

Model Waste and Recycling Collection Contract Section C: Conditions of Contract

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[Click here and type Council name and/or logo]

Section C

Conditions of Contract

Contract number:

[Click here and type Contract number]

Contract for:

[Click here and type title]

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[Click here and type Contract name or type of Contract]

Conditions of contract

Between the Council and the Contractor named in Item 1 of the Annexure in consideration of the obligations they each accept pursuant to the following terms and conditions:

1. Introductory Issues

1.1 Contract Aims and Objectives

The Aims and Objectives of the Contract are:

- (a) to achieve and maintain a high standard of performance in provision of the services by the contractor using best practice methods and systems
- (b) to maintain services within the performance benchmarks for missed services, early starts and other customer complaints
- (c) to regularly assess the performance of the contractor and to gain continual improvement to work practices and resource recovery
- (d) to promote the health, safety and welfare of all persons engaged in or affected by the services
- (e) to minimise noise impacts and to ensure all split materials are clean up during collection
- (f) to purchase environmentally preferred goods whenever possible
- (g) to facilitate a sustained effort to increase the type, quality and amount of resources recovered from the waste stream
- (h) to preserve the resource integrity and value of recoverable and reusable materials delivered to the processing facility
- (i) to provide high standard, integrated waste and resource recovery services, based on 'best practice' principles, which are complementary to national, state and regional waste strategies as well as Council's own waste management strategy and policies
- (j) to fulfil the Council's obligations under legislation relating to provision of waste and resource recovery services
- (k) to fulfil the Council's obligations under the Council's charter in the *Local Government Act 1993* including to 'properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible in a manner which is consistent with and promotes the principles of ecologically sustainable development' and 'have regard to the long term and cumulative effect of its decisions'
- (l) to provide cost-effective services that users perceive as offering value for money
- (m) to deliver a service that provides a high level of Customer satisfaction
- (n) to meet and adhere to the approved Quality Plan.

1.2 Definitions

1.2.1 Definitions

In this Contract, including the General Specification and in any associated particular Service Specifications the following terms will, unless inconsistent with the context, have the meanings indicated:

- ‘Annexure’** means the Annexure to these Conditions of Contract.
- ‘Approval’** means a direction, instruction, consent, permission, determination, or sanction given by Council for the requirements of the Contractor under the terms of this Contract, delivered as a Notice
- ‘Authority’** includes any Government (State or Federal), Government departments, statutory corporation or other body and may be a body that has the power to affect the manner of provision of the Services or the need for the provision of the Services by the Council.
- ‘Applicable Law’** is an enactment, promulgation, execution or ratification of, or any change in or amendment to any laws (or in the application or judicial (or official) interpretation of any laws, including any consent issued under any relevant laws which:
1. occurs after the date of the Contract;
 2. occurs in Australia;
 3. the Contractor is legally obliged to comply with;
 4. the Contractor did not know about and was not reasonably foreseeable to the Contractor prior to the execution by it of this Contract and
 5. impacts upon the Service Rates (whether by way of increase or decrease of the Contractor's costs and/or profit margins);
- but excludes any law relating to income tax or GST;
any law under which an amount is otherwise recovered by the Contractor through an escalation or increase in the Service Rates.
- ‘Business Day’** means a day on which trading banks are open for business in Sydney, New South Wales.
- ‘Change in Law’** means the coming into effect after the date of this Contract of any Applicable Law or any applicable judgment of a relevant court of law, which changes the interpretation of the Applicable Law and is a binding precedent, which directly and adversely affects the Contractor's performance under the Contract in a material way but does not include any Change of Law which is expressly dealt with in the Contract Documents other than in Clause 4.1.22 of this Contract.
- ‘Claim’** means a statement prepared by the Contractor, containing such information as the Supervising Officer may require, which sets out the Services provided in a given period and the amount believed by the Contractor to be due under this Contract as payment for these Services.

‘Clause’	means a clause of this Contract.
‘Confidential Information’	includes all information not in the public domain otherwise than through breach of the confidentiality requirements of the Contract provided by the Council or the Contractor to the other which is in the nature of commercial-in-confidence information of the nature referred to in Schedule 4 of the <i>Government information (Public Access) Act 2000</i> (NSW).
‘Contract’	means this agreement, including any Parts such as the General Specifications and any associated particular Service Specifications.
‘Contract Commencement Date’	means the date of the signing of the Formal Instruments of this Contract.
‘Contract Determination’	has the meaning attributed to it in the <i>Industrial Relations Act 1996</i> (NSW).
‘Contract Documents’	means the documents listed in <u>Item 2</u> of the Annexure.
‘Contract Sum’	means the total amount payable under this Contract each year and includes any provisional or contingency sums identified in Clause 10.6 of this Contract, and all taxes as identified at Clause 14.1 of this Contract of this Contract.
‘Contract Year’	means a period of one (1) year commencing on the Services Commencement Date and on any anniversary of such date.
‘Contractor’	means the Party or Parties described as such in the Contract at Item 1 of the Annexure and includes any employee, agent or subcontractor acting on behalf of the specified Contractor.
‘Contractor’s Representative’	is the person so described appointed under Clause 2.5.1 of this Contract.
‘Contract Term’	has the meaning ascribed to it by Clause 2.2.2 of this Contract
‘Council’	means [Click here and type Council name] , including any of its authorised representatives or staff under the delegated authority of Council.
‘Council’s Code of Conduct’	means any regulations, guide, policy or standards that Council sets from time to time for the conduct of its staff including the Council’s mandatory Code of Conduct pursuant to section 440 of the <i>Local Government Act 1993</i> (NSW).
‘Customer’	means an owner or occupier of Premises in the Service Areas who uses any service provided under this Contract.
‘Customer Service Centre’	means the established point of contact for Customers that will allow complaints to be received, recorded, actioned and reported.
‘Expiry Date’	means the date on which the Contract Term ends.
‘Equipment’	Refer to Vehicles, Plant and Equipment’.

‘Facility’/‘Facilities’	means facilities used by the Contractor to provide Services under this Contract.
‘Force Majeure Event’	means an event beyond the reasonable control of the Party that the Party has taken all reasonable efforts to minimise.
‘GST’	has the meaning attributed to it in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Commonwealth).
‘Industrial Instruments’	Means: (a) a Modern Award; (b) an enterprise agreement, as that term is defined in the Fair Work Act 2009 (Cth); (c) a transitional instrument, as that term is defined in the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth); (d) a Contract Determination; or (e) a contract agreement, as that term is defined in the Industrial Relations Act 1996 (NSW).
‘Material(s)’	means any item put out for collection as part of any of the Services.
‘Mobile Bin(s)’	means an appropriately designed wheeled Waste container that complies with AS 4123 Mobile Waste Containers and any additional requirements as detailed in Clause 9.1 of the General Specification and any other requirements detailed under the particular Service Specification.
‘Modern Award’	has the meaning attributed to it in the <i>Fair Work Act 2009</i> (Cth).
‘Notice’	means any direction given in writing by the Council to the Contractor.
‘Notice of Dispute’	means the Notice served by a party to this Contract pursuant to Clause 13.2 of this Contract.
Part(s)	means any of the component sections of this Contract detailing particular Specifications, which includes any or all of the following General Specification, Garbage Specification, Recyclables Specification and Organics Specification.
‘Party’/‘Parties’	means any party or parties to this Contract.
‘Party’s Representative/Party’s Representatives’	means the representative(s) nominated by each Party in writing to the other Party to act as its representative(s) in the administration of this Contract [i.e., the Contractor’s Representative and the Supervising Officer].
‘Performance Security’	has the meaning ascribed to it in Clause 12.2 of this Contract.
‘Plant’	Refer to ‘Vehicles, Plant and Equipment’.

‘Premise(s)’	means a building of any description and land, whether built on or not.
‘Principles of ecologically sustainable development’	are as defined in the <i>Local Government Act 1993</i> .
‘Quarter Date(s)’	means the dates marking a quarter of a financial year calendar, being 1 July, 1 October, 1 January and 1 April of any calendar year
‘Schedule’	means a schedule attached to a Section of this Contract or the General Specification or any of the specific Service Specifications.
‘Service(s)’	means all or any of the services to be performed by the Contractor as described in the Contract Documents.
‘Service-Entitled Premises’	means any Premise entitled to a collection service as specified in the complete listing of the addresses initially provided by Council for the Collection Schedule and subsequently updated in accordance with the provisions of this Contract.
‘Service Area’	means the area indicated on maps attached to the Specification, together with such additional Premises that Council may nominate during the term of the Contract providing such Premises are within Council’s boundary.
‘Service Rates’	means for the year commencing on the Services Commencement Date the rates specified in the Tender and for each subsequent year those rates as adjusted in accordance with Clause 10 of this Contract.
‘Services Commencement Date’	means the date specified at Item 3 (a) of the Annexure to this Contract and is the date on which the Contractor is to commence providing the Services.
‘Service Specification’	means the specification for a particular type of service as specified in the Parts to this Contract.
‘Specification’	means the specification of Services attached to this agreement as Parts, which includes any or all of the following General Specification, Garbage Specification, Recyclables Specification and Organics Specification.
‘Subcontractor's Statement’	means the statement by the Contractor in the form attached which declares that the Contractor has made payments for workers compensation, pay-roll tax and remuneration as is required by s.175B of the <i>Workers Compensation Act 1987</i> (NSW), Schedule 2 Part 5 of the <i>Payroll Tax Act 2007</i> (NSW) and s 127 of the <i>Industrial Relations Act 1996</i> (NSW).
‘Supervising Officer’	means the person appointed from time to time by the Council to represent the Council in the administration of this Contract.
‘Tender’	means a response to the Request for Tender for this Contact signed by the Tenderer comprising the Tender Return Schedules and all required

documentation and information.

‘Tender Closing Date’ means the date specified in Item 10 of the Annexure.

‘Tender Return Schedules’ means (as the context requires) some or all of the Tender Return Schedules of the Tender.

‘Waste’ includes any Material put out for collection as part of any of the Services provided as part of this Contract, and includes Garbage, Recyclables, and Organics.

1.2.2 Meaning(s)

Where a word or expression is not defined in Clause 1.2.1 of this Contract but is elsewhere defined in the Contract it shall have the meaning attributed to it in the Contract.

1.3 Construction of Terms

In this Contract:

1.3.1 Headings

Headings and underlinings are for convenience and do not affect interpretation.

1.3.2 Number

Words expressed in the singular include the plural and vice versa.

1.3.3 Gender

A reference to a gender includes a reference to any other gender.

1.3.4 Grammatical Forms

Where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning.

1.3.5 Reference to Any Statute

A reference to any Act, regulation, planning instrument, local law or by-law includes all Acts, regulations, planning instruments, Industrial Instruments, local laws or by-laws amending, consolidating or replacing same, and a reference to an Act includes all regulations, planning instruments, local laws and by-laws made under that Act.

1.3.6 Successors and Permitted Assigns

A reference to a Party in a document includes that Party, its legal representatives, successors and permitted assigns.

1.3.7 Reference to Documents

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.

1.4 Interpretation

1.4.1 Contract Interpretation

No rule of contract interpretation will 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.

1.4.2 Amendments

An amendment of any Clause in this Contract must be in writing and signed by the Parties.

1.4.3 Precedence

Should the Contract Documents contain any discrepancy or inconsistency, then the documents will take precedence in the order in which they are listed in the Annexure for the purposes of resolving the discrepancy or inconsistency. If the discrepancy or inconsistency is not resolved by this method, the Council will make a determination resolving the discrepancy or inconsistency. No determination by the Council under this Clause will be construed as giving rise to a variation under Clause 3 of this Contract.

1.4.4 Severability

If any part of this Contract is or becomes illegal, invalid or unenforceable in a relevant jurisdiction, the legality, validity or enforceability of the remainder of this Contract will not be affected and this Contract will be read as if that part had been deleted.

1.4.5 Whole Understanding

This Contract constitutes the whole understanding between the Parties, and embodies all terms and conditions of the transaction.

1.4.6 Governing Law

The law of the State of New South Wales governs this Contract and any legal proceedings or arbitration under this Contract. Any legal action in relation to this Contract against any party may be brought in any court of competent jurisdiction in the State of New South Wales.

Each party by execution of this Contract irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

1.4.7 Currency

All prices and payments shall be in Australian currency.

1.4.8 Language

Communications under this agreement shall be in the English language.

1.4.9 Measurements

Measurements shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960*.

1.5 Relationship Between the Parties

1.5.1 No Partnership

Nothing in this Contract will be deemed to create a partnership between the Parties to this Contract nor will such a relationship be deemed to exist between the Parties arising out of any circumstances associated with this Contract.

1.5.2 Several and Joint Liability

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

1.6 No Agency

The Contractor will not:

- (a) hold itself out as being an agent of the Council, or being in any 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,
- (b) hold out its employees or agents or allow its employees or agents to hold themselves out as being employees or agents of the Council.

1.7 No Fettering of Council's Powers

It is acknowledged and agreed that 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 legislation.

1.8 Contractor to Examine Information

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

1.9 No Waiver

No time or other indulgence granted by one Party to this Contract to any other Party, or any variation of the terms and conditions of this Contract, or any judgement or order obtained by one Party to this Contract against any other Party, will in any way amount to a waiver of any of the rights or remedies of the Parties against one another in relation to the terms of this Contract. Additionally, a waiver by a Party to this Contract in respect of any breach of any provision of this Contract by the other Party shall not be deemed to be a waiver of any other or of any subsequent breach. The failure of a Party to enforce at any time any of the provisions of this Contract shall in no way be interpreted as a waiver of such provision.

1.10 Notices

1.10.1 Method of Giving Notices

A Notice required or permitted to be given by one Party to another under this Contract will be in writing, addressed to the other Party and:

- (a) handed to that Party's Representative; or,
- (b) delivered to that Party's address; or,
- (c) sent by pre-paid mail to that Party's address; or,

- (d) electronically transmitted to that Party by email to that Party's email address specified in the Annexure; or,
- (e) transmitted by facsimile to that Party's facsimile number.

Notices under this Contract may not be served by email.

1.10.2 Time of Receipt

A Notice given to a Party in accordance with Clause 1.10.1 will be treated as having been duly given and received:

- (a) if handed to that Party's Representative, immediately; or,
- (b) if delivered to that Party's address, on the day of delivery; or,
- (c) if sent by pre-paid mail, on the third (3) Business Day after posting; or,
- (d) if transmitted by email to that Party's email address and the sender does not receive a report indicating that the email transmission failed, on the next Business Day following the date of transmission; or,
- (e) if transmitted by facsimile to that Party's facsimile number and a correct and complete transmission report is received, on the day of transmission.

1.10.3 Addresses of Parties

For the purposes of Clauses 1.10.1 and 1.10.2 of this Contract, the postal address or facsimile number of a Party is the postal address and facsimile number stated in Item 1 of the Annexure unless Notice of another postal address and/or facsimile number has been given to the other Party.

1.10.4 Notices Issued by the Council

Where a Notice is given by the Council under this Contract it must be issued by the Supervising Officer or the General Manager of the Council.

When the Contractor receives a Notice from the Supervising Officer or General Manager purporting to be issued on behalf of the Council the Contractor is entitled to accept that the Notice has been issued with the knowledge and authority of the Council.

1.10.5 Supervising Officer

Unless the context otherwise requires all functions of the Council under this Contract may be performed by the Supervising Officer and any Notice required to be given or received by the Council may be given by, or served on, the Supervising Officer.

2. The Services

2.1 Work to be Performed

2.1.1 Contractor's Obligation

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

2.1.2 Notice of Direction

In addition to any other right the Council may have, if the Contractor fails to meet any of its obligations under Clause 2.1.1 of this Contract for any reason, the Supervising Officer may give Notice to the Contractor directing the Contractor to remedy the failure. Any Notice given

under this Clause may specify a time within which the failure must be remedied which is to be at the Council's discretion but must be reasonable.

2.1.3 Contractor's Default Notice of Direction

If the Contractor fails to remedy a default in accordance with a Notice issued under Clause 2.1.2, the Council may arrange for the default to be remedied by others.

2.1.4 Cost of Remedying Default

Any costs or charges incurred by the Council in the remedying of a default under Clause 2.1.3, including any monitoring, administration or management cost incurred as a result of the default, as determined by the Supervising Officer, must be paid by the Contractor to the Council within ten (10) Business Days of invoice or may be deducted from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

2.1.5 Better Performance

The Supervising Officer may give directions for the better performance of this Contract and the Contractor will give effect to such directions as if they constituted express terms of this Contract, provided however, that any directions giving rise to variations will be subject to the agreement of the Parties as set out in Clause 3.

When issuing directions for better performance these directions must be consistent with the aims and objectives set out for this Contract in Clause 1.1 of this Contract.

2.2 Contract Term

2.2.1 Services Commencement Date

Option 1

Services under this contract are to commence to Council on the Services Commencement Date set forth in Item 3(a) of the Annexure.

OR

Option 2

The date Services under this contract commence to Council will be notified to the Contractor by the Council in writing at least one (1) month before Services are to commence to Council.

2.2.2 Services Expiry Date

Services under this contract will expiry on the Service Expiry Date set forth in Item 3(b) of the Annexure, 'Service Expiry Date'.

2.2.3 Contract Term

The Contract Term is to be the period set forth in Item 4(a) of the Annexure ('Initial Contract Term') plus any period for which the operation of this Contract is extended under Clause 2.2.4, and any other period for which the operation of this Contract is extended by agreement between the Parties.

2.2.4 Extension of Contract Term

The Council may, at its option, extend the operation of this Contract beyond the Initial Contract Term set forth in Item 4(a) of the Annexure for a period that is not less than the

period set forth in Item 4 (b) of the Annexure and is not more than the period set forth in Item 4 (c) of the Annexure, from the expiration of the initial Contract Term. The Council must give Notice of its intention to extend the operation of this Contract of at least the period set forth in Item 4 (d) of the Annexure prior to the expiration of the Initial Contract Term.

2.3 Fees

The Contractor will pay all fees, charges and costs incurred in its performance of the Services, except as stated, if at all, in the Service Specifications for each part of the Services or in Item 5 of the Annexure.

2.4 Reports

The Contractor will provide the Supervising Officer with written information or reports on any aspect of the Services if and as requested to do so in writing by the Supervising Officer or as specified elsewhere in the Contract Documents.

2.5 Contractor's Representative

2.5.1 Appointment of Representative

The Contractor will appoint a representative 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') and notify the Council of the name of such person. The Contractor will notify the Supervising Officer immediately in writing should a new Contractor's Representative be appointed.

2.5.2 Availability of Representative

The Contractor's Representative must be available to meet the Supervising Officer daily at Council's offices to discuss delivery of the Services and to agree how any problems or complaints are being addressed. If the Supervising Officer waives these meetings he/she may reinstate these meetings at any time.

In addition the Contractor's Representative must be available and able to be contacted by the Council by telephone each day during the hours specified in Item 6 of the Annexure.

The Contractor's Representative must have available, at all times, an appropriate and reliable motor vehicle and mobile communication system by which the Council can contact the Contractor's Representative.

2.5.3 Address and Telephone Numbers

The Contractor will provide the Supervising Officer with the address of the Contractor's Representative and a telephone number on which the Contractor's Representative may always be contacted. This address must be located in the [Click here and type location e.g. Sydney Metro area] and must be attended between [Click here and type start hours e.g. 8:00 a.m.] and [Click here and type end hours e.g. 5:00 p.m.] on all Business Days. The Contractor will notify the Council immediately in writing of any change of address or telephone numbers of the Contractor's Representative. These hours may be changed by the Council in consultation with the Contractor having regard to WorkCover requirements or other relevant factors.

2.5.4 Directions to Representative

The Parties agree that any direction, instruction, Notice, determination, Approval or other communication made or given to a Party's Representative will be deemed to have been made or given to that Party.

2.5.5 Knowledge of Representative

The Parties agree that any matter within the knowledge of a Party's Representative is deemed to be within the knowledge of that Party.

2.6 Council's and Supervising Officer's Right of Access

The Council and the Supervising Officer may at all times when the Contractor's Facilities are available for service under the Contract access and inspect those Facilities and associated Vehicles, Plant and Equipment and records to satisfy themselves that the Contractor is complying with its obligations under this Contract.

3. Changes in the Services

3.1 Service Changes in Case of Emergencies

Where in the opinion of the Supervising Officer an emergency exists which poses a risk to public health, public safety or the environment the Council may direct the Contractor to provide additional or varied Services.

Where the Contractor is directed to provide additional or varied Services under this Clause it shall be paid at rates determined under the Contract or, if no such rates are available at a reasonable rate for the Services provided. Any dispute concerning such payments shall be determined pursuant to Clause 13 of this Contract.

3.2 Service Changes for Convenience

Either Party may at any time request changes to Services provided under this Contract.

Variations to the Services may only occur with the agreement of all affected Parties under this Contract however such agreement shall not unreasonably be withheld by any Party and any dispute shall be resolved pursuant to Clause 13 of this Contract.

Any request to vary the Services must be made not later than a reasonable time before the variation is to take effect and with such information as is reasonably required for any other Party to assess the request.

In deciding if a particular variation is reasonable the Parties shall have regard to the Contract Aims and Objectives set out in Clause 1.1 of this Contract. These Contract Aims and Objectives shall be used to guide any decisions on variations.

4. Contractor's Obligations

4.1 Contractor to Comply with Statutory and Legal Obligations

The Contractor must ensure that all legal obligations that arise, whether by or under this Contract, statute, Industrial Instrument, in equity or at common law, as a consequence of or in connection with the performance of the Services are fully complied with. This includes ensuring that all persons employed or engaged by the Contractor to provide the Services also comply with legislative requirements.

The Contractor's obligations, as created by this Clause include, without limitation, the following:

- (a) Where any person, Facility, Premises, vehicle, Plant, Equipment, or activity is required to be licensed, registered, approved or accredited the Contractor must ensure that the appropriate licence, registration, Approval or accreditation is in force and current at all times during the performance of the Services.
- (b) Where development consent is required to be obtained pursuant to Part 4 of the *Environmental Planning and Assessment Act 1979* in respect of the use of any land, the Contractor must ensure such consent is obtained and is in force prior to the commencement of, and at all times during, such use.
- (c) Irrespective of who performs the Services, the Contractor must ensure the Services are performed in a safe manner and in accordance with all applicable legislation and Codes of Practice, including but not limited to the:
 - Dangerous Goods (Road and Rail Transport) Act 2008;
 - Environmental Planning and Assessment Act 1979;
 - Environmentally Hazardous Chemicals Act 1985;
 - Fair Work (State Referral and Consequential and Other Amendments) Act 2009 (Cth);
 - Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth);
 - Fair Work Act 2009 (Cth);
 - Industrial Relations (Commonwealth Powers) Act 2009 (NSW);
 - Industrial Relations Act 1996;
 - Local Government Act 1993;
 - Protection of the Environment Operations Act 1997;
 - Road Transport (General) Act 2005;
 - Road Transport (Safety and Traffic Management) Act 1999;
 - Transport Industry Waste Collection and Recycling Contract Determination or any replacement Contract Determination, if it applies to the Contractor or any of the Contractor's subcontractors; and
 - Waste Avoidance and Resource Recovery Act 2001;
 - Waste Management Award 2010 or any replacement Modern Award, if it applies to the Contractor or any of the Contractor's employees;
 - Work Health and Safety Act 2011 (NSW)
 - Workers Compensation Act 1987;
 - Workplace Injury Management and Workers Compensation Act 1998

and all regulations, Industrial Instruments, codes and/or guidelines pursuant to any of such Acts and any enactments in lieu of such Acts as may be repealed.

4.1.1 Repeals

Where legislation applying to this Contract is repealed or amended, then any replacement legislation shall govern the performance of this Contract in substitution for the repealed or original legislation. If there is no such replacement legislation, or the parties cannot agree on the application of the replacement or amended legislation, the parties must negotiate in good faith to reach agreement on varying the Contract to accommodate the repeal or amendment. If the parties fail to reach agreement within a reasonable time the matter shall be resolved by expert determination pursuant to Clause 13 of this Contract and the parties agree to be bound by such determination.

4.1.2 Change in Law

- (a) If:
- i. a Change in Law occurs
 - ii. the Contractor acting reasonably considers that the Change in Law will directly and necessarily increase or decrease the scope of the Services or the cost of performing the Services (**Change in Law Services**).
 - iii. the performance of the Change in Law Services will either increase the costs of the Contractor in performing the Services by more than \$50,000 (excluding GST) or will lessen any income to the Contractor from the performance of the Services by more than \$50,000 (excluding GST)
- then the Contractor must within 60 days of becoming aware of, or ought reasonably to have been aware of, the relevant Change in Law, notify the Supervising Officer by way of a Notice which complies with Clause 4.1.22(c) (**Change in Law Notice**) of this Contract.
- (b) The Contractor must not perform any Change in Law Services until it has complied with the balance of this Clause 4.1.22 and Clause 3.2 of this Contract if the Change in Law also gives rise to a direction of the Supervising Officer to change the Services.
- (c) A Change in Law Notice must be in writing and detail:
- iv. the reasons why (including any supporting information) the Contractor considers the relevant change is a Change in Law
 - v. if the Change in Law involves an increase to the scope of the Services, any additional obligations, cost or resources reasonably required to perform or which the Contractor will incur as a result of the Change in Law Services
 - vi. the obligations under the agreement that the Contractor considers it would not be able to comply with (if any) if the Contractor does not perform the Change in Law Services (including any part of the Services which would be prohibited as a consequence of the Change in Law)
 - vii. whether the Change in Law can be mitigated by, or gives rise to the opportunity for an innovation
 - viii. if the Change in Law involves a decrease to the scope of the Services, the obligations under the agreement that the Contractor reasonably considers it is no longer required to comply with as a result of the Change in Law and the resulting reduction in cost; and
 - ix. any other information relevant to the Change in Law and its application to the Services.
- (d) Within 30 days of receipt of a Change in Law Notice, and without limiting the Contractor's obligations to comply with all laws, the Council may:
- i. dispute that there has been a Change in Law
 - ii. dispute the quantum of the increase in the Contractor's costs and/or the lessening of the Contractor's income as referred to in Clause 4.1.22(a)(2) of this Contract
 - iii. confirm that there has been a Change in Law but dispute the Contractor's assessment of the Change in Law Services, in which case, the dispute will be referred for resolution under Clause 13 of this Contract
 - iv. confirm that there has been a Change in Law and the description of the Change in Law Services in which case, the Contractor must perform (or omit, as relevant) the Change in Law Services, and, without limiting the Contractor's obligation to mitigate the effect of a Change in Law under Clause 4.1.22(f) of this Contract, the Change in Law is deemed to be a Variation for the purposes of Clause 3.2 of this Contract

- v. if the Services may be varied so that the Change in Law Services are not required, direct a variation to the Services in accordance with Clause 3.2 of this Contract (and, in this case, the variation does not need to be agreed with the Contractor).
- (e) Following agreement by the parties or resolution of the effect of a Change in Law in accordance with Clause 4.1.22 of this Contract, the Council will increase or reduce the Service Rates to account for the net increase of the Contractor's net costs lessening of the Contractor's income (if any) or costs (if any) incurred by the Contractor in complying with the Change in Law.
- (f) If a Change of Law occurs, the Contractor is obliged to take all reasonable steps to mitigate the adverse impact of such Change of Law upon the Contract. The Contractor shall identify and take all such practical steps prior to lodging its Change in Law Notice. The Council may direct the Contractor to provide additional information in the Change in Law Notice, in which case, the Contractor must re-submit its updated Change in Law Notice within 7 days and Clause 4.1.22, (d) and Clause 4.1.22, (e) of this Contract will apply again.
- (g) Except as expressly stated in this Clause:
 - i. the Council is not liable for, or in connection with, any Claim by the Contractor
 - ii. the Contractor is absolutely barred from making any Claimarising out of, or in connection with, any change to any Law (including a Change in Law).
- (h) If the Council becomes aware of a Change in Law, the Council may issue a Change in Law Notice regarding that Change in Law notwithstanding that the Contractor has not notified the Council of the Change in Law under this provision or otherwise. Upon receipt of a Change in Law Notice from the Council, the Contractor may:
 - i. accept the Change in Law Notice, in which case, the Contractor must perform (or omit, as relevant) the Change in Law Services and Clause 4.1.22, (e) will apply;
 - ii. amend the Change in Law Notice, in which case the Contractor must comply with the whole of this Clause 4.1.22 of this Contract, as if it was submitting a new Change in Law Notice; or
 - iii. dispute that there has been a Change in Law, in which case, the dispute, and the determination of the effect of the Change in Law, are referred to Clause 13 of this Contract for resolution.
- (i) The procedures outlined in this Clause 4.1.22 of this Contract, do not in any way diminish the obligation of the Contractor under this agreement to minimise costs and to maximise savings in accordance with good industry practice.
- (j) Any dispute arising under Clause 4.1.22 of this Contract must be referred for resolution under Clause 13 of this Contract.

4.2 Contractor to Maintain Records

The Contractor is to maintain copies of all licences, approvals, consents, accreditations, orders, directions and instructions that relate to the performance of the Services, including details of renewal or Expiry Dates and any restrictions that apply, and any variations to this Contract or notices issued under this Contract until the date six (6) months after the completion of the performance of the Services in their entirety or the date six (6) months after termination of this Contract, whichever is the later.

The contractor must create and maintain all records that relate to the performance of the Services as required by law.

4.3 Contractor to Act in Support of Council's Obligations

If the Council has any legal obligations that the Council cannot fulfil without a person involved in the performance of the Services acting (or not acting) in a particular manner in relation to the performance of the Services, then the Council may direct the Contractor to ensure that such person (whether the person is the Contractor, an employee or officer of the Contractor, a subcontractor, an employee or officer of a subcontractor or any other person) acts (or does not act) in that manner. Any such direction must be complied with in accordance with any reasonable timeframe specified in the direction. The Contractor must ensure that the terms of any engagement of a subcontractor to perform part of the Services allow the Contractor to comply with the provisions of this Clause.

Where the Council makes a direction under Clause 4.3 of this Contract, up to forty (40) hours per calendar year of Contractors' staff time is to be available at no charge to Council in total under this Clause and Clause 5.4 of this Contract. Where Council requires additional time by Contractors' staff the Contractor is to provide a diary of time spent and may recover staff costs from Council at a fixed rate of that person's hourly rate plus fifty percent (50%) where hourly paid or at the rate of 1/1200 of annual base salary per hour where that person is on salary.

5. Contractor's Employees

5.1 Generally

- (a) The Contractor must provide a sufficient number of employees with adequate skills, training and qualifications to carry out promptly and effectively the Services under this Contract and otherwise to perform the obligations of the Contractor under this Contract to the satisfaction of the Council.
- (b) The Contractor must observe all laws and Industrial Instruments applicable to the Contractor's employees. The Contractor's employees will not be considered to be the Council's employees.
- (c) The Contractor must provide upon request by Council or the Supervising Officer, and to the extent allowed by law, evidence of any Industrial Instruments in place that cover or apply to employees performing Services under this Contract.
- (d) The Contractor must comply with all laws relevant to employees including laws relating to anti-discrimination, privacy, occupational health and safety, superannuation, workers' compensation, taxation laws and ensure its employees do not breach those laws.
- (e) The Contractor must comply with all laws relating to payment obligations in respect of any sub-contractors.
- (f) The Contractor must make its employees, agents and subcontractors available for induction training on Council's Code of Conduct and other relevant training. The Contractor must pay all costs associated with attending the training, whilst Council will pay any applicable training registration costs.

When required by the Council the Contractor must provide evidence and records to demonstrate it is complying with the requirements of this Clause 5.1 of this Contract.

5.2 Staff Presentation and Identification

- (a) The Contractor must ensure that all staff (employees) and subcontractors performing the Services are appropriately attired and wear name badges.

- (b) The Council may direct the Contractor that certain uniforms, clothing, safety equipment and name badges may or may not be used.
- (c) The Council may direct the Contractor as to the standard of cleanliness, repair and presentation of uniforms, clothing, and safety equipment that is acceptable.
- (d) The Contractor must comply with any directions given under Clause 5.2 (b) and (c) of this Contract.

5.3 Conduct of Employees

The Contractor will ensure that all of its employees, agents and subcontractors:

- (a) conduct themselves in a friendly, courteous, civil and inoffensive manner and in accordance with all relevant laws including work, health and safety laws
- (b) carry out their duties at all times with as little inconvenience and disturbance to others as possible, and without causing any nuisance
- (c) conduct themselves in accordance with the Council's Code of Conduct and any Act or regulation applicable and relevant to the Services and report to the Council any conduct which attempts to induce any public official to act corruptly in the administration of this Contract;
- (d) collect **only** Materials specified under the Contract. The collection of additional Materials for money or other consideration including trade waste and business wastes is prohibited without the written Approval of the Council. If the Contractor's employees are found collecting such materials Council may, in addition to any other remedies, recover the estimated costs of disposal and/or reprocessing such Materials for the period which such Materials are shown to have been collected or in the absence of clear evidence of the period from the beginning of the Contract.
- (e) transport Waste only to Council designated locations for receipt of garbage, recyclables and organics.

5.4 Legal Proceedings

The Contractor and its employees, agents and subcontractors must upon request and without any expense to the Council attend as witnesses for the Council in all cases where prosecutions are laid or where legal proceedings are instituted against the Council or by the Council against another person.

Where the Council makes a request under this Clause, up to forty (40) hours per calendar year of Contractors' staff time is to be available at no charge to Council in total under this Clause and Clause 4.3 of this Contract. Where Council requires additional time by Contractors' staff the Contractor is to provide a diary of time spent and may recover staff costs from Council at a fixed rate of that person's hourly rate plus fifty percent (50%) where hourly paid or at the rate of 1/1200 of annual base salary per hour where that person is on salary.

5.5 Counselling and Further Disciplinary Action of Employees

5.5.1 Notice of Concern

When Council has a concern over the performance of any employee, agent or subcontractor that is engaged in performing Services, in the first instance Council will provide the Contractor with 72 hours to address these issues. The Contractor will then provide Council with a written detailed investigation and action plan for this person(s) which will be agreed with Council.

5.5.2 Counselling

The Contractor shall, when directed by Notice from the Supervising Officer, be required to refer at the Contractor's cost any employee, agent or sub-contractor engaged in the performance of the Contract to independent counselling or training in relation to addressing any actions of misconduct or poor performance in the carrying out of the Services, where in the opinion of Council those actions include a failure to fulfil the requirements of Conduct of Employees detailed in Clause 5.3 of this Contract , without prejudice to Council's rights under Clause 5.5.2 of this Contract .

5.5.3 Removal

The Council in its absolute discretion may by Notice in writing from the Supervising Officer to the Contractor require that any employee, agent or subcontractor be removed, within a stated time, from any activity involved in performing the Services. Upon receipt of such Notice the specified employee, agent or subcontractor is to be removed within the time specified in the Notice.

The Contractor shall not, without the previous written Approval of the Council, re-instate in the performance of this Contract any employee, agent or subcontractor removed as aforesaid.

5.6 Industrial Disputes and Interruptions to Service

If an industrial dispute results in the cessation or interruption of any part of the Services the Contractor must take all reasonable steps to recommence such part or all of the Services as soon as possible.

If an industrial dispute results in the cessation or interruption of any of the Services, which remains unresolved for a period of more than one (1) Business Day the Contractor must immediately notify the dispute to the appropriate court or tribunal or dispute resolution provider empowered to deal with the industrial dispute and request an immediate compulsory conference or such other dispute resolution mechanism that is required under any applicable Industrial Instrument between the parties concerned and must take all reasonable steps to endeavour to resolve such disputes and bring the cessation or interruption of the Services to an end as soon as possible. If the Contractor fails to so notify such dispute as required by this Clause, the Council will be entitled to take all necessary action to remedy the situation including having the work carried out by other persons and, without prejudice to any other right or remedy available to it, call upon the Contractor to reimburse it for any cost or expense in carrying out any such work or deduct the amount of any such cost or expense from money payable under this contract to the Contractor.

If any industrial dispute results in the cessation or interruption of any part of the Services for two (2) Working Days the Council may have the Services carried out by other persons until the Services recommence and, without prejudice to any other right or remedy available to it, call upon the Contractor to reimburse it for any cost or expense in carrying out any such work or deduct the amount of any such cost or expense from money payable under this contract to the Contractor.

5.7 Indemnity

The Contractor indemnifies the Council in respect of all moneys paid by the Council to any employee of the Contractor, subcontractor, Authority, superannuation fund or insurer arising from any legal obligation of the Council following the failure of the Contractor to pay any money to any such person or entity.

5.8 Payroll Tax and Superannuation

The Contractor must:

- (a) pay any payroll tax and superannuation in respect of wages or salaries paid to the Contractor's employees; and,
- (b) ensure that all subcontractors pay any payroll tax and superannuation in respect of wages or salaries paid to the subcontractor's employees.

5.9 Payment of Employees and Subcontractors

The Contractor warrants that it will pay its subcontractors and employees in a timely fashion and in accordance with any applicable contract, Industrial Instruments and/or statute.

The Contractor must provide the Council with a copy of a Subcontractor's Statement with every Claim for payment under Clause 10.2 of this Contract covering the period where the services were performed.

5.10 Government Authorities and Termination

If the Contractor is prevented from carrying out the Services by any order, Notice or direction from any competent Authority or by law then the Council may, at its discretion:

- (a) recommend the Contractor vary the terms of this Contract in accordance with Clause 3.2 of this Contract ; or,
- (b) terminate this Contract by Notice in writing to the Contractor and upon delivery of such Notice this Contract will be cancelled and no Party will be liable to any other Party for any costs, damages, compensation, charges or expenses suffered or incurred by any Party arising out of such termination. However, such termination will be without prejudice to the rights of the Council and the Contractor in respect of any breach or default under this Contract occurring prior to such termination.

6. Subcontracting

6.1 Generally

- (a) any assignment or subcontracting will not be binding on the Council unless it is done in accordance with this Clause 6 of this Contract.
- (b) the Contractor will not, except pursuant to Clause 6.2 of this Contract, subcontract or assign the whole or any portion of its rights and obligations under this Contract, and no subcontractors or assignees will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council unless the relevant subcontract or assignment has received consent pursuant to Clause 6.2 of this Contract.

6.2 Subcontracting and Assigning

The Contractor will be entitled to assign or subcontract the whole or any part of its rights and obligations under this Contract only with the prior written consent of the Council, which consent may not be unreasonably withheld but which may be given subject to such conditions as the Council considers appropriate.

6.3 Transfer from Existing Contractual Arrangements

Where an existing contractual arrangement exists between Council and the Contractor for any or all of the Services described in this Contract this Contract supersedes the earlier arrangements to the extent that Services are included within this Contract.

No compensation will apply to the Contractor for the transfer of existing arrangements under this Clause 6.3 of this Contract.

6.4 Contractor to Provide Information

With any application for the consent of the Council to any assignment or subcontracting, the Contractor must provide all such information as may be required by the Council, including, but not limited to, evidence that the proposed assignee or subcontractor will be capable of performing any obligations of the Contractor under this Contract that are to be subcontracted or assigned.

This may include details of motor vehicles and Equipment, employees, Facilities, management, staff, systems and financial resources proposed to be used by the assignee or subcontractor.

6.5 Contractor Still to be Liable

Unless otherwise agreed in writing by the Council, no assignment or subcontracting 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 subcontractor or assignee or any subcontractor's or assignee's employees and agents as if they were the acts or omissions of the Contractor.

6.6 Change in Beneficial Ownership

For the purpose of this Clause 6 of this Contract, if the Contractor is a company, an assignment of this Contract will include any change in the beneficial ownership of the share capital of the Contractor, or the resignation, death or appointment of any director of the company, which alters the effective control of the Contractor. This Clause shall not apply if the Contractor is a public company listed on an Australian or overseas Stock Exchange or a subsidiary of any such company.

7. Contractor's Vehicles, Plant and Equipment

7.1 Generally

The Contractor will ensure that all of its Vehicles, Plant and Equipment being used in the performance of this Contract:

- (a) comply with all applicable Acts, regulations and by-laws; and,
- (b) are suitable for the purpose for which they are to be used; and,
- (c) are maintained in good repair and condition; and,
- (d) are safe and without risks to health.

7.2 Deficient Vehicles, Plant and Equipment

7.2.1 Notice of Efficiency

If the Supervising Officer, acting reasonably, considers that any item of the Contractor's Vehicles, Plant and Equipment is deficient, having regard to the requirements of Clause 7.1 of this Contract, the Supervising Officer may give Notice to the Contractor:

- (a) specifying the deficiency;
- (b) stating a date by which the deficiency is to be remedied;
- (c) stating that the item of the Contractor's Vehicles, Plant and Equipment is not to be further used in the performance of the Services or otherwise in connection with this Contract until the deficiency has been remedied;
- (d) stating that the item of the Contractor's Vehicles, Plant and Equipment may only be used subject to specified conditions until the deficiency has been remedied;

and may require the Contractor to obtain the Council's Approval before using the item of Vehicles, Plant and Equipment which has been subject to a Notice of deficiency.

7.2.2 Reasons for Direction

Any Notice given under this Clause will give reasons for the Council's direction.

8. Property

8.1 Damage to Property

The Contractor will immediately remedy any damage done by its employees, agents or subcontractors to any property of the Council or any other person. Should the Contractor fail to do so within a reasonable time, the Council may effect the necessary repairs following consultation with the Contractor pay reasonable compensation to the owner of the property. The cost of effecting any necessary repairs or the amount of any reasonable compensation will be paid on demand by the Contractor to the Council or may be deducted from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

8.2 Damage to Mobile Bins Used in this Contract

Where the Contractor damages Mobile Bins it will repair at its cost the Mobile Bins. Where the Council is dissatisfied with a repair the Council may direct the Contractor to carry out a further repair or replace the damaged Mobile Bin at the Contractor's cost.

8.3 Cost of Damage

The Council following consultation with the Contractor will determine the cost of effecting any necessary repairs or the amount of reasonable compensation to be paid to the owner of any property in accordance with Clause 8.1 of this Contract, which may include any professional fees and costs that are deemed by the Council to be attributable to the application of Clause 8.1 of this Contract.

Where the costs determined under Clause 8.1 exceed ten thousand dollars (\$10,000) the Contractor may request an independent expert review of the costs. The costs of such review are to be added to the amount of the Claim for costs of damage. If, after obtaining an independent expert review of the costs, the Parties cannot agree on an amount to satisfy

Clause 8 of this Contract, the Contractor may commence dispute resolution procedures under this Contract.

8.4 Independent Expert

For the purposes of Clause 8.3 of this Contract, an 'independent expert' shall be a person agreed upon by the Council and the Contractor as having the skills necessary to carry out the review. If no such agreement is reached within 21 days of the Contractor's request for such review, either the Council or the Contractor may request the President for the time being of the Law Society of New South Wales to nominate the independent expert and the expert so nominated shall be appointed to carry out the review.

9. Insurance, Risk, Responsibility and Indemnity

9.1 Workers' Compensation

9.1.1 Obligation to Insure

The Contractor must insure in respect of any liability, loss, Claim or proceedings whatsoever as required by law relating to workers' compensation or employers' liability by any person employed by it in or about the execution of the Services and must ensure that every subcontractor is insured against any such liability in the case of employees of such subcontractor.

9.1.2 Indemnity Concerning Workers Compensation

The Contractor will indemnify the Council from any liability, costs, penalties or additional premiums the Contractor or its subcontractors may incur under the provisions of the *Workers Compensation Act 1987* arising from any aspect of the Services to be performed by the Contractor under this Contract.

9.2 Public Liability Insurance

The Contractor must hold current public liability insurance ('the Public Liability Policy') noting the interests of the Contractor, its subcontractors and the Council which provides coverage for an amount of at least that stated in Item 7 of the Annexure. The Public Liability Policy will be effected with a reputable insurer authorised to carry on business in Australia. The cover for the Council is to be in respect of Services provided by the Contractor and its subcontractors under the Contract only.

9.3 Vehicles, Plant and Equipment Insurance

The Contractor must insure its Vehicles, Plant and Equipment in respect of any liability as required by law and also in respect of any injury or damage to person or property as may be caused by the negligent use of any such Vehicles, Plant or Equipment in the course of performing the Services.

9.4 Bi-annual Review of Insurance

At least once in every two (2) years after the Contract Commencement Date the Council and the Contractor together with such insurance advisors, on their own behalf and at their cost, as any Party may require, must meet and review the insurances held in respect of the Contract. All insurances under this provision must be taken out and maintained in a form and with reputable and financially sound insurers authorised to carry on business in Australia.

9.5 Proof of Insurance

The Contractor must provide Council with the certificate of currency at least ten (10) business days prior to commencement of the Contract. The Contractor must produce evidence in the form of certificates of currency of the insurances effected and maintained. The effecting of insurance does not limit the liabilities or obligations of a Party under other provisions of this Contract.

9.6 Failure to Produce Proof of Insurance

If the Contractor, or a subcontractor, fails within ten (10) Business Days of receiving a request from the Council to produce evidence of compliance with insurance obligations required by this Contract or fails to effect or to keep in force any of the insurances required by this Contract to the satisfaction of the Council, the Council may effect and maintain the insurance and pay the premiums or terminate the Contract. The premium paid will be a debt due to the Council from the Contractor and the Council may refuse payment of any moneys due to the Contractor under this Contract until evidence of compliance with insurance obligations required by this Contract is produced by the Contractor to the satisfaction and Approval of the Council. The rights given by this Clause 9.6 are in addition to any other right.

9.7 Indemnity

- (a) Subject to Clause 9.7 (b) of this Contract, the Contractor must at all times keep indemnified the Council, its employees, representatives, officers and agents from and against all actions, proceedings, liabilities, losses, damages, demands, Claims, suits, fines and other penalties, costs, charges and expenses (including all reasonable legal fees and other expenses of legal proceedings) and causes of action arising out of or in any way connected with or related to (in all circumstances whether directly or indirectly) the engagement of, or performance of the Services by, the Contractor, its employees (including prospective employees), agents, subcontractors and assigns (including without limitation the observance, fulfilment, non-observance or non-fulfilment of any term, condition or requirement of this Contract).

The indemnity of the Contractor under this Clause will extend to any acts or omissions of the Contractor, its agents and employees and any assignees or subcontractors and includes indemnity in relation to personal injury, property and economic loss.

- (b) The Contractor shall not be liable under Clause 9.7 (a) of this Contract to indemnify the Council, its employees, representatives, officers and agents to the extent that any such actions, proceedings, liabilities, losses, damages, demands, Claims, suits, fines and other penalties, costs, charges and expenses are caused by the negligent act or omission of the Council, its employees, representatives, officers and agents.

9.8 Reimbursement by Contractor

The Contractor must, on demand, reimburse the Council, its employees, representatives, officers and agents for any financial loss incurred by that person, including fines and other penalties, for which the Contractor indemnifies that person pursuant to this Clause 9 of this Contract.

9.9 Indemnities and Releases of Liability Continue

The indemnities and releases of liability contained in this Clause 9 of this Contract continue in full force and effect after the termination of this Contract by a Party or the Parties for any reason.

10. Payments

10.1 Payment Rates

The Contractor will be paid for Services provided under this Contract at the Service Rates that apply at the time the Services are supplied.

10.2 Submission of Claims

Each month the Contractor shall deliver to the Council a Claim for payment for the Services provided in that month. The Claim for payment must be in the form of a tax invoice for GST purposes and supported by evidence of the amount due to the Contractor and such other information as the Council may reasonably require to verify the amount due including the Services performed and the Service Rates applicable to those Services.

The Council shall approve or dispute the Claim in writing to the Contractor within ten (10) Business Days after receipt by it of the Claim. Where the Council approves the Claim subject to conditions or adjustment or rejects a Claim, the Council shall notify the Contractor of such conditions or adjustment within ten (10) Business Days of submission of the Claim by the Contractor.

10.3 Payment

Council must, within twenty (20) Business Days of submission by the Contractor, pay a Claim subject to any conditions or adjustments notified by the Council to the Contractor.

10.4 Correction of Payments

At any time the Council may correct any error discovered in any previous payment, and may add to or deduct from any payments due to the Contractor under this Contract to compensate for such error. The Contractor may also notify the Council at any time of an error discovered by it in relation to any payment. Where a party discovers there has been an over or under payment, the party will bring this to the immediate attention of the other party who must respond within 20 Business Days.

Where the parties cannot agree as to whether there has been an under or over payment, the parties may resort to Dispute resolution under Clause 13 of this Contract.

10.5 Interest on Overdue Payments

If any moneys due to any Party are not paid by the date on which they should have been paid, then interest shall be payable thereon from the due date until the date on which they are paid. The rate of interest shall be the rate stated in Item 8 of the Annexure and if no rate is stated the rate shall be ten percent (10%) per annum, compounded quarterly.

10.6 Provisional and Contingency Sums

Where the Contract provides for the payment of provisional and contingency sums the amount of these has been determined by Council and are included in the total Contract Sum.

Expenditure against these sums may only occur at the direction of the Supervising Officer. Any Claims by the Contractor from these amounts must be identified separately in accounts. Any unused amounts from these sums at the end of each year of the Contract shall remain with Council and may not be carried over from year to year.

Option 1 Quarterly CPI Adjustment

10.7 Service Rates Reviews

Service Rates for Services supplied under this Contract are to be adjusted quarterly on 1 July, 1 October, 1 January and 1 April in each year (the Quarter Dates) in accordance with Clause 10.8 of this Contract and the Service Rates that are set at that time will apply for Services provided the following quarter. The first adjustment is to occur on the first of the Quarter Dates which occurs at least three (3) months after the Services Commencement Date.

10.8 Calculation of Revised Service Rates

The Service Rates set out in the Tender will be adjusted on the Quarter Dates in each year as follows:

Revised Service Rates = Tendered Service Rate x (Current CPI ÷ Base CPI)

Where:

Revised Service Rates are the rates that are to be applied to all payments under the Contract for Services supplied from the relevant Quarter Date for the following three (3) calendar months.

Tendered Service Rate is the Service Rates quoted in the Tender Return Schedules.

Current CPI is the Consumer Price Index Number (All Groups Sydney) as published by the Australian Bureau of Statistics ("CPI") for the quarter immediately preceding the relevant Quarter Date.

Base CPI is the CPI published for the quarter immediately preceding the Services Commencement Date.

OR

Option 2 Quarterly Rise and Fall

10.7 Service Rates Reviews

A rise and fall condition shall apply to the Service Rates and the appropriate rise and fall adjustment shall be calculated as set out in Clauses 10.7 and 10.8 of this Contract for the duration of the Contract unless by mutual agreement this basis is changed.

Rise and fall adjustments made in accordance with this Clause shall be deemed to cover all increases and decreases in costs incurred by the Contractor in carrying out its obligations under the Contract.

Such adjustments shall be made at three (3) monthly intervals on 1 July, 1 October, 1 January and 1 April in each year (the Quarter Dates). The first such adjustment shall occur on the Services Commencement Date.

10.8 Calculation of Revised Service Rates

- (a) For the purpose of calculating rise and fall amounts, the following formulae shall be used:
 - (i) Wages, Payroll Tax and Superannuation Guarantee Levy Rise and Fall

$$R1 = \frac{(A - B) F}{B}$$

- (ii) Fuels and Lubricants Rise and Fall

$$R2 = \frac{(C - D) F}{D}$$

- (iii) Tyres, Workers Compensation Insurance, Vehicle Registration and Insurance and other materials Rise and Fall

$$R3 = \frac{(E - G) F}{G}$$

- (iv) Costs and Profit Return Rise and Fall

$$R4 = \frac{(E - G) F}{G}$$

Where:

R1, R2, R3 and R4 = Rise and Fall factor amounts as decimals.

F = The Rise and Fall percentage factor nominated by the Contractor in the Contractor's Tender (as specified in Item 11 in the Annexure) as being the proportion of the Service Rates applicable to that particular segment, applied as a percentage and entered as a decimal;

A = $A1 (1 + A2 + A3)$. Where A1 is the amount specified in the *Waste Management Award 2010* – Clause 19 Classification Level 6 as first published for the quarter for which a Rise and Fall Claim is being made. A2 is the payroll tax expressed as a percentage of A1 and entered in the equation as a decimal, A3 is the Superannuation Guarantee expressed as a percentage of A1 and entered in the equation as a decimal;

B = $B1 (1 + B2 + B3)$. Where B1 is the amount specified in the *Waste Management Award 2010* – Clause 19 Level 6 as first published for the quarter during which the Tender Closing Date occurred. B2 is the payroll tax expressed as a percentage of B1 and entered in the equation as a decimal, B3 is the Superannuation Guarantee expressed as a percentage of B1 and entered in the equation as a decimal;

C = The net average daily Terminal Gate Price for Sydney for diesel fuel ("TGP") for the 90 days prior to the commencement of the quarter for which the Rise or Fall is to be determined less the current daily diesel fuel rebate, if any, applicable to the Contractor. The TGP for Sydney for diesel fuel is the price so published on the Australian Institute of Petroleum's website www.aip.com.au.

D = The TGP for the 90 days prior to the Tender Closing Date specified in Item 10 of the Annexure.

E = The index number allocated by the Australian Bureau of Statistics as the Consumer Price Index: All Groups Sydney as first published by the aforesaid Bureau for the quarter for which a Rise and Fall Claim is being made.

G = The index number allocated by the Australian Bureau of Statistics as the Consumer Price Index: All Groups Sydney as first published by the aforesaid Bureau for the quarter during which the Tender Closing Date specified in Item 10 in the Annexure occurred.

- (b) To calculate the actual amount to be applied as Rise and Fall to a Service Rate, the Council shall apply the following formula:

$$ARF = Rf \times T$$

Where:

ARF = The actual Rise or Fall in the Service Rate expressed in dollars.

Rf = The total of R1, R2, R3 and R4 as calculated pursuant to subparagraph (a) expressed to six (6) decimal places.

T = The Service Rate for each Service-Entitled Premises.

If the Australian Bureau of Statistics ceases to publish the Consumer Price Index or the basis upon which that Index is calculated is substantially changed then the Council may nominate another suitable Index for the purpose of calculation of Rise and Fall under this Contract.

If the *Waste Management Award 2010* ceases to exist or is superceded for any reason then the parties shall select some similar Award for the purposes of the formula in Clause 10.8 of this Contract and in the event that they cannot agree on a selection then the matter shall be resolved pursuant to Clause 13 of this Contract.

10.9 Periods of Non-Performance

Option 1

The Council will not be required to make any payment to the Contractor in respect of any of the Services that are not performed, or are not performed in accordance with this Contract.

OR

Option 2

The Council will not be required to make any payment to the Contractor in respect of any of the Services that are not performed, or are not performed in accordance with this contract. The deduction from a monthly Claim for such non-performance shall be that proportion of the monthly Claim as the number of non-performed Services bears to the total number of Services which the contractor would normally perform during the relevant month.

10.10 Certification of Payments

On submitting a Claim for any payment under this Contract, the Contractor will certify in writing to the Supervising Officer that:

- (a) it has paid all wages and allowances owing to any of its employees in respect of the work claimed for

- (b) it has paid all amounts due to any person, including any relevant government taxes, levies or charges, in respect of the work claimed for to which it has subcontracted any of its rights and obligations under this Contract
- (c) it has made any payments that it is required to make in respect of the Contractor's Vehicles, Plant and Equipment and the Facilities up to the end of the period to which the Claim applies;
- (d) it has paid all superannuation components payable.

The Supervising Officer 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 and unless otherwise notified by the Council, the certification shall be in the form of the Subcontractor's Statement.

10.11 Power to Pay Employees and Subcontractors

If the Supervising Officer has evidence that:

- (a) any wages or allowances or superannuation due to the Contractor's employees are unpaid
- (b) the Contractor has failed to pay any amounts due to any person, including any relevant government taxes, levies or charges or workers compensation premiums, in respect of the work claimed for to which it has subcontracted any of its rights and obligations under this Contract;
- (c) The Contractor has failed to pay any amounts due to any party to which it has subcontracted any of its rights and obligations under this contract; or,
- (d) the Contractor has failed to make any payment that it is required to make in respect of its Vehicles, Plant and Equipment or Facilities,

the Council may deduct such amounts as appear to be due to the Contractor's employees or subcontractors or to any third party with an interest in any of the Contractor's Vehicles, Plant and Equipment or Facilities from any payments due to the Contractor under this Contract, and withhold the moneys until it has been provided with evidence to the satisfaction of the Council that all wages, superannuation and allowances due to the Contractor's employees or amounts due to the Contractor's subcontractors or such third parties have been paid. If no such evidence is provided to the Council within five (5) Business Days, the Council may pay to the Contractor's employees any wages and allowances or to the subcontractors and such third parties 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 Clause will in any way oblige the Council to make any payment to any of the Contractor's employees, agents or subcontractors or any other third parties. Any payments that may be made by the Council under this Clause will be deemed to have been made on behalf of the Contractor. The parties acknowledge that Federal or State legislation may require the Council to make payments or deductions on behalf of the Contractor. This payment or deduction does not alter the relationship between the parties under this Contract, namely, there is no employment relationship between the Council and the Contractor or the Council and any persons providing the Services under this Contract on behalf of the Contractor.

11. Defaults and Termination

11.1 Default by Contractor

11.1.1 Council to Give Notice

Should the Contractor default in the performance or observance of any obligation it has under this Contract, or refuse or neglect to carry out or give effect to any order, instruction, direction or determination which the Council is empowered to give or make under this Contract, and which is given or made in writing to the Contractor, the Council may give Notice requiring the Contractor to explain why the powers contained in this Clause should not be exercised.

Such Notice:

- (a) will signify that it is a Notice under this Clause; and,
- (b) will specify the default, refusal or neglect on the part of the Contractor upon which it is based.

11.1.2 Council's Powers

If, within ten (10) Business Days after receipt of the Notice, the Contractor fails to demonstrate to the Council's satisfaction that the default will be rectified, or the order, instruction, direction or determination will be carried out or given effect to and this Contract satisfactorily performed, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may:

- (a) treat the matter as a dispute under Clause 13 of this Contract
- (b) suspend all payments under this Contract until the Contract dispute is resolved
- (c) terminate or take over this Contract.

The suspension of payment under this Clause 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.

11.2 Payments on Termination

11.2.1 Limit of Payments

In the event of termination of this Contract under Clauses 11.1, 0 or 15.6 of this Contract, the Council will be liable to make payments to the Contractor only in respect of any portion of the Services which have been properly executed and not paid for at the date of termination.

11.2.2 Payment for Losses and Expenses

In the event of a termination under Clauses 11.1 and 0 of this Contract, the Contractor must pay to the Council the amount of all costs, losses and expenses incurred by the Council by reason of or arising from the termination including but not limited to all professional fees, Council's costs and costs of making alternative arrangements for provision of the Services.

11.2.3 Council's Determination

The Council will determine the amounts payable by the Contractor and the Council pursuant to this Clause 11 of this Contract as soon as practicable after the termination of the Contract. The Council will give Notice of such determination under this Clause to the Contractor. Any amounts payable under this Clause by the Contractor and the Council must be paid within

ten (10) Business Days of the receipt of Notice by the Contractor of the Council's determination.

11.2.4 The Council May Retain Moneys

The Council may retain moneys payable to the Contractor pursuant to this Clause 11 of this Contract until the amount payable by the Contractor to the Council under Clause 11 of this Contract has been determined by the Council and paid by the Contractor. Alternatively, the Council may set off against moneys payable by it to the Contractor, any moneys payable by the Contractor to the Council.

11.3 Insolvency of Contractor

If:

- (a) the Contractor (being a natural person) becomes bankrupt
- (b) the Contractor (being a natural person) files or is served with a petition in bankruptcy
- (c) the Contractor (being a natural person) is served with a bankruptcy Notice
- (d) the Contractor makes an assignment for the benefit of its creditors
- (e) the Contractor informs the Council that the Contractor is insolvent or unable to pay its debts
- (f) a meeting of creditors of the Contractor is called with a view to entering into a scheme of arrangement or composition with creditors or placing the Contractor under official management
- (g) the Contractor enters a scheme of arrangement or composition with creditors
- (h) the Contractor is placed under administration
- (i) a receiver or receiver and manager or agent for any creditor is appointed to take possession of any asset or carry on the whole or any part of the Contractor's business
- (j) a resolution is passed for the winding up of the Contractor
- (k) an application is made to a Court for the winding up of the Contractor and such application is not dismissed within twenty (20) Business Days of such application being filed
- (l) a winding up order is made in respect of the Contractor
- (m) execution is levied against the Contractor by any person
- (n) a liquidator or provisional liquidator is appointed to the Contractor,

then the Council may terminate this Contract by Notice in writing to the Contractor or take over the Services under this Contract by Notice in writing to the Contractor.

11.4 Termination of this Contract by the Contractor

11.4.1 Contractor's Right to Terminate

If the Council has failed to pay to the Contractor any amount due under Clause 10 of this Contract, other than an amount being the subject of:

- (a) dispute under this Contract
- (b) any legal proceedings commenced in respect of this Contract
- (c) adjustment or conditional Approval by the Council within ten (10) Business Days of delivery of a Claim for payment,

within ten (10) Business Days of the expiry of any period for payment, the Contractor may give Notice in writing to the Council stating that a Notice of termination under this Contract may be served if payment is not made within a further ten (10) Business Days. If the Council fails to make payment within ten (10) Business Days of the receipt of such Notice, then the Contractor may by Notice to the Council either suspend the Services or terminate Services to Council. Any suspension of the Services to Council by the Contractor under this Clause will not prevent the Contractor terminating this Contract during the period that the Services are suspended.

11.4.2 Payments upon Termination

Upon termination of this Contract by the Contractor under Clause 11.4.1 of this Contract, without prejudice to the accrued rights or remedies of the Parties or the other liabilities of the Parties under this Contract which may have accrued prior to termination, the Council will, after taking into account amounts previously paid under this Contract, make payments to the Contractor in respect of:

- (a) any portion of the Services which have been properly executed and not paid for at the date of termination; and,
- (b) 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 will, 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 and provided further that these costs are limited to the value of the goods and Materials transferred to the Council or to the cost of such goods paid by the Contractor whichever is the lesser.

The amount of any payments to be made by the Council under this Clause and any steps required to effectively transfer ownership and possession of any Materials or goods referred to in Clause 11.4.2 of this Contract (including the proportions in which each Party to this Contract is to bear the costs of the taking of any such steps) will be determined by the Council acting reasonably. Each Party will take any steps determined by the Council to effectively transfer ownership and possession of the Material or goods under this Clause.

12. Security

12.1 Performance Security

The Performance Security is required to be provided by the Contractor for the purpose of ensuring due and proper performance of the Services.

12.2 Amount and Form of the Performance Security

At least ten (10) Business Days before Contract Commencement Date, the Contractor will deliver to the Council, an irrevocable, unconditional bank guarantee from a bank or similar institution approved by the Council in favour of the Council in a form acceptable to the Council for the sum stated in Item 9 of the Annexure the ('Performance Security').

12.3 Recourse to the Performance 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. Without limiting the rights of the Council under this Clause, the Council may deduct from the Performance Security any sum payable to the Council under Clauses 10 and 11 of this Contract.

In the event that the Council has recourse to the Performance Security then the Council must notify the Contractor within ten (10) Business Days thereafter.

12.4 Return of the Performance Security

Unless the Council has exercised a right under Clause 12.3 of this Contract, the Performance Security will be returned to the Contractor at the conclusion of the Contract Term providing all liabilities under this Contract have been met.

12.5 Replacement of the Performance Security

If the Council has applied the Performance Security or any part thereof to rectify or part rectify any breach of this Contract the Contractor shall within five (5) Business Days of service of the Notice on the Contractor pursuant to Clause 12.3 of this Contract provide a replacement Performance Security or 'top up' of the same amount to be held on the same terms as this Clause 12 of this Contract to the intent that the Performance Security will be maintained in the amount specified in Clause 12.2 of this Contract.

12.6 Appointment as Attorney

The Contractor irrevocably appoints the Council as its attorney to do any acts and execute any documents that may be necessary to ensure payment of the whole or part of the Performance Security to the Council under Clause 12.3 of this Contract.

12.7 Council's Right to Terminate

If the Contractor fails to meet its obligations under Clause 12.2 or 12.5 of this Contract, the Council may immediately terminate this Contract. In the event of a termination of this Contract under this Clause, Clauses 11.2 and 0 of this Contract will operate to the extent that they are applicable, as if the termination had been made by the Council under Clause 11.1 of this Contract.

13. Dispute Resolution

13.1 Resolution of Dispute

If a dispute arises between the Contractor and the Council, any Party seeking to resolve the dispute must do so in accordance with the provisions of this Clause 13 of this Contract.

Reasonable compliance with this Clause 13 of this Contract is a condition precedent to any entitlement to Claim relief or remedy whether by way of proceedings in a court or other tribunal in respect of the dispute.

Nothing in this Clause 13 of this Contract prevents:

- (a) a Party seeking urgent injunctive or declaratory relief from a court in connection with a dispute without first having attempted to negotiate and settle the dispute in accordance with this Clause 13 of this Contract
- (b) a Party terminating this Contract pursuant to any Clause of this Contract;
- (c) the Parties meeting at any time to seek to resolve a dispute.

The Parties' obligations under this Contract will continue despite any dispute between the Parties.

Despite any provisions in this Clause 13 of this Contract, the Parties will try to resolve disputes before any Notice of Dispute is served.

13.2 Notice of Dispute

If council or the contractor becomes aware of a dispute between Council and the Contractor, that Party must notify the other Party of the existence and nature of the dispute by serving on the other Party a Notice setting out detailed particulars of the dispute including, if appropriate, references to documents and provisions of the Contract which relate to the dispute ('Notice of Dispute').

A copy of this Notice of Dispute and all subsequent correspondence between the Parties on that matter must be supplied to the Supervising Officer at the same time it is issued to the other Party.

13.3 Further Information

A Party who receives a Notice of Dispute pursuant to Clause 13.2 of this Contract may, within five (5) Business Days after such receipt, reasonably require the Party who served the Notice of Dispute to provide further or more detailed information relating to the dispute.

13.4 Negotiation

Upon receipt of a Notice of Dispute and, if applicable, the provision of further or more detailed information in relation to the dispute under Clause 13.3 of this Contract, the Parties must negotiate to resolve the dispute as follows:

- (a) one or more representatives of each Party in dispute will meet, within ten (10) Business Days of the receipt by a Party of a Notice of Dispute or the further information, if any, required pursuant to Clause 13.3 of this Contract (whichever be the later), to discuss and attempt to resolve the dispute; and,
- (b) If those representatives do not resolve the dispute within five (5) Business Days of their first meeting then within ten (10) Business Days of that first meeting the General Managers of the Parties in dispute must meet to discuss and attempt to resolve the dispute.

13.5 Appointment of Mediator

If a dispute is not resolved within ten (10) Business Days of the meeting of the General Managers of the Parties in dispute pursuant to Clause 13.4 (b) of this Contract, then the dispute must be referred to a mediator.

The Parties in dispute must agree upon the selection and appointment of a mediator who will act in respect of the dispute. The Parties in dispute may agree to appoint a different mediator at any time.

If no agreement is reached between the Parties in dispute on the selection and appointment of the mediator within fifteen (15) Business Days of the meeting of the General Managers pursuant to Clause 13.4 (b) of this Contract, then any Party in dispute may request the chief executive of the Australian Commercial Disputes Centre Limited to appoint a mediator, and any mediator so appointed shall be the mediator for the dispute pursuant to this Clause 13 of this Contract.

13.6 Initial Mediation Meeting

The Parties in dispute must as soon as practicable after notification of the dispute to the mediator, confer in the presence of the mediator to:

- (a) identify the subject matter of the dispute
- (b) identify the provisions of this Contract relevant to the dispute
- (c) discuss each other's position in relation to the dispute
- (d) listen to any comments made by the mediator
- (e) attempt to resolve the dispute by mutual agreement.

13.7 Mediation

The mediation will be conducted by the mediator at a time, place and in a manner agreed between the Parties in dispute or otherwise in accordance with the rules of the Australian Commercial Dispute Centre Limited ('ACDL') in force at the time of the service of the notice of dispute pursuant to Clause 13.2 of this contract.

With the consent of the parties in dispute, the mediator may appoint a neutral expert of the mediator's choice to provide assistance in relation to the mediation.

The parties agree that the mediator will act as an aid to assist them to resolve the dispute and not as an arbitrator or decider of any matter.

The parties in dispute will share equally the costs of the mediation and any neutral expert appointed by the mediator unless otherwise agreed by the Parties.

13.8 Arbitration

If the mediation does not commence within twenty (20) Business Days after appointment of the mediator or is not completed within thirty (30) Business Days of such date or the mediation is completed but does not resolve the dispute then:

- (a) any Party in dispute may terminate the mediation proceedings by written Notice to the other Party and refer the matter to arbitration; and
- (b) that written Notice must identify the matters that are still in dispute.

The arbitration will proceed in accordance with Clause 13.9 of this Contract.

13.9 Manner of Arbitration

- (a) Any dispute or difference arising out of or in connection with the Contract which is referred to arbitration shall be carried out in accordance with and subject to The Rules for Domestic Arbitration issued by ACDC.
- (b) The Party referring the matter to arbitration shall do so in accordance with the Rules referred to in Clause 13.9(a) of this Contract.
- (c) Pending any award made by the arbitrator to the contrary, the costs of the arbitration (including any fee payable to ACDC and the arbitrator) shall be paid equally by the Council and the contractor and both parties shall pay their share of such costs promptly during the course of the arbitration proceedings. Any adjustment to payments made by a party arising from the arbitrator's award must be paid by or to that party not later than 30 days after the quantum of such adjustment is calculated by the Party to whom the adjustment is payable.
- (d) subject to the Rules referred to in Clause 13.9(a) of this Contract, the arbitrator's decision on the dispute shall be final, save for any matter which may be brought before a Court pursuant to the Commercial Arbitration Act 2010 (NSW)

13.10 Time Limits

The Parties in dispute may agree to extend any of the time limits in this Clause 13 of this Contract.

13.11 Continuing Provision of Services

Despite the existence of a dispute under this Contract the Contractor must continue to perform the Services in accordance with this Contract and the Council must continue to pay for such Services.

14. Taxes and Tax Payments

14.1 Contract Sum Includes All Tax

The Service Rates include all sales tax, excise duties, consumption tax, value added tax (but not GST) and other like imposts or taxes presently imposed.

14.2 The Council May Recover Excess Tax Payments

The Council shall have the right to recover as a debt from the Contractor the following amounts:

- (a) any tax or impost paid by the Contractor and charged to the Council for the Services where an exemption concession or rebate applies; and,
- (b) any tax or impost incorporated into payments made by the Council under the Contract which may be subsequently recovered by the Contractor from the Australian Taxation Office or any other person.

14.3 Taxable Supply

It is expressly agreed that the recipient of any taxable supply under this Contract shall pay in addition to the agreed consideration for such supply the amount of any GST payable by the supplier of such taxable supply. The supplier of such taxable supply must provide the recipient of such supply with a tax invoice. The expressions 'taxable supply', 'tax invoice', 'supplier' and 'recipient' shall each have the meaning attributable to them in *A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)*.

14.4 Survival of Clause

This Clause 14 of this Contract shall survive termination or expiration of the Contract.

15. Force Majeure (Events and Interruptions of Services)

15.1 Claim of Force Majeure

If by reason of a Force Majeure Event occurring, a Party is wholly or partially unable to carry out its obligations under this Contract that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party written Notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event
- (b) details of the obligations affected
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to take to remedy the situation
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event
- (e) An estimate of the costs the Party will incur to remedy the situation and the proposed funding arrangements; and,
- (f) Details of all insurance monies which the Party will be able to rely on in making good damage caused by the Force Majeure Event.

15.2 Suspension of Rights and Obligations

Once a Party notifies the other of a Force Majeure Event, the notifying Party's obligations under this Contract (other than its obligations to make payments already owing) will, to the extent only that such obligations are affected by the Force Majeure Event, be suspended.

15.3 Provision of Further Information

Upon the Notice under Clause 15.1 of this Contract having been given the Party giving such Notice must provide the other Party promptly with all further relevant information, pertaining to the Force Majeure Event, that the other Party requests.

15.4 Duty to Mitigate

Following a notification pursuant to Clause 15.1 of this Contract, the Parties will promptly meet to identify alternative viable means of providing the Services affected and to mitigate the effect of the Force Majeure Event.

15.5 End of Period of Force Majeure

Subject to the Clause 15.6 of this Contract, the suspension of one or more obligations of a Party pursuant to Clause 15.2 ends when that Party is able to recommence fulfilment of each such obligation. At such time that Party must issue a Notice to that effect to the other Party, and immediately recommence the performance of each such obligation.

15.6 Termination after Extended Force Majeure

If a Party is rendered wholly or partially unable to carry out its obligations in relation to this Contract due to a Force Majeure Event for a period of more than five (5) consecutive Business Days, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Services. Failing an alternative means being agreed upon within ten (10) Business Days of the start of the Force Majeure Event any Party may terminate this Contract immediately by written Notice to the other party.

In the event of a termination of this Contract under this Clause 15.6 of this Contract, the provisions of this Contract relating to termination set out in Clause 11.2 and Clause 11.4.2 of this Contract apply.

15.7 Interruption of Service

Should the performance of Services under this Contract become interrupted by reason of industrial disputes or any other cause then, subject to Clause 2.1 of this Contract, the Council may have that work carried out by other persons and, without prejudice to any other right or remedy available to it, call upon the Contractor to reimburse it for any cost or expense in carrying out any of such work or deduct the amount of any such cost or expense from money payable under this Contract to the Contractor.

15.8 Acknowledgment

The Contractor acknowledges that:

- (a) it has relied on its own reasonable enquiries in preparing its tender
- (b) the Council acknowledges that the Contractor has made representations to the Council in the tender process in its Tender Response Schedules and that the Council has relied on these in entering the contract

16. Stamp Duty and Costs

- (a) The Contractor must pay all stamp duty on or arising in connection with this Contract and any other related documentation.
- (b) Each Party will bear its own legal and other costs and expenses arising directly or indirectly with respect to the preparation, execution, completion and performance of this Contract and any other related documentation.

17. Cumulative Rights

The rights or remedies conferred on any Party by this Contract are in addition to all rights and remedies of that Party at law or in equity.

18. Further Assurance

18.1 Further Documents

Each Party will sign, execute and complete all further documents necessary to effect, perfect or complete the provisions of and the transactions contemplated by this Contract.

18.2 Council's Statutory Functions

Nothing in this Contract shall fetter the Council in the exercise of its discretions in the exercise of any consent function imposed upon the Council by any law and no compensation shall be payable by the Council to the Contractor for any loss or damages suffered by the Contractor arising from the valid exercise by the Council of any such function.

19. Government Information (Public Access) Act 2009

19.1 Access to Information

1. The Contractor must, within seven (7) days of receiving a written request by the Council, provide the Council with access to the following information contained in records held by the Contractor:
 - (a) information relating directly to the performance of the Services provided to the Council by the Contractor pursuant to this Contract
 - (b) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the Services; and
 - (c) information received by the Contractor from the Council to enable it to provide the Services pursuant to this Contract.
2. For the purposes of sub-clause (1), information to be provided to the Council does not include:
 - (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margins; or
 - (b) information that the Contractor is prohibited from disclosing to the Council by provision made by or under any Act of the Parliament of NSW or the Commonwealth; or
 - (c) information that, if disclosed to the Council, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Council, whether at present or in the future.

3. The Contractor will provide copies of any of the information in sub-clause (1) as requested by the Council at the Contractor's own expense.
4. Any failure by the Contractor to comply with any request pursuant to sub-clauses (1) or (3) will be considered a breach of an essential term of this Contract and will allow the Council to terminate the Contract by giving Notice in writing of its intention so to do with the termination to take effect seven (7) days after receipt of the Notice. Once the Contractor receives the Notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of the Council, then the termination will take effect seven (7) days after receipt of the Notice.
5. This Clause is included in this Contract to facilitate the Council's obligations under s.121 of the Government Information (Public Access) Act 2009 (NSW).

19.2 Consultation

1. The Council will take reasonable steps to consult with the Contractor before providing any person with access to information relating to this Contract in response to an application under the Government Information (Public Access) Act 2009 (NSW) (GIPA Act), if it appears that:
 - (a) the information sought to be accessed:
 - i. includes personal information about the Contractor, its officers or its employees; or
 - ii. concerns the Contractor's business, commercial, professional or financial interests; or
 - iii. concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or
 - iv. concerns the affairs of a Government of the Commonwealth or a State of the Commonwealth and the Contractor is that Government;
 - (b) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and
 - (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
2. If, following consultation between the Council and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) in writing within five (5) days of the conclusion of the consultation process.
3. In determining whether there is an overriding public interest against disclosure of the information, the Council will take into account any objection received from the Contractor.
4. If the Contractor objects to the disclosure of some or all of the information and the Council nonetheless decides to release the information, the Council must not provide such access until it has given the Contractor Notice of the Council's decision and Notice of the Contractor's right to have that decision reviewed.
5. Where the Council has given Notice to the Contractor in accordance with sub-clause (4), the Council must not provide access to the information:
 - (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (b) where any review of the decision duly applied for is pending.
6. The reference in sub-clause 5(a) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

7. This Clause is included in this Contract to inform the Contractor of the Council's obligations under s.54 of the GIPA Act and the Contractor's rights under that section.

19.3 Government Contracts Register

The Contractor acknowledges that the Contract will be registered in the Council's Government Contracts Register in accordance with the requirements of Division 5 of Part 3 of the GIPA Act.

20. Confidentiality and the Media

20.1 Confidential Information

Where in connection with this Contract, Confidential Information is provided to or produced by a party, that party shall ensure that any person receiving or producing the information protects the confidential nature of the information except:

- (a) where disclosure of the information is required by law or statutory duties; or
- (b) to the extent that the Council would be prevented from exercising its Intellectual Property rights under this Contract.

20.2 Disclosure of Confidential Information

- (a) Where it is necessary to disclose Confidential Information to a third party, other than a legal advisor or for a purpose listed in Clause 20.1 of this Contract, the Party wishing to make the disclosure must obtain the written consent of the other party to the Contract.
- (b) The Contractor shall not, in marking information supplied to the Council, misuse the term 'Confidential'. The marking of information as 'Confidential' does not affect the legal nature and character of the information.

20.3 The Media

The Contractor must:

- (a) 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 Contract
- (b) refer all enquiries from the media relating to the performance of the Contract to the Supervising Officer or to the media officer nominated by the Supervising Officer; and
- (c) notify the Supervising Officer immediately of any event arising in the course of performing the Contract, which may receive media attention.

21. Use of the Council Name or Logo

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

22. Special Conditions

The Parties have agreed to adopt the special conditions, if any, set forth in the Schedule.

Schedule

(Special conditions)

[Click here and specify any special conditions or type NONE]

Subcontractor's Statement

[Insert from attached document]



SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:.....
(Business name of principal contractor) **(Note 2)**

Contract number/identifier **(Note 3)**

This Statement applies for work between:/...../..... and/...../..... inclusive, **(Note 4)**

subject of the payment claim dated:/...../..... **(Note 5)**

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature Full name.....

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Annexure

- Item 1** The Council is:
[Click here and type Council name],
of [Click here and type address].
- The facsimile number of the Council is:
[Click here and type facsimile number].
- The email address of the Council is:
[Click here and type facsimile number].
- Successful Tenderer's name/address/facsimile number to be completed*
- The Contractor is:
[Click here and type Contractor name],
of [Click here and type address].
- The facsimile number of the Contractor is:
[Click here and type facsimile number].
- The email address of the Contractor is:
[Click here and type facsimile number].
- Item 2** Contract Documents:
- Conditions of Contract;
 - The Tenderer's submitted Tender Return Schedules;
 - Council's letter of Acceptance of Tender;
 - The Specification;
 - The Performance Security (if in the form of a Bank Guarantee);
 - Any Addenda issued;
 - **Any and all associated subcontracts managed pursuant to this Contract.**
- Item 3 (a)** Services Commencement Date:
(Clause 2.2.1) [Click here and type Start Date of Services to Council].
- Item 3 (b)** Services Expiry Date
(Clause 2.2.2) [Click here and type Expiry Date of Services to Council]
- Item 4(a)** Initial Contract Term:
(Clause 2.2.3) [Click here and type length of Contract e.g. five (5)] years.
- Item 4 (b)** Minimum Extension Period:
(Clause 2.2.4) [Click here and type minimum extension e.g. three (3) months].
- Item 4 (c)** Maximum Extension Period:
(Clause 2.2.4) [Click here and type maximum extension e.g. two (2) years].
- Item 4 (d)** Notice Period:
(Clause 2.2.4) [Click here and type minimum notice period e.g. one (1) month].
- Item 5** Fees, charges and costs for which the Contractor is not to be responsible:
(Clause 2.3) [Click here and type cost exclusions or type NONE].

- Item 6**
(Clause 2.5.2) The hours each day when the Contractor's Representative is to be available by telephone:
[Click here and type hours].
e.g. between the hours of 8:00 a.m. and 5:00 p.m. Monday to Friday
- Item 7**
(Clause 9.2) The minimum amount of coverage under the Public Liability Policy is **Twenty Million Dollars (\$20,000,000)** (or such other amount as the Council may nominate from time to time).
- Item 8**
(Clause 10.5) Interest rate on overdue payments.
The interest rate payable at the time of the default under Section 100 of the *Civil Procedure Act 2005 NSW* relating to interest on unpaid judgement debts.
- Item 9**
(Clause 12.2) The amount of the Performance Security is:
An amount determined by the Council as being equal (to the nearest \$1,000 above) to five percent (5%) of the estimated total annual payments due to the Contractor under the Contract during its first year. The Council may vary this amount annually to reflect variations to such payments and the bank guarantee must be replaced or a further bank guarantee provided by the Contractor to reflect any such variation.
- Item 10**
(Clause 2.3
Conditions of
Tendering) Tender Closing Date
[Click here and type in the Closing Date for the Tender]
- Item 11**
(Clause 10.8) Rise and Fall Percentage Factors:
- | | |
|--|---------------------|
| Wages: | % |
| Fuels and Oils: | % |
| Other Materials: | % |
| Management Costs
and Profit Review: | <u> </u> % |
| | 100% |
- [Click here and type in Percentages]