation, section 10A of that Act) which:

9.1.3.1 deems any employees or agents of the Contractor, or any employees or agents of any sub-contractor of the Contractor, to be employees or workers of the Council, or the Council's employees, sub-contractors or agents; or

9.1.3.2 otherwise makes the Council, or any of the Council's staff, sub-contractors or agents, in any way responsible for, or liable to pay any moneys to or in respect of, such persons, except for liabilities arising directly from the negligence of the Council or any of the Council's staff, sub-contractors or agents.

9.2 **Public Liability Insurance**

9.2.1 **Obligation to Insure**

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**):

9.2.1.1 in the joint names of the Contractor, its sub-contractors and the Council; or

9.2.1.2 containing a principal's indemnity extension

(at the option of the Council), providing coverage for an amount per event of at least that stated in the Annexure.

The Public Liability Policy must:

9.2.1.3 be effected with an insurer; and

9.2.1.4 cover such risks, and be subject only to such conditions and exclusions, as are -

approved by the Supervisor.

9.2.2 **Cross Liability Clause and Notice of Claims**

The Contractor must, unless the Supervisor indicates otherwise, ensure that the Public Liability Policy:

9.2.2.1 contains a cross liability clause:

9.2.2.1.1 under which the insurer waives all rights of subrogation against any party insured under the Public Liability Policy; and

9.2.2.1.2 which provides cover to each party insured under the Public Liability Policy as if a separate policy of insurance had been issued to each party issued under the Public Liability Policy; and

9.2.2.2 requires the insurer to give notice in writing to the Council immediately if:

9.2.2.2.1 a notice of cancellation or other notice is given under the Public Liability Policy; and

9.2.2.2.2 the Contractor does not renew the Public Liability Policy or pay a premium for the Public Liability Policy.

9.2.3 **Increase in Cover**

On each anniversary of the Commencement Date until the completion of the Contract Term, the Contractor must increase the amount of coverage under the Public Liability Policy by at least the amount per event stated in the Annexure.

9.3 **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 -

9.3.1 be effected with an insurer; and

9.3.2 cover such risks, and be subject only to such conditions and exclusions, as are -

approved by the Supervisor.

On each anniversary of the Commencement Date until the completion of the Contract Term, the Contractor must increase the amount of coverage under the Professional Indemnity Policy by at least the amount per event stated in the Annexure.

9.4 Other Policies of Insurance

The Contractor must effect and maintain any other policy of insurance described in the Annexure with an insurer, and covering such risks, as are specified by the Supervisor.

9.5 Evidence of Insurance

9.5.1 Provision of Evidence

The Contractor must produce to the Supervisor policies of insurance and receipts showing that the insurances referred to in sub-clauses 9.1, 9.2, 9.3 and 9.4 have been paid not less than seven (7) days before the Commencement Date.

9.5.2 Certificates of Currency

The Contractor must provide the Council with certificates of currency in respect of the insurances referred to in sub-clauses 9.1, 9.2, 9.3 and 9.4:

9.5.2.1 each twelve (12) months during the Contract Term; and

9.5.2.2 within two (2) days after a written request being made by the Supervisor.

9.5.3 Failure to Insure

If the Contractor fails to comply with its obligations under sub-clause 9.1, 9.2, 9.3 or 9.4, the Council may:

9.5.3.1 in the case of a failure by the Contractor to comply with its obligations under sub-clause 9.2, 9.3 or 9.4, effect or maintain the Public Liability Policy, the Professional Indemnity Policy or other policy of insurance, as the case may be, and pay the premiums thereof, the cost of which must be paid on demand by the Contractor to the Council or may be deducted by the Council from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council; or

9.5.3.2 immediately terminate this Contract. If this Contract is terminated under sub-clause 9.5.3.2, sub-clauses 6.2 and 6.3 will operate, to the extent that they are applicable, as if the termination had been made by the Council under sub-clause 6.1.

9.5.4 Proof of Failure to Insure

Any failure by the Contractor to comply with its obligations under sub-clause 9.5.1 or sub-clause 9.5.2 will constitute conclusive proof of its failure to effect or maintain the insurances, as the case may be, for the purposes of sub-clause 9.5.3.

9.5.5 **Powers not Restricted**

The exercise of a power by the Council under sub-clause 9.5.3.1 does not prevent the Council terminating the Contract under sub-clause 9.5.3.2 in respect of that or any subsequent breach of sub-clause 9.1, 9.2, 9.3 or 9.4.

9.6 **The Council Indemnified and Held Harmless**

9.6.1 **Indemnity**

Without limiting anything in sub-clause 2.12.2, 2.13.1.3, 2.15.2 or 9.1.3, the Contractor must indemnify, keep indemnified and hold harmless the Council, and its Councillors and staff, from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by, arising from or connected with the Contractor's performance or purported performance of its obligations under this Contract.

9.6.2 **Acts of Employees and Others**

The indemnity of the Contractor under sub-clause 9.6.1 extends to any acts or omissions of the Contractor's agents, employees, assignees and sub-contractors.

9.6.3 **Not to Affect Other Obligations**

The effecting of insurances by the Contractor under this Contract does not affect the obligations of the Contractor under this or any other clause of this Contract.

10. **PROPERTY**

10.1 **Property**

10.1.1 **Damage to Property**

The Contractor must at once remedy any damage done by its employees, agents or sub-contractors to any property of the Council or any other person. Should the Contractor fail to do so, the Supervisor may effect the necessary repairs or pay compensation to the owner of the property. The cost of effecting any necessary repairs or the amount of any compensation must be paid on demand by the Contractor to the Council or may be deducted by the Council from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

10.1.2 **Cost of Damage**

The Supervisor must determine the cost of effecting any necessary repairs or the amount of compensation to be paid to the owner of any property in accordance with sub-clause 10.1.1.

11. SECURITY

11.1 Performance Security

11.1.1 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**).

11.1.2 Recourse to Security

In the event of any failure by the Contractor 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. Without limiting the rights of the Council under this sub-clause 11.1.2, the Council may deduct from the Performance Security any sum payable to the Council under sub-clause 6.3.

11.1.3 Return of Security

Unless the Council has exercised a right under sub-clause 11.1.2, the Performance Security must be returned to the Contractor at the conclusion of the Contract Term.

11.1.4 Further Rights and Obligations

If the Council has exercised a right under sub-clause 11.1.2 and the Contract has:

11.1.4.1 been terminated or the Contract Term has expired, the Council must, after making any deductions from the Performance Security that it is entitled to make under this Contract, return to the Contractor the remainder of the Performance Security, provided that the Council is not required to return the remainder of the Performance Security to the Contractor under this sub-clause 11.1.4.1 until all payments due on termination of the Contract under sub-clause 6.3 have been made; or

11.1.4.2 not been terminated and the Contract Term has not expired, the Contractor must provide a supplementary irrevocable bank guarantee or insurance bond payable to the Council for an amount equivalent to the moneys paid to the Council by the bank in accordance with sub-clause 11.1.2 within fourteen (14) days of the Council having exercised a right under sub-clause 11.1.2.

11.2 The Council's Right to Terminate

If the Contractor fails to meet any of its obligations under sub-clause 11.1.1 the Council may immediately terminate this Contract. If this Contract is terminated under this sub-clause 11.2, sub-clauses 6.2 and 6.3 will operate, to the extent that

they are applicable, as if the termination had been made by the Council under sub-clause 6.1.

11.3 Parent Guarantee

If the Contractor is a subsidiary of another corporation it must, if requested by the Council, procure from that corporation a Deed of Guarantee, Undertaking and Substitution in a form approved by the Council and which provides for the corporation to guarantee the performance of the Contractor's obligations under this Contract.

12. TRANSITION

12.1 Continuing Obligations

If, before the end of the Contract Term, the Council engages another person (**the New Contractor**) to, on or from a date after the end of the Contract Term, perform services similar to the Services, the Contractor must, if requested by the Supervisor to do so:

12.1.1 participate in a transition process which is effective and efficient, and which involves optimum co-operation with both the Council and the New Contractor; and

12.1.2 for a period not exceeding the period set out in the Annexure:

12.1.2.1 continue to perform the Services notwithstanding that the Contract Term has ended; and

12.1.2.2 allow the New Contractor and any members staff or agents of the New Contractor reasonable access to any operational information concerning the performance of the Services.

12.2 Performance of Services After Contract Term

If, in accordance with sub-clause 12.1.2, the Contractor continues to perform the Services notwithstanding that the Contract Term has ended, the terms of the contract between the Council and the Contractor will be the same as the terms of this Contract minus sub-clause 12.1.2.1.

13. DISPUTE RESOLUTION

13.1 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:

13.1.1 not be unreasonably given;

13.1.2 indicate that it is a notice under this sub-clause 13.1; and

13.1.3 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.

13.2 Alternative Dispute Resolution

Within seven (7) days of the receipt of any notice of dispute under sub-clause 13.1 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.

13.3 Referral to Mediation

Unless a dispute or difference of which notice has been given under sub-clause 13.1 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.

13.4 No Obligation to Refer

Sub-clause 13.3 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 13.3 to the end of any subsequent mediation.

13.5 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.

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):

The Form of Agreement;
These Services General Conditions – Long Form;

The Initial Contract Term is (sub-clause 2.2):

The Option Terms are (sub-clause 2.2):

Period (eg number of days or months) before Expiry by which Option must be exercised is (sub-clause 2.2):

The Supervisor is (sub-clause 1.1):

The address of the Council is (sub-clause 1.5.3):

The facsimile number of the Council is (sub-clause 1.5.3):

The address of the Contractor is (sub-clause 1.5.3):

The facsimile number of the Contractor is (sub-clause 1.5.3):

The hours on each day during which the Contractor's Representative is to be available and able to be contacted are (sub-clause 2.5.1.4):

Pre-existing Intellectual Property (sub-clause 2.10.3):

The payments to be made to the Contractor are (sub-clause 4.1):

The basis of payments to the Contractor is (sub-clause 4.1):

The minimum amount of coverage under the Public Liability Policy is (sub-clause 9.2.1):

The amount by which the coverage under the Public Liability Policy must be increased each year is (sub-clause 9.2.3):

The amount of coverage under the Professional Indemnity Policy is (sub-clause 9.3):

The amount by which the coverage under the Professional Indemnity Policy must be increased each year is (sub-clause 9.3):

Other Policies of Insurance to be effected and maintained are (sub-clause 9.4):

The amount of the Performance Security (bank guarantee or insurance bond) is (sub-clause 11.1.1):

The maximum period for which the Contractor must continue to perform the Services following the end of the Contract Term (sub-clause 12.1.2):

The person to nominate an mediator is (sub-clause 13.3):
