

## **GOODS AGREEMENT**

(for Hobart City Council)

### **Parties:**

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Name	<b>Hobart City Council</b>	<b>(“Council”)</b>
ABN	39 055 343 428	
Registered Office	Town Hall, 50 Macquarie Street, Hobart, TAS	
Phone	(03) 6238 2711	

#### **Council’s Representative**

Position

Name

Phone

Email

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Name	<b>(“Supplier”)</b>
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ACN (if applicable)

ABN

Registered Address

Phone

#### **Supplier’s Representative**

Position

Name

Phone

Email

**SCHEDULE 1:**

<b>Item 1</b>	<b>Date of Agreement:</b>	The date of the Formal Instrument of Agreement
<b>Item 2</b>	<b>Notices:</b>	
	<b>(A) Council</b>	
	Name:	Hobart City Council
	Address:	50 Macquarie Street, Hobart TAS 7000
	Email address:	<a href="mailto:coh@hobartcity.com.au">coh@hobartcity.com.au</a>
	Attention:	City Procurement
	<b>(B) Supplier</b>	
	Name:	
	Address:	
	Phone number:	
	Email address:	
	Attention:	
<b>Item 3</b>	<b>Commencement Date</b>	19 May 2024 for otherwise stated in the Letter of Acceptance
<b>Item 4</b>	<b>Term</b>	The length of this Agreement beginning on the Commencement Date and continuing for three (3) years.
<b>Item 4(a)</b>	<b>Term Extension</b>	The Council may, in its absolute discretion, offer up to one (1) further term of three (3) years in accordance with clause 3.
<b>Item 5</b>	<b>Public Liability</b>	\$20,000,000
	<b>Product Liability</b>	\$20,000,000
	<b>Motor Vehicle</b>	\$20,000,000 3 <sup>rd</sup> Party per occurrence
<b>Item 6</b>	<b>Termination by Notice:</b>	Permitted by providing 30 days' prior written notice.
<b>Item 7</b>	<b>Delivery Place</b>	McRobies Gully Waste Management Centre McRobies Road SOUTH HOBART TAS 7004
<b>Item 8</b>	<b>Acceptance Method</b>	Visual Inspection.
<b>Item 9</b>	<b>Contract Manager</b>	Name: Position: Phone: Email:
<b>Item 10</b>	<b>Invoices</b>	All invoices are to be submitted to <a href="mailto:accountspayable@hobartcity.com.au">accountspayable@hobartcity.com.au</a>

## **SCHEDULE 2 – CONTRACTORS RESPONSE:**

The documents comprising the Contractor's offer to provide the Services under this Agreement to the Council are appended to the Agreement under this Schedule, including but not limited to:

- Description of the Service Fees
- Contractor's response to the Specification
- Other (please describe if applicable):

***[Drafting Note: Will be completed at the time of compiling the Contract]***

### **SCHEDULE 3 - STATEMENT OF REQUIREMENTS:**

The document describing the Council's requirements in relation to the Services to be provided by the Contractor under this Agreement are appended to the Agreement under this Schedule.

*Drafting Note: For the purposes of issuing the quote this is issued as a separate document, but will be incorporated at the time of compiling the Contract*

## **SCHEDULE 4 – CONDITIONS OF CONTRACT:**

### **Recitals:**

- A.** The Council is a Local Government Body engaged in the development, management and affairs of the municipality of Hobart.
- B.** The Council advertised a Request for Tenders for the supply of the Goods and the provision of any related Services.
- C.** The Supplier has submitted a tender for the supply of the Goods and the provision of any related Services.
- D.** The Parties have agreed to establish an agreement for the supply of the Goods, in the quantities that are ordered from time to time by the Council during the Term subject to the undermentioned terms and conditions.

### **Operative Provisions:**

#### **1. GENERAL TERMS**

##### **Definitions**

- 1.1 In this Agreement, unless the context otherwise requires:

<b>Acceptance</b>	means acceptance of the Goods by the Council in accordance with clause 7.
<b>Agreement</b>	means this agreement between the Council and the Supplier, as set out in the Formal Instrument of Agreement and the documents (including all Schedules and Annexures) listed in it.
<b>Alcohol</b>	means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols in methyl and isopropyl alcohol, no matter how it is packaged or in what form the alcohol is stored, utilised or found. (The only exception is products which contain alcohol and are used for legitimate reasons in the Workplace.)
<b>Business Day</b>	means a day which is not a Saturday, Sunday or public holiday in Hobart, Tasmania, Australia.
<b>Commencement Date</b>	Means the date specified in Item 3 of Schedule 1.
<b>Contract Manager</b>	means the person identified in Item 9 of Schedule 1 and includes any other person or persons appointed by the Council from time to time as the Contract Manager.
<b>Contract Material</b>	means all material brought, or required to be brought, into existence as part of, or for the purposes of, supplying or delivery of the Goods and performing the Services including documents, information and data stored by any means.
<b>Contract Price</b>	means the prices and rates for the Goods accepted by the Council and set out in Schedule 2.
<b>Correctly Rendered Invoice</b>	means an invoice provided by the Supplier that meets the requirements set out in clause 10.3.

<b>Council</b>	means the party described as the Council set out in Item 2A of Schedule 1 and includes the Council's employees, authorised subcontractors and agents.
<b>Council's Representative</b>	means the person(s) appointed in writing by the Council from time to time as the Council's Representative.
<b>Council Material</b>	means any material provided by or on behalf of the Council to the Supplier for the purpose of this Agreement including documents, equipment, information and data stored by any means.
<b>Date for Delivery</b>	means as agreed to by the Council in writing from time to time or as stated in the relevant Purchase Order.
<b>Defect</b>	means a defect, error, omission, malfunction or other fault in the Goods such that the whole or part of the Goods does not comply with, and cannot be used in accordance with, its intended use, this Agreement or the Specification.
<b>Delivery</b>	means the delivery of the Goods and Services in accordance with the provisions of this Agreement.
<b>Delivery Place</b>	means the place for delivery of the Goods and Services as specified in Item 7 of Schedule 1.
<b>Drugs</b>	means medicine or other substance which has a physiological effect when ingested or otherwise introduced into the body and includes Illicit Drugs (as defined in the Road Safety (Alcohol and Drugs) Act 1970 (TAS) and as prescribed in the Road Safety (Alcohol and Drugs) Regulations 2009 (TAS)).
<b>Formal Instrument of Agreement</b>	means the document entitled Formal Instrument of Agreement listing the documents comprising the agreement between the Parties and signed by both Parties.
<b>Goods</b>	means the goods (or any of them) to be provided by the Supplier to the Council as specified in the Specification and Tender and as ordered by the Council and, in relation to a Purchase Order Contract, means the goods specified and quantified in the relevant Purchase Order.
<b>High Risk</b>	Has the meaning generally given to that term under the Work Health and Safety Regulations 2012 (Tas).
<b>Intellectual Property</b>	means all present and future copyright, patents, registered and unregistered trademarks, registered designs, confidential information including trade secrets and know-how and all other intellectual property rights resulting from intellectual activity.
<b>Latent Defect</b>	means a defect or deficiency in design, materials or workmanship which could not have been discovered by the Council: <ul style="list-style-type: none"> <li>a) using the acceptance tests specified in this Agreement; or</li> <li>b) by reasonable inspection before the acceptance of the Goods and Services,</li> <li>c) and which has an adverse effect on the functionality,</li> </ul>

	performance or capability of the Goods, or any part of them, so as to require rectification or modification.
<b>Legislative Requirements</b>	means Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth of Australia or the State of Tasmania applicable to the supply of the Goods or Services.
<b>Moral Rights</b>	means: <ul style="list-style-type: none"> <li>a) a right of attribution of authorship;</li> <li>b) a right not to have authorship falsely attributed; or</li> <li>c) a right of integrity of authorship;</li> <li>d) granted to creators under the Copyright Act 1968 (Cwlth).</li> </ul>
<b>OTC Drugs</b>	means Drugs available to persons without a prescription.
<b>Prescription Drugs</b>	means Drugs prescribed by an individual person's treating medical practitioner for a medical condition.
<b>Parties</b>	means Council and the Supplier.
<b>Purchase Order</b>	means any written notice issued by the Council to the Supplier ordering the Goods and/or Services.
<b>Purchase Order Contract</b>	means the contract which arises between Council and the Supplier when Council delivers a Purchase Order or purchases Goods or Services.
<b>Request for Tender</b>	means the documents issued by the Council inviting offers to supply the Goods and/or Services to the Council, including any addenda issued or amendments made thereto by the Council.
<b>Services</b>	means the services, including any works as set out in the Specification, required to be undertaken by the Supplier in order for the Supplier to meet its obligations under this Agreement and/or which are incidental to the provision of, or form part of, the Goods.
<b>Specification</b>	means the statement of the Council specifying and describing the Goods and Services set out in Schedule 3 Statement of Requirements.
<b>Supplier</b>	means the party described in Item 2B of Schedule 1 and where the context requires, includes the Supplier's employees, authorised subcontractors and agents.
<b>Supplier's Representative</b>	means the person identified on the cover sheet of this Agreement.
<b>Tender</b>	means: <ul style="list-style-type: none"> <li>a) documents constituting an offer by the Supplier to supply the Goods and Services to the Council and accepted by the Council (in part or entirety); and</li> <li>b) supplemental document of clarification or variation agreed to in writing by the parties,</li> </ul>

	as set out in Annexure A - Tender.
<b>Term</b>	means the length of this Agreement as fixed in Item 4 of Schedule 1.
<b>Valid Purchase Order</b>	means a Purchase Order that meets the requirements of clause 4.3.
<b>Warranty Period</b>	means the period stated in the Specification for the Goods and Services or as otherwise agreed between the Council and the Supplier on a case by case basis and where no such period is specified or otherwise agreed between the parties, will mean at least 12 months from the date of Acceptance or satisfactory completion of the Services, whichever is the later.
<b>Worker</b>	has the meaning given to that term under the Work Health and Safety Act 2012 (Tas).
<b>Workplace</b>	has the meaning given to that term under the Work Health and Safety Act 2012 (Tas).

## Interpretation

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) a reference to this Agreement includes its schedules, appendices, annexures and attachments, and any variation or replacement of any of it;
  - (b) a reference to a statute, ordinance, code or other legislative instrument includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (c) the singular includes the plural and vice versa, and a gender includes other genders;
  - (d) a reference to a person includes:
    - (i) an individual, a firm, a body corporate, an unincorporated association or a statutory or responsible authority or other authority, as constituted from time to time; and
    - (ii) the person's executors, administrators, successors and permitted assigns;
  - (e) an agreement, representation or warranty by, or for, two or more persons binds, or is for their benefit, together and separately;
  - (f) a covenant forbidding a person from doing something, also forbids that person from authorising or allowing another person to do it;
  - (g) a reference to anything (including an amount) is a reference to all or any part of it, and a reference to a group of persons is a reference to any one or more of them;
  - (h) a reference to a clause, paragraph, schedule, annexure or appendix, is a reference to a clause, paragraph, schedule, annexure or appendix in or to it;
  - (i) words or phrases derived from a defined word have a corresponding meaning to the defined word;
  - (j) a term of inclusion is not to be interpreted to be a term of limitation;
  - (k) all references to monetary sums are to Australian currency;
  - (l) a reference to time is to the time in the place where the obligation is to be performed;

- (m) if the day on or by which an act, matter or thing is to be done under it is not a Business Day, then that act, matter or thing must be done no later than the next Business Day;
- (n) if the Supplier is a trustee, the Supplier enters this Agreement personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Agreement;
- (o) an uncertainty or ambiguity in the meaning of a provision is not to be interpreted against a party only because that party prepared the provision; and
- (p) headings are included for convenience only, do not form part of it, and are not to be used in its interpretation.

## 2. TERM OF AGREEMENT

- 2.1 This Agreement begins on the Commencement Date and will continue, unless earlier terminated, for the Term.

## 3. FURTHER TERM

### Council's Discretion of a Further Term

- 3.1 Council may, in the Council's absolute discretion, offer a further term of three (3) years (the "Further Term").
- 3.2 If the Council offers the Supplier a Further Term, the Supplier must accept the Further Term strictly in accordance with the provisions of this Agreement.
- 3.3 If the Supplier fails to accept the Further Term strictly in accordance with the terms of this Agreement, then the Council's offer of a Further Term will lapse and the Agreement will be at an end at the expiration of the Term, unless earlier terminated.

### Offer of a Further Term

- 3.4 If the Council intends to offer a Further Term to the Supplier, the Council must provide written notice to the Supplier of the Council's intention to offer the Further Term prior to the expiration of the Term. The contract for the Further Term must contain all the terms of this Agreement (except this Further Term clause), subject to any changes required by the Council.

### Acceptance of Further Term

- 3.5 Within fourteen (14) days after the date of the Council's offer of the Further Term, the Supplier must provide written notice to the Council if the Supplier accepts the Further Term.

### Execution of Agreement of Extension

- 3.6 If the Council provides the Supplier with a document evidencing a formal agreement of extension for the Further Term (the "Agreement of Extension"), the Supplier must provide the Council with a properly executed Agreement of Extension within fourteen (14) days after the date of the Council's request that the same be executed.

## 4. ORDERING OF GOODS

### Ordering Method

- 4.1 The Council will order the Goods and any related Services by Purchase Order. A Purchase Order may be given in any of the ways permitted under clause 30.1.

### Ordering of Goods and Services

- 4.2 The Supplier must during the Term:
- (a) only supply the Goods and quantities and Services described in a Purchase Order;
  - (b) comply with the terms and conditions of a Purchase Order; and
  - (c) only fulfil Valid Purchase Orders.

**Valid Purchase Orders**

- 4.3 In order to be a Valid Purchase Order under this Agreement, a Purchase Order must be placed with the Supplier by:
- (a) a Council's Representative; or
  - (b) another person notified by the Contract Manager in writing to the Supplier as being authorised by the Council to place Purchase Orders under this Agreement.

**Supplier's Receipt of Invalid Purchase Orders**

- 4.4 In the event of the Supplier receiving an invalid Purchase Order, the Supplier must:
- (a) not fulfil the Purchase Order; and
  - (b) immediately notify the Contract Manager that an invalid Purchase Order has been received.

**Council's action for invalid Purchase Order**

- 4.5 The Contract Manager may in relation to an invalid Purchase Order:
- (a) instruct the Supplier to disregard the Purchase Order, in which case the Purchase Order will be of nil effect; or
  - (b) provide written authorisation to the Supplier to fulfil the Purchase Order (either in part or in full), in which case the Purchase Order will come into effect on the date of the Council's written authorisation for the order to be filled.

**Effective date of a Purchase Order**

- 4.6 Unless otherwise agreed, a Purchase Order comes into force on the date the Council serves it on the Supplier. A Purchase Order is taken to have been served at the times specified in clause 30.2.

**5. PROVISION OF GOODS AND SERVICES****Supply of the Goods**

- 5.1 The Supplier must supply the Goods in accordance with:
- (a) the terms and conditions of this Agreement; and
  - (b) the requirements of the Specification; and
  - (c) any other reasonable direction of the Council.

**General obligations for Goods**

- 5.2 The Goods must:
- (a) be newly manufactured or produced;
  - (b) meet all relevant Australian Standards, best practice and guidelines;
  - (c) be of reputable and identifiable manufacture or production;
  - (d) be consistent with industry standard;
  - (e) be of good merchantable quality and conform to all legally applicable standards;
  - (f) be free from defects;
  - (g) be of a kind suitable for the purpose and consistent with the nature and character of the use of the Goods;
  - (h) be consistent with any sample provided;
  - (i) unless otherwise agreed to by the Council, be the exact brand, grade and type as set out in the Tender or as subsequently agreed to by the Council in writing; and
  - (j) be entirely suited to and fit for purpose in the intended use.

**General obligations for Services**

5.3 The Supplier must:

- (a) exercise all due care, skill, competency and attention in providing the Services;
- (b) provide the Services in a proper and workmanlike manner;
- (c) meet all relevant Legislative Requirements, codes of practice and legal requirements in the performance and provision of the Services;
- (d) do all things necessary to ensure that the Goods are provided to the reasonable satisfaction of the Council;
- (e) have all permits, licences and authorisations required in relation to the provision of the Goods;
- (f) provide the Goods in accordance with the reasonable directions of the Council; and
- (g) provide the Goods in a timely manner.

**Supplier's General Warranties**

5.4 The Supplier represents and warrants that:

- (a) it has the right to enter into this Agreement;
- (b) all representations made by the Supplier in, or in connection with, the Tender were, and remain, accurate;
- (c) it has all rights, titles, licences, interests and property necessary to lawfully perform its obligations;
- (d) the Council will receive clear unencumbered title to the Goods;
- (e) the Supplier has the expertise, resources and capacity to perform to the highest standard, all of its obligations under this Agreement;
- (f) all the statements (verbal or written), information and documents made or provided by or on behalf of the Supplier to the Council or its advisors in relation to the supply of the Goods and Services is accurate and complete and not misleading whether by inclusion or omission;
- (g) all information which the Council would reasonably require and reasonably expect to have disclosed to it for the purpose of making an informed assessment of the ability of the Supplier to perform its obligations under this Agreement has been fully and specifically disclosed in writing to the Council before the date of this Agreement and will be updated and advised to the Council on a timely basis;
- (h) the Supplier has exercised its own judgement in entering into this Agreement and has not relied on any warranty or representation made by the Council, its officers, employees or agents, save as specifically set out in this Agreement;
- (i) the Supplier and the Supplier's employees, subcontractors and agents will:
  - (i) comply with all reasonable directions of the Council in relation to the supply of the Goods;
  - (ii) comply with all Legislative Requirements;
  - (iii) cooperate with the Council's employees and the other contractors of the Council;
  - (iv) comply with the instructions and directions of any person authorised by a relevant statute or regulation to give instructions affecting the Goods and/or Services;
- (j) the Supplier is entitled to use any Intellectual Property which is used in connection with the Goods and Services or any other deliverables supplied under this Agreement and the provision of Contract Material will not infringe the Intellectual Property rights of any third party; and

- (k) the Supplier is able to provide all of the benefits and rights and comply with all of its promises and warranties set out in the Tender and this Agreement.

## 6. DELIVERY

### Delivery times

- 6.1 Delivery of the Goods must occur during the hours of 7:30am to 4:00pm, Monday to Friday (excluding Public Holidays).

### Delivery to Delivery Place

- 6.2 The Supplier must, at its own expense, deliver the Goods to the Delivery Place by the Date for Delivery, or such other date as the Council's Representative agrees to in writing. Delivery is not complete until it is acknowledged in writing by the Council's Representative.

### Inductions

- 6.3 The Council may, in the Council's sole discretion, require the Supplier and the Supplier's personnel and subcontractors to be inducted on site as required during the Term, as to any specific workplace health and safety matters required to be managed by the Supplier.
- 6.4 Any costs associated with attendance at inductions by the Supplier, the Supplier's personnel and subcontractors will be borne by the Supplier.

### Unloading of Goods

- 6.5 Delivery includes the unloading of the Goods and is the Supplier's responsibility unless otherwise directed by Council.

### Notice of Delivery

- 6.6 If requested by the Council's Representative issuing the Purchase Order, the Supplier must give reasonable notice of Delivery.

### Conduct at Council's Premises

- 6.7 The Supplier must, if using or accessing the Council's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances

### Returns

- 6.8 During the Term, the Supplier will manage the process for return of items by the Council that:
- (a) do not meet the requirements of this Agreement;
  - (b) contain manufacturing faults; or
  - (c) have been incorrectly supplied by the Supplier.
- 6.9 There will be no cost to the Council for the return of items.

### Legislative Requirements

- 6.10 The Supplier must comply with all Legislative Requirements concerning Delivery.

## 7. ACCEPTANCE TESTING

### Assessment of Goods and Services

- 7.1 The Council will have 10 Business Days from satisfactory Delivery to undertake acceptance testing to determine whether the Goods and Services comply with the Specification, this Agreement and the Purchase Order.

### Conduct of Acceptance Testing

- 7.2 The Council will perform the Acceptance tests in the manner specified in Item 8 of Schedule 1 and/or by other appropriate means.

- 7.3 The Supplier must at its own cost provide all assistance reasonably requested by the Council for the purposes of performing the Acceptance tests.

#### **Rejection of Goods or Services**

- 7.4 If the Council rejects the Goods and/or Services, the Council must within the timeframe allowed for Acceptance testing provide a list of defects and deficiencies to the Supplier at the time of rejection.
- 7.5 Acceptance of the Goods and/or Services will be deemed if the Council fails to notify the Supplier in writing within the time for acceptance testing, that the Goods and/or Services are rejected.

#### **Rectification of non-compliant Goods and Services**

- 7.6 If the Council notifies the Supplier that all or part of the Goods and/or Services are not Accepted, the Supplier must within 5 Business Days after the date of such notice:
- (a) take all necessary steps to promptly rectify the Goods including the replacement of the rejected Goods;
  - (b) take all necessary steps to promptly rectify the Services including to undertake rectification work at the Supplier's own cost;
  - (c) give notice to the Council when the Goods and/or Services have been rectified; and
  - (d) allow the Council to repeat the assessment for Acceptance for all or part of the Goods and/or Services.

#### **Removal of rejected Goods**

- 7.7 The Supplier, at its cost, must collect and remove all rejected Goods from wherever they are held, as soon as practicable or the Council may at the Supplier's expense either:
- (a) return the Goods to the Supplier; or
  - (b) store them.

#### **Refund of payments for rejected Goods or Services**

- 7.8 If any money has been paid by the Council to the Supplier for Goods or Services which are subsequently rejected under this Agreement (including Goods which have been accepted but which are later found to have a Latent Defect), then the Council will be entitled to claim, by written notice, the immediate refund of that money, which will be a debt due to the Council. The Council may also recover that money by set-off against any other money it owes to the Supplier.

#### **Discovery of Latent Defect**

- 7.9 Despite anything to the contrary in this Agreement, if the Council discovers a Latent Defect in the Goods, then within 10 Business Days of discovering that defect, the Council may reject the Goods by written notice to the Supplier giving reasons for the rejection.

## **8. OWNERSHIP AND RISK**

#### **Ownership**

- 8.1 Ownership and property in the Goods, free of all legal and equitable adverse interests, passes to the Council upon Acceptance.

#### **Risk**

- 8.2 Risk in the Goods and Contract Materials passes to the Council upon satisfactory Delivery.

## **9. WARRANTY PERIOD**

#### **Repair and replacement of defective Goods**

- 9.1 Without limiting any other warranty implied by statute or generally at law, if a Defect appears in the Goods within the Warranty Period, then the Supplier:

- (a) is responsible for its replacement to ensure the Goods fully comply with the Specification, the Purchase Order and this Agreement; and
- (b) must pay all costs in relation to the performance of its obligations to replace or undertake remedial work including any packing, freighting, repair, modification, unloading costs.

**Commencement of Warranty Period**

- 9.2 The Warranty Period in relation to the Goods will commence on Acceptance of the Goods by the Council.

**Replacement Warranty**

- 9.3 All replacement Goods supplied by the Supplier are warranted by the Supplier to the same extent as the Goods, from the completion of that repair, replacement or remedial work.

**Failure to repair or replace**

- 9.4 If the Supplier does not comply with its obligations under this clause within a reasonable time after receipt of notice to do so, then the Council may have that work or replacement done at the cost of the Supplier, which cost will be a debt due and owing to the Council.

**Third party warranty**

- 9.5 Without limiting any obligation of the Supplier under this Agreement, the Supplier must:
- (a) ensure the Council receives to the Council's satisfaction the benefit of all manufacturer and other relevant third party warranties in respect of the Goods;
  - (b) ensure the Council is advised of the warranty; and
  - (c) at its own cost, and in a timely manner, act as the agent of the Council to enforce any manufacturer's or other third party's warranty.

**10. CONTRACT PRICE****Contract Price**

- 10.1 The Council must pay the Contract Price to the Supplier for Goods delivered and accepted by the Council under this Agreement. There is no additional cost for any Services performed under this Agreement.

**Time for payment**

- 10.2 Payment will be made by the Council within 20 Business Days after the date of Acceptance of the Goods or receipt of a Correctly Rendered Invoice, whichever is the later.

**Correctly Rendered Invoice**

- 10.3 For the purposes of this Agreement, for a tax invoice to be correctly rendered it must:
- (a) provide a sufficiently detailed description and itemisation to the satisfaction of the Council of the Goods and Services provided;
  - (b) note the number of the Purchase Order or be accompanied by a copy of the Purchase Order to which the Goods and Services relate;
  - (c) include the Supplier's name and Australian Business Number;
  - (d) include an invoice number;
  - (e) include the address to where the Goods were delivered;
  - (f) provide the GST exclusive value of the amount claimed;
  - (g) provide the GST component;
  - (h) provide the GST inclusive value of the amount claimed; and

- (i) be delivered to the Council's Accounts Payable department at the email address specified in Item 10 of Schedule 1.

#### **Incorrectly Rendered Invoice**

- 10.4 Any invoices received by the Council that are not Correctly Rendered Invoices may be returned to the Supplier without payment.

### **11. GST**

#### **Interpretation**

- 11.1 In this clause, "GST" refers to goods and services tax under *A new Tax System (Goods and Services) Act 1999* (Cwlth) ("GST Act") and, where the context requires, the terms used have the same meanings as in the GST Act.

#### **Payment of GST**

- 11.2 Subject to any other provision of this Agreement expressing a contrary intention, if GST is imposed on a supply made under it, then the party paying for the supply must pay the amount of the GST to the party making the supply, at the same time as, and in addition to, the amount payable for the supply.

#### **Provision of Tax Invoice**

- 11.3 A party making a taxable supply under this Agreement must give the recipient a tax invoice for the taxable supply when that supply is made.

### **12. PRICE ADJUSTMENT INDEXATION DURING TERM**

#### **12.1 CPI REVIEW**

The Contractor may elect to receive an adjustment for the Consumer Price Index on an applicable Review Date (being the commencement date of any further term of the Contract) in accordance with clause 13.1 (CPI Review) of the Conditions of Contract.

#### **12.2 ALTERNATIVE PROPOSAL FOR PRICING ADJUSTMENT**

In the event that the Service Provider considers that an adjustment for CPI does not adequately reflect the actual movement in pricing for supplying the goods and services, the Service Provider may elect to put a business case to the Council to support an adjustment in pricing by a method other than one based on CPI in accordance with clause 13.2 (Alternative Proposal for Pricing Adjustment) of the Contract. The Council, acting reasonably, will consider any such request in its discretion. Any adjustment agreed between the parties as an alternative to an adjustment for CPI will apply from the applicable Review Date (being the commencement date of any further term of the Contract). In the event that the alternative proposal for adjustment is not accepted by Council, the Service Provider will be entitled to receive the adjustment for CPI if it elects to do so.

### **13. ADJUSTMENT / INDEXATION OF PRICING**

#### **CPI Review**

- 13.1 The Contract Price shall be subject to review as follows:
- (a) the Contractor may elect if it wishes for a CPI review to apply on an applicable Review Date.
  - (b) on the applicable Review Date and if so elected by the Contractor under Clause 12.1, the Contract Price will be adjusted (either increased or decreased) in accordance with the percentage rise or fall in the Consumer Price Index using the formula  $ACP = B \times C$ , where:
    - (i) ACP = the adjusted Contract Price;
    - (ii) B = the Contract Price applicable immediately prior to the applicable Review Date; and

- (iii) C = the annual percentage increase to one decimal place in the Consumer Price Index published immediately prior to the applicable Review Date;
- (c) "Consumer Price Index" means the consumer price index (Hobart – All Groups Percentage Change (from Corresponding Quarter of Previous Year)) published by the Australian Bureau of Statistics; and
- (d) if the Consumer Price Index is discontinued or suspended, the calculation is to be made using whatever index is substituted for it. If no other index is substituted for it, the calculation is to be made using the index or calculation nominated by the President of the Law Society of Tasmania.
- (e) in the event that the Contractor makes the election under clause 12.1 to apply the adjustment for the Consumer Price Index on an applicable Review Date, the Contractor must submit the adjusted Schedule of Rates, together with the applicable value for "C" applied in the formula above, to the Council's Representative for verification and approval. The adjusted Schedule of Rates should be provided in the same format as required for the original tender however for the avoidance of doubt the Council's expectation is that complex Schedules of Rates will be supplied in excel format.

#### **Alternative Proposal for Pricing Adjustment**

13.2 In the event that the Service Provider considers that an adjustment for CPI does not adequately reflect the actual movement in pricing for supplying the goods and services, the Service Provider may elect to put a business case to the Council to support an adjustment in pricing by a method other than one based on CPI in accordance with clause 13.2 (Alternative Proposal for Pricing Adjustment) of the Contract. The Council, acting reasonably, will consider any such request in its discretion. Any adjustment agreed between the parties as an alternative to an adjustment for CPI will apply from the applicable Review Date (being the commencement date of any further term of the Contract). In the event that the alternative proposal for adjustment is not accepted by Council, the Service Provider will be entitled to receive the adjustment for CPI if it elects to do so.

## **14. FAIR WORK OBLIGATIONS**

### **Fair Work Questionnaire**

14.1 The Service Provider warrants that all information provided to the Council during or in connection with the Tender process was accurate, current and complete at the time at which it was provided, including but not limited to information about its workplace policies and practices, compliance with its obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009* and contract management practices provided to the Council in the Fair Work Questionnaire.

### **Notification of material changes**

14.2 During the Term, the Service Provider must notify the Council in the event of material change to any of the information provided to the Council during or in connection with the Tender process, including but not limited to information about its workplace policies and practices, compliance with its obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009* and contract management practices provided to the Council in the Fair Work Questionnaire.

### **Legislative compliance**

14.3 During the Term, the Service Provider must comply, and take all reasonable steps to ensure that its subcontractors comply, with all applicable obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009*.

### **Communicate to employees**

14.4 Within two (2) Business Days of the Commencement Date, the Service Provider must communicate the following information to its employees and as far as practicable to all of the employees of its subcontractors:

- (a) A specified representative of the Service Provider that employees, including employees of subcontractors, are invited to contact if the employees have any concern about the payment of wages, loadings, allowances and penalties owed to them for any work performed during the term of the Agreement; and
- (b) Where to access further information about workplace rights and entitlements including the Fair Work Ombudsman's website [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Fair Work Infoline 13 13 94.

14.5 The Service Provider must promptly communicate the information specified in clause 14.4 to all new employees commencing after the Commencement Date.

#### **Information to be provided to Council**

14.6 During the Term, the Service Provider must provide the Council with any information that the Council reasonably requires to confirm that the Service Provider is complying, and as far as practicable that its subcontractors are complying, with all applicable obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009*.

#### **Service Provider audits**

14.7 During the Term, the Service Provider will undertake annual audits to determine that the correct wages, loadings, allowances and penalties have been paid to its employees, and the Service Provider will rectify any underpayments within 10 Business Days of identifying the underpayment.

#### **Notify compliance activity**

14.8 During the Term, the Service Provider must inform the Council of any:

- (a) compliance action taken by the Fair Work Ombudsman, including but not limited to penalty infringement notices, compliance notices, enforceable undertakings, proactive compliance deeds or court orders; or
- (b) other court orders;

arising from non-compliance with the *Fair Work Act 2009* or *Fair Work Regulations 2009* by the Service Provider, and any remedial action that the Service Provider is required to take, has taken or proposes to take as a result of the compliance action or court order.

#### **Participate in compliance activity**

14.9 During the Term, the Service Provider must actively and cooperatively participate in all compliance activities associated with its obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009*, including but not limited to participating in investigations of workplace complaints and audits undertaken by the Fair Work Ombudsman or other regulatory agencies.

#### **No assignment or sub-contracting without consent**

14.10 The Service Provider must not sub-contract or assign this Agreement or any part of it without the prior written approval of the Council.

#### **Reciprocal obligations for sub-contractors**

14.11 The Service Provider must ensure that all subcontracts impose obligations on sub-contractors equivalent to the obligations under this clause 14.

#### **Service Provider to commit resources**

14.12 The Service Provider must commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the requirements of this clause 14.

#### **Council's right to terminate**

14.13 The Council reserves the right to terminate this Agreement in the event that, in the sole opinion of the Council and in its discretion, the Service Provider fails to comply with any of the provisions of this clause 124.

- 14.14 Depending on the materiality of the non-compliance referred to in clause 14.13, Council may, in its discretion, allow the Service Provider a period of time (to be determined by the Council in its discretion depending on the nature of the non-compliance) to remedy the non-compliance before exercising its right to terminate this Agreement under clause 14.13.

## **15. INTELLECTUAL PROPERTY**

### **Contract Material**

- 15.1 The title to, and property (including all Intellectual Property) in all Contract Material vests in the Council upon its creation, but that material must remain readily available to the Supplier to the extent necessary to enable the Supplier to perform its duties under this Agreement.
- 15.2 On the expiration or earlier termination of this Agreement, the Supplier must immediately deliver all Contract Material in its possession or control to the Council and if necessary, transfer any Intellectual property forming part of that material to the Council.
- 15.3 The Supplier will ensure that the Contract Material is only used, copied, supplied or reproduced for the purposes of this Agreement.

### **Pre-existing Intellectual Property rights**

- 15.4 Nothing in this Agreement will affect the Supplier's ownership in intellectual property that existed at the date of this Agreement (the "existing IP").
- 15.5 The Supplier grants to the Council an irrevocable, perpetual, royalty-free, non-exclusive and worldwide licence (including sub-licence) to publish, communicate, reproduce, modify, adapt and use in anyway the existing IP where the Supplier uses, incorporates, builds on or develops any of the Supplier's existing IP as a result of or incidental to the performance of the Services or supply of the Goods.

## **16. INTELLECTUAL PROPERTY INDEMNITY**

- 16.1 The Supplier will indemnify the Council against any suit, action, proceedings or claim that the Services, the Goods or the use of the Contract Material infringes the Intellectual Property rights of any third party.

### **Licence to use Intellectual Property**

- 16.2 The Supplier grants to the Council, for no additional charge, a non-exclusive, world-wide perpetual licence to use all Intellectual Property rights in relation to the Goods and Services supplied under this Agreement.

## **17. MORAL RIGHTS**

### **Moral Rights consent from Supplier**

- 17.1 The Supplier unconditionally consents to any infringement of its Moral Rights resulting from any use, by or on behalf of the Council, of the Contract Material described for the purposes of the Services, the Goods or any future use undertaken by the Council.

### **Moral Rights consent from third parties**

- 17.2 To the extent that any third party has Moral Rights, the Supplier warrants that:
- (a) for pre-existing materials that form part of the Contract Material, it has obtained; and
  - (b) for new materials coming into existence for the purpose of this Agreement and that form part of the Contract Material, it will obtain before or immediately on creation,
- the third party's unconditional consent to any use of those Contract Materials by or on behalf of the Council for the purposes of the Services, the Goods or any future use undertaken by the Council.

### **Supply of documentary evidence**

- 17.3 If the Council so requests, the Supplier must promptly provide to the Council all Moral Rights consents required by clause 17.2.

## 18. COUNCIL MATERIAL

### Council Material remains property of the Council

18.1 Council Material remains the property of the Council and on:

- (a) the completion of the Delivery of the Goods and Services for which it has been provided; or
- (b) the expiration or earlier termination of this Agreement,

whichever is the earlier, the Supplier must immediately return all the Council Material to the Council. The cost of delivery must be paid by the Supplier.

### Supplier must keep Council Material safe

18.2 The Supplier is responsible for the safe keeping and maintenance of Council Material.

## 19. INDEMNITIES

### Supplier indemnifies Council

19.1 The Supplier hereby indemnifies and releases the Council, its officers, employees and agents (Indemnified Party) against any present and future loss, damage, claim, action or expense (including legal expense) whatsoever (including to or in respect of third parties) which any Indemnified Party suffers as a direct or indirect result of, or which arises or is in connection with, any of the following:

- (a) Any damage or injury to any person or property caused as a result of the supply of the Goods and/or the provision of the Services;
- (b) a breach of this Agreement or any Purchase Order Contract by the Supplier, including any failure to deliver the Goods or Services in accordance with either this Agreement, the Specification or any Purchase Order Contract;
- (c) any warranty given by the Supplier under this Agreement being incorrect or misleading in any way; or
- (d) any negligent act or failure to act by the Supplier or any of the Supplier's employees, agents, officers or sub-contractors,

except to the extent that any loss, damage, claim, action, injury or expense is caused or contributed to by the negligence of the Council.

### Nature of indemnities

19.2 The indemnities in clause 19.1:

- (a) are continuing obligations of the Supplier, separate and independent from any other obligations; and
- (b) survive the termination of this Agreement.

## 20. INSURANCE

### Obligation to maintain insurance

20.1 The Supplier must have and maintain for the Term, valid and enforceable insurance policies suitable for covering the Supplier's risks, obligations and indemnities (with Council noted where applicable as an interested party) for:

- (a) product liability in the sum of not less than the amount for Product Liability specified in **Item 5**;
- (b) public liability in the sum of not less than the amount for Public Liability specified in **Item 5**;
- (c) motor vehicle insurance which includes third party liability cover against the death of or injury to persons and third party property damage arising out of the use of any vehicles owned, possessed or under the control of the Supplier or the Supplier's employees, agents, officers or sub-contractors in the sum of net less than the amount for Public Liability specified in **Item 5**;

- (d) the Supplier's liability for worker's compensation as required by law; and
- (e) any other insurance that the Council may reasonably require from to time.

**Evidence of insurance**

20.2 The Supplier must provide a copy of its insurances within 7 days of the Council's request that the same be provided.

**Supplier not to prejudice insurances**

20.3 The Supplier must not do anything that may result in insurance under clause 20.1, or any part of it, becoming invalid or unenforceable.

**21. SUPPLIER TO MAINTAIN CONFIDENTIALITY****Confidential Material**

21.1 The Supplier agrees that all documents and information (both oral and written, or other material form):

- (a) provided to the Supplier by the Council;
- (b) about or in connection with this Agreement, including any of the terms or context or negotiations;
- (c) of which the Supplier becomes aware; or
- (d) which the Supplier generates in the course of, and by reason of, this Agreement including the Tender,

is confidential material ("Confidential Material").

**Supplier's duty not to disclose**

21.2 The Supplier agrees not to disclose any Confidential Material without the prior written consent of the Council except where:

- (a) such information is generally available to the public (other than as a result of the Supplier's breach of clause 23);
- (b) the law requires the Supplier to make such a disclosure;
- (c) it is necessary or expedient that such disclosure be made to any taxation or fiscal authority; or
- (d) the Supplier makes the disclosure on a confidential basis to a professional adviser for the purposes of obtaining professional advice in relation to this Agreement.

**Disclosure by the Council**

21.3 The Council may publicly disclose on the internet, in annual reports or otherwise the following details of the Agreement:

- (a) a description of the Goods and Services;
- (b) the date of the Agreement, its Commencement Date, duration and expiry date;
- (c) a description of any provisions;
- (d) the name and business address of the parties;
- (e) the total contract price (estimated or actual), including the price payable for the extended term if any extension is exercised;
- (f) the procurement method used; and
- (g) any other matter required by law.

**Employees to comply**

21.4 The Supplier must ensure that its employees who have access to any Confidential Material are aware of, and comply with, all confidentiality obligations affecting it.

## 22. CONDUCT AT COUNCIL'S PREMISES

- 22.1 The Supplier must, if using or accessing the Council's premises, facilities or Workplace, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises, facilities or Workplace whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances.

## 23. RELATIONSHIP BETWEEN THE PARTIES

- 23.1 The Contractor is engaged by the Council as an independent contractor and nothing in this Agreement constitutes the Contractor as an agent, employee, director or partner of the Council.
- 23.2 The Contractor has no authority to incur, and will not incur, any obligation on behalf of the Council except with the prior written approval of the Council.
- 23.3 Subject to the terms of this Agreement, the parties acknowledge that the Contractor is solely responsible for controlling the manner in which the Contractor provides the Services.

## 24. TERMINATION

### Council's termination without notice

- 24.1 If Item 6 specifies that:
- (a) termination by notice is 'Permitted', then either party may terminate the engagement of the Contractor and this Agreement at any time by giving the other party prior notice of not less than the notice period specified in Item 6; or
  - (b) termination by notice is 'Not Permitted', then neither party may terminate the engagement of the Contractor and this Agreement unless that party is entitled to do so under clause 24.2 or otherwise by law.

### Termination for default

- 24.2 The Council may terminate this Agreement by giving the Supplier a written notice ("Notice of Termination") if, 5 Business Days after receipt of a written notice ("Notice of Default") requiring the Supplier to do so, the Supplier:
- (a) continues to be in breach of any of the provisions of this Agreement; or
  - (b) has not remedied each default in the performance of its obligations; identified in the Notice of Default.
- 24.3 The Notice of Termination will be effective immediately the Supplier receives it and the Council may then recover from the Supplier any loss or damage suffered by the Council because of the Supplier's default.
- 24.4 Recovery by the Council may be effected in whole or part by way of set-off against any moneys owed by, or which become due from, the Council to the Supplier under this Agreement.

### Termination does not affect accrued rights

- 24.5 Termination of this Agreement does not affect any accrued rights or remedies of a party.

## 25. NON-WAIVER

- 25.1 No failure by a party to exercise, nor delay in exercising, a right, power or remedy operates as a waiver.
- 25.2 A single or partial exercise of a right, power or remedy does not preclude any other, or further, exercise of that, or any other, right, power or remedy.
- 25.3 A waiver is neither valid nor binding on the party granting it unless made in writing and signed by the party to be bound by the waiver.

## 26. APPLICABLE LAW

### Laws of Tasmania

- 26.1 This Agreement is governed by the laws of Tasmania, Australia.
- 26.2 The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Tasmania and all courts of appeal from those courts.
- 26.3 Each party waives any right it has to object to an action being brought in a court referred to in this clause including any objection that the action has been brought in an inconvenient forum or that court does not have jurisdiction.

## 27. RESOLUTION OF DISPUTES

### Resolution of disputes

- 27.1 If a dispute arises between the parties under this Agreement then (except in the case of action required to be taken under statute), the parties undertake in good faith to use all reasonable endeavours to resolve the dispute between them by negotiation.

### Notice of dispute

- 27.2 If one party has given a written notice of a dispute to the other party, within 10 Business Days after receiving a notice of dispute, the parties must meet at least once to attempt to resolve the dispute or agree on the method to do so.
- 27.3 If the matter in dispute has not been resolved within 20 Business Days of the service of the notice of the dispute, that dispute will be referred to arbitration.
- 27.4 If the parties are unable to agree on an arbitrator within a further 5 Business Days the arbitrator will be nominated by the President for the time being of the Law Society of Tasmania.

### Final and binding decision

- 27.5 The arbitrator's or independent expert's decision, including any decision as to an expense arising from the dispute, is final and binding on the parties.

### Parties not to commence legal action

- 27.6 Except to enforce this clause, or to seek an urgent interim determination, a party must not commence or maintain an action by way of legal proceedings relating to the dispute until it has been dealt with as provided in this clause.

## 28. SUB-CONTRACTING AND ASSIGNMENT

### Supplier not to sub-contract or assign

- 28.1 The Supplier must not sub-contract, assign, part with or be relieved from, any of its rights, powers and obligations arising under this Agreement, without the prior written consent of the Council.

### Supplier remains responsible

- 28.2 The Supplier remains responsible for Delivery of the Goods and Services notwithstanding that the Supplier has sub-contracted or assigned the performance of any part of the Delivery of the Goods or Services.

### Insurance of sub-contractors

- 28.3 The Supplier must ensure that all subcontractors, prior to commencing Delivery of any part of the Goods and Services, have in place or obtain, and maintain the same insurances that the Supplier is required to hold and maintain pursuant to clause 20.

## 29. CONFLICT OF INTEREST

- 29.1 The Supplier warrants that, at the date of this Agreement, no conflict of interest exists, or is likely to arise, in the supply of the Goods and Services and that if, during the Term, a conflict of interest arises, then the Supplier will notify the Contract Manager immediately in writing, of that conflict or risk.

## 30. NOTICES

### How a notice can be given

- 30.1 A notice or other communication is properly given or served by a party if that party addresses or delivers it:
- (a) by hand;
  - (b) by post;
  - (c) by facsimile; or
  - (d) by electronic mail (email); or
  - (e) to the relevant address in the Agreement or the address last communicated in writing to that party.

### When a notice is deemed to be received by a party

- 30.2 A notice or other communication is deemed to have been received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
  - (b) sent by post to an address within Australia, after 6 Business Days; or
  - (c) sent by a facsimile, at the time the facsimile machine from which the it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours) to the recipient's facsimile machine;
  - (d) sent by electronic mail (email), upon the sender receiving a message that the message has been delivered to the recipient or upon the sender receiving a response from the recipient or at the time the other party acknowledges receipt by any means, whichever is the earlier.

## 31. SEVERANCE

### Severability

- 31.1 Should any part of this Agreement be or become invalid or is illegal or unenforceable, that part may be severed from this Agreement. Such invalidity, illegality or unenforceability will not affect the validity of the remaining provisions of this Agreement which continue in full force.

### Maintaining the basic nature of this Agreement

- 31.2 Clause 30.1 has no effect if the severance alters the basic nature of this Agreement.

## 32. COUNCIL'S RIGHTS

- 32.1 An express statement of a right of the Council under this Agreement is without prejudice to any other right of the Council expressly stated in this Agreement or arising at law, all rights being cumulative.

## 33. INCONSISTENCY

- 33.1 If something in a schedule, annexure or an attachment to this Agreement is inconsistent with a clause of this Agreement, then the latter prevails.

## 34. ENTIRE AGREEMENT

- 34.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, negotiations and understandings between the parties in relation to its subject matter.
- 34.2 The Supplier's standard or usual terms and conditions of supply (if any) are expressly excluded with the effect that this Agreement exclusively applies and constitutes the entire agreement between the parties.

### **35. CONTINUING OBLIGATIONS**

35.1 The termination or expiration of this Agreement does not act to extinguish a debt, obligation or liability of either of the parties which has accrued under the Agreement and in particular the provisions, rights and obligations described in the following clauses will survive and continue to apply:

- (a) 7 (Acceptance Testing);
- (b) 8.1 (Ownership);
- (c) 8.2 (Risk);
- (d) 9 (Warranty Period);
- (e) 15 (Intellectual Property);
- (f) 16 (Intellectual Property Indemnity);
- (g) 17 (Moral Rights);
- (h) 18 (Council Material);
- (i) 19 (Indemnities);
- (j) 20 (Insurance);
- (k) 21 (Supplier to maintain confidentiality);
- (l) 24 (Termination);
- (m) 25 (Non-waiver);
- (n) 26 (Applicable Law);
- (o) 27 (Resolution of Disputes);
- (p) 29 (Conflict of Interest);
- (q) 32 (Council's Rights);
- (r) 33 (Inconsistency);
- (s) 34 (Entire Agreement);
- (t) 35 (Continuing Obligations);
- (u) 36 (Non-reliance); and
- (v) 37 (Work Health and Safety and Industrial Relations).

### **36. NON-RELIANCE**

#### **The Supplier:**

36.1 warrants that when entering this Agreement, it did not in any way rely upon any information, representation or statement forming part of the Request for Tender or otherwise provided by the Council; and

36.2 agrees the Council will not be liable to it in relation to any claim arising out of, or in any way connected with, any errors in or omissions from the Request for Tender or any other information provided to, or received by, it from any person in connection with the Tender process.

### **37. WORK HEALTH AND SAFETY AND INDUSTRIAL RELATIONS**

#### **Legislative compliance**

37.1 In the course of delivering the Services in connection to this Agreement, the Supplier must comply with:

- (a) the Industrial Relations Act 1984;
- (b) the Fair Work Act 2009;

- (c) the Work Health and Safety Act 2012;
- (d) the Workers Rehabilitation and Compensation Act 1988; and
- (e) all other all Acts, Regulations, local laws and by-laws, and Codes of Practice which are in any way applicable to the delivery of the Services.

**Personnel**

- 37.2 The Supplier will provide all of the personnel necessary to perform the requirements of this Agreement and must ensure that all of the personnel in any way engaged in the provision of work or services in connection to this Agreement are licensed and possess the appropriate qualifications, are competent and are experienced in the type of work or services that they are engaged to undertake.
- 37.3 The Supplier will immediately at the request of the Council dismiss from the continued provision of any work or services in connection to this Agreement any person who may in the opinion of the Council be considered as incompetent, a risk to the Council in discharging its legal obligations or who has, in the sole judgement and discretion of the Council, engaged in any act of misconduct.
- 37.4 The Supplier is responsible for maintaining good industrial relations with its employees and the employees of any of its subcontractors and suppliers and must refrain from any action that might adversely affect the Council in this regard.
- 37.5 The Supplier and any person engaged in the provision of work or services in connection to this Agreement, including any subcontractor or agent of the Supplier, must not engage in unethical work practices or engage employees or sub-contracted workers upon terms and conditions which are not in accordance with relevant Legislative Requirements or which are not commensurate with industry standards generally applicable in the State of Tasmania.
- 37.6 Where an industrial award, agreement or order may apply to the capacity in which an employee is engaged by the Supplier, or by a subcontractor, in the provision of work or services in connection to this Agreement, the rates of pay and conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award, agreement or order.

**Alcohol and other drugs**

- 37.7 The Supplier agrees, and undertakes to ensure, that its Workers operate in accordance with the CoH Alcohol and Other Drugs Policy and must:
- (a) submit to testing for Alcohol or Drugs as required by Council;
  - (b) adhere to lawful and reasonable directions, policies and procedures provided by Council in relation to obligations set out in the CoH Alcohol and Other Drugs Policy;
  - (c) not possess, sell, distribute or consume Illicit Drugs or Alcohol in Council's Workplace;
  - (d) for High Risk Workers, have a blood alcohol concentration (BAC) which does not exceed 0.02 grams of Alcohol per 100 millilitres of blood at work;
  - (e) for all Workers other than High Risk Workers, have a BAC which does not exceed 0.05 grams of Alcohol per 100 millilitres of blood at work;
  - (f) present for work in a state where they are not under the influence of Alcohol or Drugs; and
  - (g) not have Illicit Drugs present in their system at any time during which they are at work and/or carrying out work.
- 37.8 The Supplier agrees that, if any of its Workers fail to comply with the obligations set out in this clause, then Council may at its discretion:
- (a) remove such Worker from Council's workplaces; and

- (b) by written notice provided by Council direct the Supplier to remove the Worker from Council's Workplace (or from any activity involved in the provision of the Services) either;
- permanently;
  - for a stated period of time; or
  - terminate this Agreement under clause 24.2.
- (c) Council may terminate this Agreement under clause 24.2 and the Supplier will not be entitled to compensation where the Supplier is unable to carry out its duties under this Agreement as a result of its Workers being required to leave Council premises or Workplace under this clause.

#### **General workplace health and safety requirements**

- 37.9 The Supplier must at all times identify, comply with and exercise all necessary duties and precautions for the health and safety of all persons including the Supplier's employees, subcontractors, subcontractors' employees, employees of the Council and other persons who may be affected by the delivery of the Council's requirements under this Agreement.
- 37.10 The Supplier will inform itself of all workplace health and safety duties, codes of practice, policies, site safety rules, procedures or measures required under the Work Health and Safety Act 2012 and the Work Health and Safety Regulations 2012, by any other Legislative Requirement and required by the Council and/or the occupiers of any premises or Workplace at or within which the successful Supplier will perform the Council's requirements under this Agreement. The Supplier will comply with all such policies, procedures or measures and in the event of any inconsistency, will comply with such procedures or measures that produce the highest level of safety.
- 37.11 The Supplier must comply with any and all directions by or on behalf of the Council relating to workplace health and safety.
- 37.12 The Supplier and any of its employees and subcontractors whosoever are engaged in the provision of work in connection to the Services provided under this Agreement must hold, and at all time maintain, the accreditation, occupational and other licenses and qualifications required to undertake the specific items of work allocated to them. The Supplier must ensure that employees of subcontractors are similarly accredited, licensed and qualified.

#### **Induction and consultation**

- 37.13 The Supplier will, and will ensure that all of its employees, subcontractors and agents in any way engaged in the provision of work in connection to the Services provided under this Agreement do, participate in any and all inductions, meetings and the like required by the Council.

#### **Protective and specialist equipment**

- 37.14 The Supplier must ensure that all personnel are provided with the necessary items of personal protective equipment and specialist working platforms, fall arrest and other equipment.

#### **Hazards**

- 37.15 The Supplier must not create or leave unattended any potential hazards. Any hazards must be reported immediately to the Council.

#### **Accidents**

- 37.16 All accidents, injuries and damage to persons or property of which the Supplier has notice, whether caused by the Supplier or not, must be reported to the Council as soon as possible and no later than the next Business Day. Where the Supplier's acts or omissions cause loss, damage or injury to third parties, the Supplier must promptly deal with any third party claim.

**Risks**

- 37.17 The Supplier must ensure that its employees and members of the general public in or near the Council's sites are not exposed to risk to their health or safety arising from the provision of the Supplier's Services.

**Urgent action**

- 37.18 Where urgent action is necessary in order to protect persons or property and the Supplier fails to take appropriate action as required by this Agreement, the Council itself may take the appropriate action. If the action should have been taken by the Supplier at the Supplier's cost, any expense incurred by the Council shall be a debt recoverable by the Council from the Supplier. The Council may effect payment by retaining the amount of any costs or expense expended for such action from any payment due to the Supplier by the Council.

**Non-compliance**

- 37.19 If at any time the Council considers that the Supplier or any of its employees, agents or subcontractors:
- (a) are not supplying the Goods or carrying out the Services in compliance with any applicable work health and safety plan, Safe Work Method Statements (as defined under the Work Health and Safety Regulations 2012) or suitable policy, systems, procedures and measures; or
  - (b) are supplying the Goods or carrying out the Services in such a way as to endanger the health or safety of any person/s,
- the Council may direct suspension of the purchase of the Goods or provision of the Services or terminate this Agreement under clause 24.2.

**38. COUNTERPARTS**

- 38.1 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

**39. SET OFF**

- 39.1 The Council may set off against any sum owing to the Supplier under this Agreement or any Purchase Order Contract any amount then owing by the Supplier to the Council.