

## 6.2.7 Environmental Health contract extension

**Responsible GM:** Debbie Tyson  
**Author:** Linda Ross

### Recommendation(s)

That Council approves the 2-year extension to Environmental Health Services Contract for Councils current contractor Kernow Environmental Services Pty Ltd.

### Attachments

1. EH Contract signed documents - 2021 07 09 [1.2.1 - 53 pages] [6.2.7.1 - 53 pages]
2. 6.4.1 Variation of contract 21 032 Environmental 2023 [1.2.2 - 3 pages] [6.2.7.2 - 3 pages]
3. EH Memorandum of Understanding Docu Sign [1.2.3 - 12 pages] [6.2.7.3 - 12 pages]

### Executive Summary

Kernow Environmental Services Pty Ltd is currently contracted to manage the daily operations of Environmental Health Services on behalf of Cardinia Shire Council. This is a Shared Service with City of Casey, Bass Coast Council and Cardinia Shire Council. The Contract was awarded for an initial 3-year period with an option for extension of 2 years. This report seeks Council approval to extend the term of the Contract for a further 2 years from 1 July 2024 to 30 June 2026. (The first extension of the 2-year extension)

### Background

This contract is for the provision of Environmental Health Services, which includes food safety and Registration of food premises, infectious diseases control and investigation, compliance with the Tobacco Act, rooming house inspections, septic tanks permits and nuisance complaints.

On 13 December 2021, Council awarded the tender for the above-mentioned contract to Kernow Environmental Services Pty Ltd for an initial 3-year period with the contract period commencing on 1 July 2021 and the completion date confirmed as 30 June 2024, and there is a provision for two optional extensions. The proposed extension will extend the term of the Contract for a further 2 years from 1 July 2024 to 30 June 2026. The original tender specification is attached to this report.

The options for extension have yet been exercised, however the Year 3 price (23-24 FY) was subsequently varied from the price originally specified in the tender due to the adoption of a shared IT system. Please see previous contract variation table below and the original tender variation is attached to this report.

**Table 1: Contract Variation History**

|  |                        |
|--|------------------------|
| A. Original Contract Value (23/24 FY)        | \$1,358,357 (excl GST) |
| B. Value of Variation/s to Date (if any)     | \$0                    |
| C. Value of any Extension/s to Date (if any) | \$0                    |
| D. Value of this Proposed Variation          | \$83,147               |
| E. Proposed Revised Total Contract Value     | \$1,441,504            |

The previous increase was considered relatively modest as the cost increase was spread across three Councils.

The Environmental Health Services Contract is a Shared Service with City of Casey, Bass Coast Council and Cardinia Shire Council ran by a Shared service steering Committee with a Memo of Understand (MOU) between Councils. The signed MOU is attached to this report. The City of Casey and Bass Coast Council intend to utilise the extension in the contract for the service, similar to the recommendation above.

**Please see table below outlining the lump sum price for Cardinia Shire Council for Year 3 (current) and Year 4 (Proposed)**

| Item | Description  | Lump Sum Price*                         | Lump Sum Price*                          |
|------|--|---|--|
|      |  | Year 3<br>From 1/7/2023 to<br>30/6/2024 | Year 4<br>From 1/7/2024 to<br>30/06/2025 |
| 1    | Management of Environmental Health Shared Services, as specified | \$1,441,503.94                          | \$1,562,984.67                           |
|      | <b>TOTAL*</b>  | <b>\$1,441,503.94</b>                   | <b>\$1,562,984.67</b>                    |

*\*All prices are ex GST*

The proposed variation and cost increase of **\$121,460.73** from year 3 to year 4 has been deemed necessary by Kernow Environmental Services Pty Ltd due to the result of workload challenges and the impact of the current economic climate on its operations, including a +7.9% minimal growth and:

- **CPI increase**  
The pricing includes a CPI increase of 4.9% based current annualised CPI
- **Superannuation increase**  
The Federal Government has legislated employer superannuation contributions for employees to increase from 9.5% to 12% by 2025. The increase to 12% will be scaled over the next 4 years with the first two increases coming into effect over the past 2 years (from 9.5% to 10% on 1 July 2021, 10% to 10.5% on 1 July 2022 and 11% on 1 July 2023).  
Kernow Environmental Services Pty Ltd has factored in Superannuation contributions at 10.5% on employee salaries in the lump sum contract amount for Year 2. As the contract price remains at the Year 2 price, they adjusted their pricing to reflect the legislated superannuation contribution percentage (11.5%)
- **Fleet cost**

Fleet costs have increased at the highest rate in over 40 years during the past 12 months, due to supply chain constraints, commodity price increases and inflationary pressures.

Fuel prices have increased by 10% over the past 12 months according to the Australian Bureau of Statistics

- **Insurance cost**

Insurance premiums over the past 3 years, in particular Public Liability and Professional Indemnity cover, have escalated dramatically with growth in premium costs in Australia.

- **Workcover**

As the Victorian State Government announced increases to Workcover levies for businesses last year, Workcover levies increased by 42% (1.27% to 1.8%). The increase in their liability for staff remuneration has been incorporated into the Year Four price.

No additional resourcing is being sought.

### **Policy Implications**

The position outlined is a continuation of Council's existing policy position

### **Relevance to Council Plan**

#### **1.1 We empower our communities to be healthy, connected and resilient**

1.1.1 Plan for, and support the delivery of, accessible health and social services that address critical gaps in provision.

#### **5.1 We practise responsible leadership**

5.1.2 Manage our finances responsibly and leave a positive legacy for future generations

### **Climate Emergency Consideration**

It is noted that that climate change will increase the frequency and severity of natural disasters, but otherwise there is limited impact on Climate Emergency considerations.

### **Consultation/Communication**

As part of contract renewal negotiations between Shared service steering committee and Kernow Environmental Services Pty Ltd the current contract and services were reviewed and discussed and Kernow Environmental Services Pty Ltd provided their end of year actuals for 2022 and 2023 for each Council.

### **Financial and Resource Implications**

The proposed year 4 lump sum price for Cardinia Shire Council has been included in the 2024/2025 budget.

### **Conclusion**

As a Contractor, Kernow Environmental Services Pty Ltd has proven to be reliable and to date, has fulfilled its obligations under the Contract. The quality of service has met the required standard, and a constructive working relationship has been maintained to achieve Council outcomes.

It is respectfully requested that that Council approve the 2-year extension to Environmental Health Services Contract.

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**Bass Coast Shire Council Environmental Health Shared  
Services CONTRACT No. 21015  
General Conditions of Contract - Services**

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## 1 Introductory Issues

### 1.1 Definitions

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

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

**the Annexure** means the Annexure to these Services General Conditions.

**Applicable Code of Practice** means an applicable code of practice as defined in the *Privacy and Data Protection Act 2014* and which applies to Council.

**the Commencement Date** means the date specified as such in the Annexure.

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

- 1.1.1 concerning the Council, its business, systems, customers, ratepayers, residents, properties, assets and affairs;
- 1.1.2 concerning the terms and subject matter of this Contract; or
- 1.1.3 which the Council nominates in writing to be confidential.

**this Contract** means the contract evidenced by the Contract Documents.

**the Contract Documents** means the documents specified as such in the Annexure.

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

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

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

**Contractor's Plant** means Plant the Contractor uses, provides or procures for the purposes of delivering, or as part of, the Services, excluding all Plant paid for or provided by the Council or persons on behalf of Council.

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

**Cooperating Council** means:

- 1.1.4 Cardinia Shire Council, Casey City Council and Bass Coast Shire Council; and
- 1.1.5 any other Victorian Council invited by the Councils listed in paragraph 1.1.4 from time to time to be a Cooperating Council, as notified by the Joint Contract Manager to the Contractor in writing.

**the Council** means the party specified as such in the Annexure.



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

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

**Council's Representative** means:

1.1.6 the person appointed to, or anyone acting in, the position nominated as the Council's Representative in the Annexure, or if the position nominated or its title changes, the person appointed to or anyone acting in the equivalent new or renamed position; or

1.1.7 any other person nominated in writing by the Council,

and includes any person:

1.1.8 to whom powers, duties or functions have been delegated by a person referred to in sub-clause 1.1.6 or 1.1.7;

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

1.1.10 in respect of whom no notice of the revocation of his or her authority has been given to the Contractor by Council or by a person referred to in sub-clause 1.1.6 or 1.1.7.

**Deed of Adoption** has the meaning given to that term in clause 2.18.

**Force Majeure Event** means the occurrence of:

1.1.11 war, armed conflict or an act of terrorism;

1.1.12 nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Contractor; or

1.1.13 pressure waves caused by devices travelling at supersonic speeds

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

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

**the Head Council** means Bass Coast Shire Council.

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

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

**Joint Contract Manager** means the person identified to the Contractor as such by Council in writing from time to time, which may be (but is not required to be) Council's Representative.

**Labour Hire Legislation** means applicable Victorian laws in respect of labour hire providers, the supply of labour and licensing for such labour hire providers, including associated regulations and codes.

**Modern Slavery** has the meaning given to that term in the Modern Slavery Laws.

**Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth) and any analogous laws in any other relevant jurisdiction.

**Municipal District** means the municipal district of the Council.

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

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

**OH&S** means occupational health and safety.

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

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

**Participating Councils** means Council and any Cooperating Council which has executed a Deed of Adoption.

**Party's Representative** means:

1.1.14 the Council's Representative in respect of the Council; and

1.1.15 the Contractor's Representative in respect of the Contractor.

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

**Plant** means all or any of the vehicles, plant, implements, appliances and equipment used by the Contractor for carrying out its obligations under this Contract, whether or not owned by the Contractor.

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

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

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

**the Services** means:

1.1.16 the performance of work;

1.1.17 the supply of materials; and

1.1.18 all other things required to be done,

under this Contract by the Contractor, as indicated in the Contract Documents, and includes any matters reasonably to be inferred from the Contract Documents or trade usage or Good Industry Practice.

**Service Performance Principles** means the service performance principles described in section 106(2) of the *Local Government Act 2020 (Vic)*.

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

## 1.2 Construction of Terms

In this Contract, unless inconsistent with the context:

- 1.2.1 headings and underlinings are for convenience only and do not affect interpretation;
- 1.2.2 words expressed in the singular include the plural and vice versa;
- 1.2.3 a reference to a gender includes a reference to each other gender;
- 1.2.4 where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- 1.2.5 a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa;
- 1.2.6 a reference to any Act, regulation, proclamation, planning scheme, local law or by-law includes all Acts, regulations, proclamations, planning schemes, local laws or by-laws amending, consolidating or replacing same;
- 1.2.7 a reference to an Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act;
- 1.2.8 a reference to a party in a document includes that party and its successors, permitted assigns, receivers, receivers and managers, liquidators, administrators and legal personal representatives;
- 1.2.9 a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document;
- 1.2.10 a reference to 'includes', 'include' and 'including' is to be read as if followed by '(without limitation)';
- 1.2.11 if there is any cost associated with an obligation created by or in relation to this Contract and this Contract is silent or unclear as to which party is to bear that cost, then the cost is to be borne by the Contractor. In addition, the cost of meeting any obligation imposed on the Contractor by this Contract is to be borne by the Contractor unless this Contract expressly provides otherwise; and
- 1.2.12 where there is an obligation placed on the Contractor to comply with legislation that, but for this Contract, would not apply to the Contractor but that legislation does apply to the Council, then the Contractor must comply with those obligations as though it were the Council.

## 1.3 Interpretation

### 1.3.1 Contract Interpretation

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

**1.3.2 Amendments**

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

**1.3.3 Precedence**

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

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

No determination by the Council's Representative under this sub-clause 1.3.3 must be construed as giving rise to a variation under sub-clause 5.1.

**1.3.4 Severance**

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

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

**1.3.5 Whole Understanding**

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

**1.3.6 Governing Law**

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

**1.3.7 Counting of Days**

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

1.3.7.1 in a stated period of days, the stated number of days will exclude Saturdays, Sundays and Public Holidays. Any period of days is deemed to be consecutive if interrupted only by days which are not to be taken into account under this sub-clause 1.3.7.1; and

1.3.7.2 on a Saturday, Sunday or Public Holiday, the notice may be given, the payment made or anything else done on the next day which is not a Saturday, Sunday or Public Holiday.

**1.3.8 Counterparts**

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

**1.3.9 Currency**

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

**1.3.10 Survival of Rights and Obligations**

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

**1.4 Relationship between the Parties**

**1.4.1 No Partnership**

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

**1.4.2 Several and Joint Liability**

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

**1.4.3 Agency**

The Contractor must not:

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

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

**1.4.4 No Restriction of the Council's Powers**

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

**1.4.5 Contractor to Examine Information**

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

**1.4.6 No Waiver**

No:

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

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

1.4.6.3 judgment or order obtained by the Contractor against the Council,

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

#### **1.4.7 No Exclusivity**

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

1.4.7.1 itself; or

1.4.7.2 engage a third party to

perform services which are similar to the Services.

### **1.5 Notices**

#### **1.5.1 Method of Giving Notices**

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

1.5.1.1 handed to that Party's Representative;

1.5.1.2 delivered to that party's address; or

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

#### **1.5.2 Time of Receipt**

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

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

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

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

#### **1.5.3 Addresses of Parties**

For the purposes of sub-clauses 1.5.1 and 1.5.2, the address of a party is the address stated in the Annexure unless notice of another address has been given to the other party.

## **2 The Services**

### **2.1 Work to be Performed**

#### **2.1.1 The Contractor's Obligation**

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

2.1.1.2 The Contractor must comply with and achieve the performance measures set out in the Specification.

2.1.2 Warranty and Representation

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

2.1.2.1 the terms of this Contract; and

2.1.2.2 Good Industry Practice.

2.1.3 The Contractor's Representations and Council Reliance

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

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

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

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

2.1.4 Notice of Default

If the Contractor fails to meet any of its obligations under sub-clause 2.1.1 or 2.1.2 for any reason, the Council's Representative may, without limiting any other power of the Council's Representative or the Council under this Contract or otherwise (including under clause 2.1.8), give notice to the Contractor to remedy the default. Any notice given by the Council's Representative under this sub-clause 2.1.4 may specify a time within which the default must be remedied.

2.1.5 Remedying of Default

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

2.1.6 Cost of Remedying Default

Any costs or charges incurred by the Council in the remedying of a default under sub-clause 2.1.5, as determined by the Council's Representative, must be paid on demand by the Contractor to the Council or may be deducted either from any moneys due or becoming due to the Contractor under this Contract or from the Performance Security, at the option of the Council.

2.1.7 Better Performance

The Council's Representative or Joint Contract Manager may give such directions for the better performance of this Contract as they consider appropriate. The Contractor must give effect to such directions as if they constituted express terms of this Contract, provided, however, that any directions giving rise to variations must be given under sub-clause 5.1.

**2.1.8 Re-performance**

If the Contractor fails to meet any of its obligations under sub-clause 2.1.1 or 2.1.2 for any reason, Council may, without limiting any other power of Council or Council's Representative under this Contract or otherwise (including under clause 2.1.4), engage another supplier to re-perform the impacted Services and the fees paid to such a supplier by or on behalf of Council will be a debt which is immediately due and payable by the Contractor to Council.

**2.2 Contract Term**

**2.2.1 Extent of Contract Term**

The Contract Term is the Initial Contract Term and any period for which the operation of the Contract is extended under sub-clause 2.2.2.

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

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

**2.2.3 Extension of Contract – Modified Terms**

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

**2.3 Fees**

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

**2.4 Reports**

The Contractor must provide the Council's Representative or Joint Contract Manager with written reports on any aspect of the Services if requested to do so by them in writing.

**2.5 The Contractor's Representative**

**2.5.1 Appointment of Representative**

The Contractor must:

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

2.5.1.2 notify the Council's Representative of the name of the Contractor's Representative prior to the Commencement Date;

2.5.1.3 notify the Council's Representative immediately should a new Contractor's Representative be appointed; and



2.5.1.4 ensure that the Contractor's Representative is available and able to be contacted by the Council's Representative during the hours specified in the Annexure (**Normal Contact Hours**).

2.5.2 Address and Telephone Numbers

The Contractor must:

2.5.2.1 prior to the Commencement Date, provide the Council's Representative with:

2.5.2.1.1 the address and telephone number of the Contractor's Representative during Normal Contact Hours; and

2.5.2.1.2 a telephone number on which the Contractor's Representative may generally be contacted outside Normal Contact Hours; and

2.5.2.2 notify the Council's Representative immediately of any change of address or telephone number of the Contractor's Representative.

2.5.3 Directions to Representative

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

2.5.4 Knowledge of Representative

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

**2.6 The Media**

The Contractor must:

2.6.1 not either itself or through its employees, agents or sub-contractors make any statement to the media on behalf of the Council or in relation to the performance of the Services unless directed or approved by the Council's Representative;

2.6.2 refer all enquiries from the media relating to the performance of the Services to the Council's Representative; and

2.6.3 notify the Council's Representative immediately of any event arising in the course of performing the Services which may receive media attention.

**2.7 Conflicts of Interest**

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

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

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

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

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

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

#### 2.7.3 Contractor Warranty

The Contractor warrants that it:

2.7.3.1 does not hold any office or possess any property;

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

2.7.3.3 does not have any obligations by virtue of any Contract

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

#### 2.7.4 Ongoing Obligation

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

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

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

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

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

#### 2.7.5 Breach of Ongoing Obligation

If the Contractor fails to comply with its obligations under sub-clause 2.7.1, the Council may immediately terminate this Contract. If this Contract is terminated under this sub-clause 2.7.5, sub-clauses 6.2 and 6.3 will operate, to the extent that they are applicable, as if the termination had been made by the Council under sub-clause 6.1.1.

### **2.8 Use of the Council's Name or Logo**

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

### **2.9 Confidentiality**

2.9.1 The Contractor must:

2.9.1.1 keep confidential; and

2.9.1.2 not use or reproduce in any form

the Confidential Information without the written consent of the Council's Representative, or as required by law.

2.9.2 If disclosure of any of the Confidential Information is required by law then the Contractor must notify the Council's Representative either prior to such disclosure or otherwise at the first available opportunity after such disclosure of its obligation to make such disclosure or of the actual disclosure, as the case may be.

2.9.3 Immediately upon receipt of the Council's Representative's written request to do so, the Contractor must:

2.9.3.1 deliver to the Council all Confidential Information in its possession that is capable of being delivered; and

2.9.3.2 delete, erase, or otherwise destroy all Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the Council.

**2.10 Intellectual Property**

2.10.1 Subject to this sub-clause 2.10, the property and copyright in all Contract Material will vest in the Council. The Contractor must ensure that any person, including employees, agents and sub-contractors, engaged by it in the provision of the Services agrees to assign to the Council all the property and copyright in the Contract Material.

2.10.2 Subject to this sub-clause 2.10, the Contractor acknowledges that the Council has the property and copyright in any discoveries, inventions, patents, designs or other rights arising out of or in performance of this Contract.

2.10.3 Notwithstanding sub-clauses 2.10.1 and 2.10.2, nothing in this Contract affects or in any way alters the Contractor's ownership of or rights to any pre-existing intellectual property specified in the Annexure.

2.10.4 Except to the extent that the Contract Material contains the Contractor's rights arising from sub-clause 2.10.3, the Contractor will not use, reproduce or publish, other than for the Council, the Contract Material, without the prior written consent of the Council's Representative.

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

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

2.10.6.1 grants the Council, without further condition, an irrevocable, non-exclusive, global, fee and royalty free licence to use for the purposes of this Contract the Contractor's intellectual property used in relation to this Contract as the Council deems necessary to enable it to derive the full benefit the Council reasonably expected from the Contract; and

2.10.6.2 must, at its cost, obtain for the Council from any third party whose intellectual property the Contractor is using in connection with this Contract a licence in equivalent terms to the form of licence stipulated in sub-clause 2.10.6.1.

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

**2.11 Maintenance of and Access to Council Information**

2.11.1 Application of Clause

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

2.11.1.1 Council Information System

The Contractor must:

- 2.11.1.1.1 maintain the existing Council Information in an accurate and up-to-date condition;
  - 2.11.1.1.2 not change the form or structure of the Council Information without the prior written consent of the Council; and
  - 2.11.1.1.3 provide the Council with access to the Council Information in a form (whether electronic or otherwise) required by the Council, upon demand, on the termination or expiry of the Contract or as otherwise agreed from time to time.
- 2.11.1.2 The property in the existing Council Information is and will remain property of the Council.
- 2.11.1.3 The property in additions to or modifications of the Council Information by the Contractor vests in the Council.

2.11.2 Protection of Information

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

- 2.11.2.1 preventing unauthorised update;
- 2.11.2.2 employing appropriate back-up and recovery processes (of which the detail of the back-up regime, the off-site storage environment and the security and documentation of the back-up process must be approved in advance by the Council's Representative);
- 2.11.2.3 minimising the risk of accidental damage, including the introduction of errors; and
- 2.11.2.4 returning all of the Council Information to the Council at the end of the Contract Term in a form or forms (whether electronic and/or otherwise), format and reasonable time specified by the Council. The return of the Council Information under this sub-clause 2.11.2.4 must be done in a manner that reasonably facilitates the ongoing use of the Council Information by Council or the New Contractor of the Services in the ongoing delivery of the Services after the end of this Contract.

**2.11.3 Inspection of the Council Information**

**2.11.3.1 The Contractor must:**

2.11.3.1.1. allow the Joint Contract Manager, Council's representative or any other person authorised by the Council to inspect and verify from time to time during the ordinary business hours of the Contractor all or any part of the Council Information and the Contractor must give any assistance necessary for the carrying out of such an inspection and verification and permit the taking of copies of any information or related documents or data; and

2.11.3.1.2 enable the Joint Contract Manager, Council's representative or any other person authorised by the Council to review the contents of the Council Information and the processes for using and maintaining the Council Information.

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

2.11.3.2.1 manual records;

2.11.3.2.2 databases;

2.11.3.2.3 application programs; and

2.11.3.2.4 back-up processes and documentation.

**2.11.3.3 For the purposes of sub-clause 2.11.3.2, review of the processes for using and maintaining the Council Information includes observation testing and the conduct of interviews regarding processes and standards for:**

2.11.3.3.1 granting and revoking access to data and application;

2.11.3.3.2 password usage;

2.11.3.3.3 data entry, including audit trails; and

2.11.3.3.4 analysis and correction of data errors.

**2.12 Service Performance Principles**

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

2.12.2 If, during the Term, Council gives notice to the Contractor that it proposes to:

2.12.2.1 evaluate the Contractor's performance of the Services by reference to the Service Performance Principles; or

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

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

**2.13 Information Privacy**

**2.13.1 The Contractor:**

- 2.13.1.1 agrees to be bound by the Information Privacy Principles and any Applicable Code of Practice with respect to any act done, or practice engaged in, by the Contractor for the purposes of this Contract in the same way and to the same extent as Council would be bound by them in respect of that act or practice had it been directly done or engaged in by Council;
- 2.13.1.2 only use Personal Information collected by or made available to the Contractor in connection with this Contract for the purpose of complying with its obligations under this Contract;
- 2.13.1.3 immediately notify the Council's Representative where it becomes aware of a breach of sub-clause 2.13.1.1 or 2.13.1.2 by the Contractor, its employees or agents; and
- 2.13.1.4 indemnify and keep indemnified and hold harmless the Council and its Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Councillors or members of staff arising out of or in connection with a breach of sub-clause 2.13.1.1 or 2.13.1.2 by the Contractor, its employees or agents.

2.13.2 If, during the Contract Term, the Council gives notice to the Contractor that it proposes to audit, either directly or through its auditors, the Contractor's information handling practices, the Contractor must provide all reasonable assistance to the party conducting such an audit.

**2.14 Audit and Inspection**

2.14.1 The Contractor will, at its own cost, co-operate fully and in a timely manner with any auditor (whether internal or external) of the Council or any government inspection agency who wishes to audit the Contractor's performance of its obligations under this Contract. The Contractor will not be required to participate in any such audit initiated by the Council more frequently than twice in any year during the Contract Term unless the Council agrees to pay the Contractor's reasonable costs incurred in relation to any third or subsequent audit.

Nothing in this sub-clause 2.14.1 will, however, require the Council to pay any costs incurred by the Contractor in relation to any audit which:

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

2.14.2 Except as mentioned in sub-clause 2.14.3, the Contractor will provide to any auditor described in sub-clause 2.14.1 all information (including any documents relating to the performance of the Services) and staff to which such auditor requires access in discharging the auditor's responsibilities under the audit. For the avoidance of doubt, the obligations of the Contractor extend to:

- 2.14.2.1 ensuring that any members of its staff, any sub-contractor and any staff of any sub-contractor attend any interview reasonably required by the auditor;
- 2.14.2.2 supplying copies to the auditor of all documents to which access has been provided to the auditor; and

- 2.14.2.3 providing such assistance and access as the auditor may reasonably require.
- 2.14.3 Nothing in this sub-clause 2.14 entitles the Council or any auditor (whether internal or external) engaged by it to have access to or obtain originals of any documents unrelated to the performance of the Services.
- 2.14.4 To facilitate the Council's monitoring of the Contractor's performance of the Services, the Contractor agrees that an agent of the Council may, at any time, enter upon any property used by the Contractor to perform the Services under this Contract, and there inspect or observe the performance of the Services and monitor compliance by the Contractor of its obligations under this Contract.
- 2.14.5 If the Council exercises the right conferred by sub-clause 2.14.4, it must ensure that:
- 2.14.5.1 any disruption caused to the Contractor and the performance of the Services is minimised;
- 2.14.5.2 its agent at all times complies with any OH&S requirements reasonably imposed by the Contractor; and
- 2.14.5.3 if its agent has caused any material damage to any property belonging to the Contractor then all reasonable costs directly caused by such damage are paid to the Contractor.

## 2.15 Charter of Human Rights

- 2.15.1 The Contractor must, in performing the Services, comply with the requirements of section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006*.
- 2.15.2 The Contractor must indemnify and keep indemnified and hold harmless Council and its Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Councillors and all members of Council staff arising out of the Contractor's failure to comply with the requirements of section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* when performing or purporting to perform the Services.

## 2.16 Modern Slavery

- 2.16.1 The Contractor must comply (and ensure its agents, contractors and subcontractors comply) with the Modern Slavery Laws.
- 2.16.2 The Contractor confirms that it conducts its business in a manner consistent with the principles of Modern Slavery Laws and is not subject to any investigation, enforcement or conviction involving Modern Slavery.
- 2.16.3 The Contractor:
- 2.16.3.1 must promptly notify Council of any actual or suspected breaches by the Contractor or its subcontractors of the Modern Slavery Laws; and
- 2.16.3.2 agrees to provide Council promptly upon request any information and assistance that Council may require for compliance with Modern Slavery Laws.

## 2.17 Labour Hire Legislation

- 2.17.1 The Contractor must comply with all Labour Hire Legislation as far as such legislation may apply to it. The Contractor must immediately notify the Council in writing if it is in



breach of, or has any sanction imposed against it or its related bodies corporate, in connection with the Labour Hire Legislation.

- 2.17.2 If the Labour Hire Legislation requires the Contractor to be licensed in order to provide labour hire services, the Contractor warrants that as at the date of this Contract it is licensed to provide labour hire services under, and in accordance with the requirements of, the Labour Hire Legislation. The Contractor must comply with all requirements of any such licence, including reporting requirements. The Contractor must immediately notify the Council in writing if its licence to provide labour hire services is suspended, restricted, varied, cancelled, revoked or if it no longer holds such licence for any reason.
- 2.17.3 The Contractor shall notify the Council in writing:
- 2.17.3.1 immediately upon receiving any contact or correspondence from a government regulatory body in relation to compliance with the Labour Hire Legislation, including any request or notice from a regulatory body regarding any inspections, audits, investigations, interviews or visits by a regulatory body in relation to compliance with the Labour Hire Legislation;
  - 2.17.3.2 within 24 hours after any inspections, audits, investigations or visits by any government regulatory body in relation to compliance with the Labour Hire Legislation; and
  - 2.17.3.3 within 24 hours of becoming aware of the outcome of any inspections, audits, investigations, interviews or visits by any government regulatory body in relation to compliance with the Labour Hire Legislation (including, but not limited to, particulars of any potential contravention of the Labour Hire Legislation or other laws).
- 2.17.4 The Contractor shall maintain adequate records of compliance with this sub-clause 2.17 by the Contractor, its sub-contractors and its Related Bodies Corporate, and provide the Council with copies on request.
- 2.17.5 If the Council is investigated or audited in respect of compliance with the Labour Hire Legislation, the Contractor must render all reasonable assistance to the Council in relation to the investigation or audit and provide the Council with all relevant information and documentation on request.
- 2.17.6 The Contractor shall ensure that all of its sub-contractors enter into sub-contracts with the Contractor which impose obligations on the sub-contractors equivalent to the Contractor's obligations under this clause.
- 2.17.7 If the Contractor at any time fails to comply with any provision of this clause, then subject to the Council issuing the notice required by sub-clause 6.1 of this Contract, the Council may at its sole option and discretion, exercise all or any of the powers under sub-clause 6.1 of this Contract.
- 2.17.8 The Council may at any time undertake an audit with respect of the Contractor's compliance with the Labour Hire Legislation and the Contractor will provide all reasonable assistance to enable that audit to be carried out and completed subject to Council's reasonable directions.
- 2.18 Participating Councils**
- 2.18.1 The parties acknowledge that the Cooperating Councils may wish to engage the Contractor to perform services equivalent to the Services on the same terms as this Contract.



- 2.18.2 If a Cooperating Council notifies the Contractor in writing that it wishes to engage the Contractor to perform services equivalent to the Services on the same terms as this Contract, then, within 5 Business Days of the date of the Cooperating Council's notice, the Contractor will duly execute a deed of adoption in the form set out in Schedule 1 (**Deed of Adoption**) and will provide the duly executed Deed of Adoption to that Cooperating Council for execution on its behalf. The details in the Annexure to the Deed of Adoption will be equivalent to the Annexure to this Contract (with the necessary amendments) unless otherwise agreed by the relevant Cooperating Council.
- 2.18.3 The parties acknowledge and agree that, if the Contractor and a Participating Council execute a Deed of Adoption, that will form a separate contract between the Contractor and the Participating Council on the same terms as set out in this Contract, except that:
- 2.18.3.1 the Lead Council will not be a party to that separate contract and will not have any rights, responsibilities or liability under that separate contract;
- 2.18.3.2 the Annexure for a Contract with a Participating Council who is not the Lead Council will be as attached to the Deed of Adoption; and
- 2.18.3.3 the contract formed with a Participating Council will not include this clause 2.18.
- 2.18.4 For the avoidance of doubt, termination of this Contract will not result in termination of the contract formed between the Contractor and a Participating Council under a Deed of Adoption.
- 2.18.5 As between the Participating Councils, the Joint Contract Manager will be responsible for carrying out the activities described in Schedule 3, as well as any other responsibilities expressly attributed to the Joint Contract Manager elsewhere in this Contract (including the Contract Documents).

### **3 Statutory and Award Obligations**

#### **3.1 Statutory Requirements**

The Contractor must:

- 3.1.1 obey; and
- 3.1.2 ensure that its employees, sub-contractors and agents obey,  
any Acts, regulations, local laws and by-laws in any way applicable to the performance of the Services or this Contract.

#### **3.2 Awards and Agreements**

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

- 3.2.1 comply with the terms of any relevant Commonwealth and State awards in respect of its employees;
- 3.2.2 comply with any applicable certified agreement or Australian workplace agreement; and
- 3.2.3 ensure that any agents and sub-contractors of the Contractor also comply with the obligations imposed by sub-clauses 3.2.1 and 3.2.2.

## **4 Payments**

### **4.1 Payment**

If the Contractor complies with its obligations under this Contract, the Council must make the payment or payments specified in Schedule 3 on the basis stated in Schedule 3, provided that the Council is not required to make any payment to the Contractor in respect of any of the Services which are not performed or are not performed in accordance with this Contract.

### **4.2 Certification of Payments**

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

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

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

### **4.3 The Council Power to Pay Employees and Sub-Contractor**

If the Joint Contract Manager or Council's Representative is of the opinion that:

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

the Council may:

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

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

**4.4 Goods and Services Tax**

4.4.1 This sub-clause 4.4 applies if:

4.4.1.1 GST is or will be payable by; or

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

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

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

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

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

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

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

4.4.5 In this sub-clause 4.4:

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

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

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

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

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

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

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

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

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

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

4.4.6.1 if the payment or payments described in this sub-clause 4.1 has or have been described as exclusive of GST, the payment or payments will be increased by the applicable amount of GST (**GST Amount**) which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST;

4.4.6.2 the Contractor must provide to the Council a valid tax invoice at or prior to the time of payment of any GST Amount; and

4.4.6.3 and any adjustment occurs in relation to the taxable supply, the Contractor must issue an adjustment note to the Council within 7 days of becoming aware of the adjustment, and any payment necessary to give effect of such adjustment must be made within 7 days after the date of receipt of the adjustment note.

#### 4.5 Right of Set Off

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

### 5 Variations

#### 5.1 Direction of Variations

During the Contract Term, the Council's Representative may direct the Contractor to:

5.1.1 alter the extent of the Services;

5.1.2 alter the character, quality or mode of performance of the Services;

5.1.3 carry out any work of a character similar to the Services;

5.1.4 make any other change that the Council's Representative reasonably deems is necessary; or

5.1.5 make any other change which the parties agree to make.

#### 5.2 Variations not to Vitate Contract

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

#### 5.3 Valuation of Variations

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

5.3.1 the schedule of rates set out in Schedule 3; or

- 5.3.2 reasonable rates or prices, if there are no rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this sub-clause 5.3.

## **6 Defaults and Termination**

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

If the Contractor:

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

the Council may, without limiting any other rights that the Council may have, give notice to the Contractor to show cause why the powers contained in this sub-clause 6.1 should not be exercised.

Such notice must:

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

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

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

and this Contract satisfactorily completed in accordance with its terms, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may:

- 6.1.8 suspend payment under this Contract; or
- 6.1.9 terminate this Contract,
- by notice to the Contractor.

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

### **6.2 Termination of Contract by the Council**

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

- 6.2.1 the Council may itself or by engaging or employing any other person:
- 6.2.1.1 complete the performance of the Services; or

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

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

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

6.2.2.1 the performance of the Services; or

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

### **6.3 Payments on Termination**

6.3.1 Limit of Payments

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

6.3.2 Payment for Losses and Expenses

If this Contract is terminated by the Council under sub-clause 6.1 or otherwise, the Contractor must pay to the Council the amount of the loss and expenses incurred by the Council due to, or in connection with (including, without limitation, indirect losses, consequential losses and all legal costs on a full indemnity basis), the termination.

6.3.3 Council's Representative's Determination

The amounts payable by the Contractor and the Council under sub-clauses 6.3.1 and 6.3.2 must be determined by the Council's Representative. The Council's Representative must give notice of his or her determination under sub-clause 6.3 to the Contractor. Subject to sub-clause 6.3.4, any amounts payable under sub-clause 6.3 must be paid within fourteen (14) days of the receipt of notice of the Council's Representative's determination.

6.3.4 The Council May Retain Moneys

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

### **6.4 Insolvency**

If the Contractor:

6.4.1 being a person:

6.4.1.1 becomes bankrupt, or files or is served with a petition in bankruptcy;

6.4.1.2 is served with a bankruptcy notice;

6.4.1.3 makes an assignment for the benefit of his or her creditors;

6.4.1.4 becomes bound as a debtor by any scheme of arrangement;

- 6.4.1.5 executes as a debtor any deed of assignment or deed of arrangement; or
- 6.4.1.6 has a mortgagee or other creditor take possession of any of his or her assets;
- 6.4.2 being a partnership:
  - 6.4.2.1 is dissolved;
  - 6.4.2.2 any of the partners becomes bankrupt, or files or is served with, a petition in bankruptcy;
  - 6.4.2.3 any of the partners is served with a bankruptcy notice;
  - 6.4.2.4 any of the partners makes an assignment for the benefit of his or her creditors;
  - 6.4.2.5 any of the partners becomes bound by any scheme of arrangement;
  - 6.4.2.6 any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or
  - 6.4.2.7 any of the partners has a mortgagee or other creditor take possession of any of his or her assets; or
- 6.4.3 being a company or other body corporate:
  - 6.4.3.1 takes, or has taken or instituted against it, any action or proceeding, whether voluntary or compulsory, having as its object the winding-up of the company or other body corporate;
  - 6.4.3.2 an administrator is appointed, or steps are taken for the appointment of an administrator, under the *Corporations Act 2001* in respect of it;
  - 6.4.3.3 enters into a composition or other arrangement with its creditors, other than a voluntary winding-up by members for the purpose of reconstruction or amalgamation;
  - 6.4.3.4 has a mortgagee or other creditor take possession of any of its assets;
  - 6.4.3.5 a receiver or receiver and manager is appointed, or steps are taken for the appointment of a receiver or receiver and manager, in respect of it; or
  - 6.4.3.6 in the case of an incorporated association, takes or institutes, or has taken or instituted against it, any action or proceeding having as its object the cancellation of the incorporation of the incorporated association,

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

## **6.5 Termination of the Contract by the Contractor**

### **6.5.1 The Contractor's Right to Terminate**

If the Council has failed to pay to the Contractor any amount due under sub-clause 4.1, other than an amount being the subject of a dispute or difference under this Contract or any legal proceedings commenced in respect of this Contract, within fourteen (14) days of any period for payment stated in the Annexure, the Contractor may give notice in writing to the Council stating that notice of termination under this Contract may be served



if payment is not made within a further fourteen (14) days. If the Council fails to make payment within fourteen (14) days of the receipt of such notice, the Contractor may, by notice to the Council, either suspend the performance of the Services or terminate this Contract. Any suspension of the Services by the Contractor under this sub-clause 6.5.1 will not prevent it terminating this Contract during the period that the performance of the Services is suspended.

#### 6.5.2 Payments upon Termination

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

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

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

### 6.6 Termination On Force Majeure

#### 6.6.1 Effect of Force Majeure

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

#### 6.6.2 Good Faith Consultation

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

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

#### 6.6.3 Termination

If the parties are unable to agree on appropriate terms to mitigate the effect of the Force Majeure Event and the continued performance of this Contract cannot be facilitated, then if the Force Majeure Event is continuing or its effect remains such that one party is unable to comply with its obligations under this Contract for a period of more than thirty (30) days



**(the Affected Party)**, then, subject to sub-clause 6.6.4, either party may terminate this Contract by giving thirty (30) days' written notice to the other party.

#### 6.6.4 Contractor Notice

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

- 6.6.4.1 the Contractor must perform so much of the Services as are reasonably capable of being performed;
- 6.6.4.2 the Council must pay to the Contractor any payment which is due under sub-clause 4.1 as if the Services were being fully performed; and
- 6.6.4.3 this Contract will not terminate until thirty (30) days after the Council gives written notice to the Contractor that it wishes this Contract to terminate or upon the completion of the Contract Term (whichever is the earlier).

#### 6.6.5 Minimising Effects

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

#### 6.6.6 Cessation of Force Majeure Event

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

## 7 Sub-Contracting, Assignment and Employees

### 7.1 Sub-Contracting

#### 7.1.1 General

The Contractor must not sub-contract the whole or any portion of its rights and obligations under this Contract, except with the prior written consent of the Joint Contract Manager, which may be given subject to such conditions as the Joint Contract Manager considers appropriate. Except in so far as any consent given by the Joint Contract Manager under this sub-clause 7.1.1 expressly provides otherwise, no sub-contractors will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council.

#### 7.1.2 The Contractor to Provide Information

With any application for the consent of the Joint Contract Manager to any sub-contracting, the Contractor must provide any information required by the Joint Contract Manager, including, but not limited to, evidence that a proposed sub-contractor will be capable of performing any obligations of the Contractor under this Contract that it may be required to perform.

**7.1.3 The Contractor still to be Liable**

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

**7.2 Assignment**

**7.2.1 General**

The Contractor must not assign the whole or any of its rights under this Contract, except with the prior written consent of the Joint Contract Manager, which may be given subject to such conditions as the Joint Contract Manager considers appropriate. Except in so far as any consent given by the Joint Contract Manager under this sub-clause 7.2.1 expressly provides otherwise, no assignees will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council.

**7.2.2 Change in Beneficial Ownership**

For the purpose of this sub-clause 7.2.2, an assignment of this Contract includes any change in the beneficial ownership of the share capital of the Contractor, if it is a company, which alters the effective control of the Contractor.

**7.3 Employees and Sub-Contractors**

**7.3.1 Employees**

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

**7.3.2 Prohibited Behaviour**

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

7.3.2.1 consumes any alcoholic beverage;

7.3.2.2 is intoxicated; or

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

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

**7.3.3 Conduct of Employees**

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

7.3.3.1 conduct themselves towards Councillors of the Council, the Council's staff and all members of the public in a civil and inoffensive manner; and

7.3.3.2 carry out their duties at all times with as little inconvenience and disturbance to others as possible and without causing any nuisance.

**7.3.4 Directions of Council's Representative**

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

**7.3.5 Appearance of Employees**

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

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

**8 Occupational Health and Safety**

**8.1 General Occupational Health and Safety**

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

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

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

The Contractor must immediately comply with any and all directions by the Council's Representative or Joint Contract Manager relating to OH&S.

**8.2 Legislative Compliance**

The Contractor must:

- 8.2.1 comply with; and
- 8.2.2 ensure that its employees, sub-contractors and agents comply with,  
any Acts, regulations, local laws, codes of practice, WorkSafe publications and Australian Standards which are in any way applicable to OH&S and the performance of the Services.

### **8.3 The Contractor's OH&S Management System**

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

The OH&S Management System must be:

- 8.3.1 submitted to the Joint Contract Manager for approval prior to the Commencement Date;
- 8.3.2 updated during each year of the Contract Term, and such updated OH&S Management System submitted to the Joint Contract Manager for approval prior to each anniversary of the Commencement Date; and
- 8.3.3 audited for its relevance, currency, completeness, practical application and comparison to Good Industry Practice by an independent third party with expertise in OH&S at least once every two (2) years with the first audit to be completed before the first anniversary of the Commencement Date.

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

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

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

The OH&S Management System must at least include the Contractor's:

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

#### **8.4 OH&S Performance Reporting**

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

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

The Contractor must, when requested by the Joint Contract Manager or Council's Representative, provide reports on OH&S inspections, audits or assessments undertaken during the Contract Term.

#### **8.5 Incident Notification**

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

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

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

#### **8.6 Non-Compliance**

If, during the Contract Term, the Joint Contract Manager or Council's Representative gives the Contractor notice that, in their opinion, the Contractor is:

- 8.6.1 not performing the Contractor's obligations under the Contract in compliance with the OH&S Management System or any other obligation contained in clause 8; or
- 8.6.2 performing the Contractor's obligations under the Contract in such a way as to endanger the health or safety of the Contractor's employees or sub-contractors, the Council's staff or the public,

the Contractor must promptly:

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

## **8.7 Suspension**

### **8.7.1 Procedure**

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

- 8.7.1.1 in accordance with its obligations under clause 8; and
- 8.7.1.2 without endangering the health and safety of the Contractor's employees or sub-contractors, the Council's staff or the public.

The Council is not required to make any payment to the Contractor in respect of any period for which the performance of the Services is suspended in accordance with this sub-clause 8.7.1.

### **8.7.2 The Council's Rights**

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

- 8.7.2.1 itself, or by employing or engaging any other person, perform:
  - 8.7.2.1.1 the Services; or
  - 8.7.2.1.2 such part of the Services as the Council considers it desirable to perform, which, so far as practicable, must be carried out in accordance with this Contract, provided that the Council is not required to use the least expensive means of performing the Services; or
- 8.7.2.2 do any other thing which the Council, in its absolute discretion, considers necessary in the circumstances.

### **8.7.3 Payments**

The Contractor must pay to the Council the amount of:

- 8.7.3.1 all costs incurred by the Council in exercising any power or performing any function conferred on it under sub-clause 8.7.1 or 8.7.2; and
- 8.7.3.2 any other losses and expenses incurred by the Council due to, or in connection with (including, without limitation, indirect losses, consequential losses and all legal costs on a full indemnity basis), any breach of the Contractor's obligations under clause 8 or the suspension of the performance of the Services,

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

## **9 Insurance and Indemnity**

### **9.1 Insurances and Indemnities**

#### **9.1.1 Accident Compensation Legislation**

The Contractor must:

9.1.1.1 itself effect; and

9.1.1.2 ensure that each of its sub-contractors effects,

a WorkCover policy of insurance complying with the provisions of the *Accident Compensation Act 1985* and *Workplace Injury Rehabilitation and Compensation Act 2013* in respect of all of its employees.

#### **9.1.2 Other Legislation**

The Contractor must:

9.1.2.1 itself comply; and

9.1.2.2 ensure that each of its sub-contractors complies,

with any other workers' compensation legislation in force from time to time and must, in the absence of any such legislation, or if so directed by the Council's Representative, insure against any claims that may be made in respect of the death of or injury to any of their employees.

Any such insurance must be:

9.1.2.3 for an amount;

9.1.2.4 with an insurer; and

9.1.2.5 in a form,

to the satisfaction of the Joint Contract Manager.

#### **9.1.3 Indemnity**

The Contractor must indemnify, keep indemnified and hold harmless the Council and its Councillors and all of the Council's staff, sub-contractors or agents against any liabilities, costs, penalties or additional premiums they may incur arising, whether directly or indirectly, from any provision of the *Accident Compensation Act 1985* or the *Workplace Injury Rehabilitation and Compensation Act 2013* which:

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

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

## 9.2 Public Liability Insurance

### 9.2.1 Obligation to Insure

The Contractor must, at all times during the Contract Term, be the holder of a current public liability policy of insurance (**the Public Liability Policy**):

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

9.2.1.2 containing a principal's indemnity extension

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

The Public Liability Policy must:

9.2.1.3 be effected with an insurer; and

9.2.1.4 cover legal liability to third parties for personal injury or property damage as a result of an occurrence in connection with the business of the insured.

### 9.2.2 Cross Liability Clause and Notice of Claims

The Contractor must, unless the Joint Contract Manager indicates otherwise, ensure that the Public Liability Policy:

9.2.2.1 contains a cross liability clause:

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

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

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

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

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

### 9.2.3 Increase in Cover

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

## 9.3 Professional Indemnity Insurance

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



The Professional Indemnity Policy must:

- 9.3.1 be effected with an insurer; and
- 9.3.2 cover legal liability to third parties for personal injury or property damage as a result of an occurrence in connection with the business of the insured.
- 9.3.3 On each anniversary of the Commencement Date until the completion of the Contract Term, the Contractor must increase the amount of coverage under the Professional Indemnity Policy by at least the amount per event stated in the Annexure.

**9.4 Other Policies of Insurance**

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

**9.5 Evidence of Insurance**

9.5.1 Provision of Evidence

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

9.5.2 Certificates of Currency

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

- 9.5.2.1 each twelve (12) months during the Contract Term; and
- 9.5.2.2 within two (2) days after a written request being made by the Joint Contract Manager.

9.5.3 Failure to Insure

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

- 9.5.3.1 in the case of a failure by the Contractor to comply with its obligations under sub-clause 9.2, 9.3 or 9.4, effect or maintain the Public Liability Policy, the Professional Indemnity Policy or other policy of insurance, as the case may be, and pay the premiums thereof, the cost of which must be paid on demand by the Contractor to the Council or may be deducted by the Council from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council; or
- 9.5.3.2 immediately terminate this Contract. If this Contract is terminated under sub-clause 9.5.3.2, sub-clauses 6.2 and 6.3 will operate, to the extent that they are applicable, as if the termination had been made by the Council under sub-clause 6.1.

9.5.4 Proof of Failure to Insure

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

**9.5.5 Powers not Restricted**

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

**9.6 The Council Indemnified and Held Harmless**

**9.6.1 Indemnity**

Without limiting anything in sub-clause 2.13.1.4, 2.15.2 or 9.1.3, the Contractor must indemnify, keep indemnified and hold harmless the Council, and its Councillors and staff, from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by, arising from or connected with the Contractor's performance or purported performance of its obligations under this Contract.

**9.6.2 Acts of Employees and Others**

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

**9.6.3 Not to Affect Other Obligations**

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

**10 Property**

**10.1 Property**

**10.1.1 Damage to Property**

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

**10.1.2 Cost of Damage**

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

**11 Security**

**11.1 Performance Security**

**11.1.1 Security**

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

#### 11.1.2 Recourse to Security

In the event of any failure by the Contractor to carry out and complete its obligations under this Contract, the Council may have recourse to the Performance Security in respect of any moneys for which the Contractor may be liable to the Council under this Contract or otherwise. Without limiting the rights of the Council under this sub-clause 11.1.2, the Council may deduct from the Performance Security any sum payable to the Council under sub-clause 6.3.

#### 11.1.3 Return of Security

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

#### 11.1.4 Further Rights and Obligations

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

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

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

#### 11.2 The Council's Right to Terminate

If the Contractor fails to meet any of its obligations under sub-clause 11.1.1 the Council may immediately terminate this Contract. If this Contract is terminated under this sub-clause 11.2, sub-clauses 6.2 and 6.3 will operate, to the extent that they are applicable, as if the termination had been made by the Council under sub-clause 6.1.

#### 11.3 Parent Guarantee

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

### 12 Transition

#### 12.1 Continuing Obligations

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

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

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

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

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

## **12.2 Performance of Services After Contract Term**

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

## **13 Dispute Resolution**

### **13.1 Notice of Dispute**

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

Such notice must:

13.1.1 not be unreasonably given;

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

13.1.3 give sufficient details of the dispute or difference as to enable the party receiving the notice to ascertain the nature of the dispute or difference alleged.

### **13.2 Alternative Dispute Resolution**

Within seven (7) days of the receipt of any notice of dispute under sub-clause 13.1 by either party, a representative of each party must meet to discuss ways of resolving the dispute or difference. The representatives may resolve the dispute or difference themselves or refer the dispute or difference to any form of alternative dispute resolution procedure on which they agree. The representatives must be authorised by the parties to resolve the dispute or difference on their behalf should this prove to be practicable.

### **13.3 Referral to Mediation**

Unless a dispute or difference of which notice has been given under sub-clause 13.1 is settled, either party may, not less than seven (7) days after the notice of dispute or difference was given, give notice referring the dispute or difference to mediation. The mediator must be agreed between the parties within fourteen (14) days from the date of the receipt of the notice referring the dispute to mediation by the Contractor or the Council, as the case may be, or, failing agreement, must be nominated by the Chairperson of the Australian Disputes Centre Limited or the Chairperson's authorised representative. Any such mediation must take place in Victoria.

**13.4 No Obligation to Refer**

Sub-clause 13.3 does not in any way require the Council or the Contractor to refer to mediation any dispute or difference or in any way act as a bar to the bringing of legal proceedings by the Council or the Contractor, except that no dispute or difference must be the subject of legal proceedings, except for legal proceedings concerning the conduct of the mediation itself or a question of law, from the time it is referred to mediation under sub-clause 13.3 to the end of any subsequent mediation.

**13.5 Work to Continue**

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

**13.6 Disputes involving other Participating Councils**

Where a dispute or difference under this Contract also extends to other Participating Councils under their own equivalent contracts with the Contractor, either party to this Contract may give to such other Participating Council(s) notice requiring them to participate in the attempted resolution of the dispute or difference under this clause 13.

**13.7 Costs**

The Contractor and any Participating Councils engaged in the processes described in this clause 13 do so at their own cost except that the parties to a dispute will share the costs of any independent third party engaged to assist in the resolution of this dispute equally, or in such other shares as otherwise agreed in writing by all parties to the dispute.

## Annexure Conditions of Contract

This annexure forms part of the Conditions of Contract and shall be read as part of the Contract.

### Contract No 21015

#### Description: Environmental Health Shared Services

|   |  |
|---|--|
| The Commencement Date is (clause 1.1):  | <b>1 July 2021</b>   |
| The Contract Documents in order of precedence are: (clause 1.1 and 1.3.3)   | <ol style="list-style-type: none"> <li><b>1. Contract Agreement</b></li> <li><b>2. Letter of Acceptance</b></li> <li><b>3. General Conditions of Contract Services</b></li> <li><b>4. Contractor Requirements, Occupational Health and Safety</b></li> <li><b>5. Specification</b></li> <li><b>6. Appendices</b></li> <li><b>7. Form of Tender and Schedules</b></li> <li><b>8. Contractor's Transition Plan referred to in its Tender, in the form approved by Council in writing</b></li> <li><b>9.</b></li> </ol> |
| The Contractor is (clause 1.1.3)  | <b>Kernow Environmental Services Pty. Ltd.<br/>ABN 53 070 348 999</b>  |
| The Council is (clause 1.1.3):  | <b>Bass Coast Shire Council</b>  |
| The Initial Contract Term is (clause 1.1.3):  | <b>3 Years</b>   |
| The Options Terms are (clause 2.2.2)  | <b>2 x 2 Years</b>   |
| The Council's Representative is (clause 1.1):   | <b>Manager Community Recreation and Culture</b>  |
| The address of the Council is (clause 1.5.3):   | <b>Bass Coast Shire Council<br/>76 McBride Avenue<br/>Wonthaggi, VIC 3995</b>  |
| The address of the Contractor is (clause 1.5.3)   | <b>17 Prendergast Lane,<br/>North Melbourne, Victoria, 3051</b>  |
| The maximum period for which the Contract may be extended is (clause 1.1 and 2.2.2):  | <b>2 x 2 Years</b>   |
| The period prior to the expiration of the Initial Contract Term by which notice of an extension must be given is (clause 2.2.2):    | <b>90 days</b>   |
| The hours on each day during which the Contractor's Representative is to be available and able to be contacted are (clause 2.5.1.4) | <b>During Council's published business hours</b>   |
| The pre-existing intellectual property is (clause 2.10.3)   | <b>Nil</b>   |
| Period of Payment (clause 6.5.1)  | <b>30 days from receipt of invoice</b>   |

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*Bass Coast Shire Council, City of Casey and Cardinia Shire Council*

*Conditions of Contract*

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|   |   |
|---|---|
| The Minimum amount of coverage under the Public Liability Policy is (clause 9.2.1):                               | <b>\$20 million</b>                                   |
| The amount by which the coverage under the Public Liability Policy must be increased each year is (clause 9.2.3): | <b>Nil</b>  |
| The Minimum amount of coverage under the Professional Indemnity Policy is (clause 9.3.2):                         | <b>\$20 million</b>                                   |
| Other Policies of Insurance to be effected and maintained are (clause 9.4):                                       | <b>Motor Vehicles Policy</b>                          |
| The amount of coverage under the Motor Vehicles Policy is (clause 9.4):   | <b>\$10 million (Minimum)</b>                         |
| Performance security required (clause 11.1.1):  | <b>\$25,000</b>                                       |
| The party or parties required to execute the Deed of Guarantee are (clause 11.3):                                 | <b>All the Directors and Owners of the Contractor</b> |
| Continuing Obligation (clause 12.1.2)   | <b>Not Required</b>                                   |

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## Schedule 1 – Deed of Adoption

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Date [insert]

Parties

Between

[Insert Council name] of [address]

**(New Council)**

and

[Insert Contractor name] of [address]

**(Contractor)**

Background

- A. Bass Coast Shire Council entered into the Services Contract with the Contractor for the environmental health shared services.
- B. The Contractor has agreed to supply services to the New Council on the same terms as the Services Contract.
- C. The parties have agreed that, with effect on and from the Effective Date, the Services Contract will be adopted by the New Council and the Contractor and varied in accordance with this Deed.
- D. The parties enter into this Deed to record and give effect to their common intentions in writing and to record the terms of the Council Purchase Contract between them.

This Deed Witnesses

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### 1. Definitions

In this Deed, capitalised terms have the meaning given to them in the Services Contract and unless expressed or implied otherwise:

**Council Purchase Contract** means the arrangement formed between the New Council and the Contractor under clause 2 of this Deed.

**Deed** means this Deed of Adoption including all schedules and attachments.

**Effective Date** means the date of execution of this Deed by the parties.

**Services Contract** means the General Conditions of Contract – Services No. [insert] between Bass Coast Shire Council and the Contractor dated [insert], as amended by its parties from time to time prior to the Effective Date. A copy of the Services Contract as originally signed by Bass Coast Shire Council and the Contractor is at Attachment 2.



**2. Formation of the Council Purchase Contract**

- 2.1 With effect on and from the Effective Date and subject to the variations set out in clause 3, the New Council and the Contractor agree to observe, perform and be bound by all of the terms of the Services Contract as if it had originally been executed by them.
- 2.2 The arrangement between the parties for the supply of services arising under this Deed will be known as the Council Purchase Contract.
- 

**3. Variation of Services Contract**

The parties agree that the Council Purchase Contract will differ from Services Contract as follows:

- 3.1 all references in the Services Contract to 'Bass Coast Shire Council' in any capacity or context will be read and construed as references to the New Council;
- 3.2 clause 2.18 is deleted and replaced with 'Not used';
- 3.3 the Annexure of the Services Contract is deleted and replaced with the Schedule set out in Attachment 1 of this Deed; and
- 3.4 all references to 'the Council' in the Services Contract will be read and construed as references to the New Council.
- 

**4. Confirmation**

- 4.1 The parties agree and confirm that the Council Purchase Contract comprises the Services Contract, except as the latter is varied by this Deed.
- 4.2 The parties acknowledge and agree that Bass Coast Shire Council is not a party to the Council Purchase Contract and Bass Coast Shire Council does not have any rights, responsibilities or liability under the Council Purchase Contract.
- 4.3 For the avoidance of doubt, termination of the Services Contract will not result in termination of the Council Purchase Contract.
- 4.4 Any changes or variations to the Service Contract which are notified to the New Council in writing by Bass Coast Shire Council will apply to the Council Purchase Contract unless the Contractor and the New Council agree in writing not to vary the Council Purchase Contract.
- 

**5. Interpretation**

**5.1 Words and headings**

In this Deed, unless expressed to the contrary:

- 5.1.1 words denoting the singular include the plural and vice versa;
- 5.1.2 the word 'includes' in any form is not a word of limitation;
- 5.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 5.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
-

- 5.1.5 no rule of construction applies to the disadvantage of the party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

**5.2 Specific references**

In this Deed, unless expressed to the contrary, a reference to:

- 5.2.1 a gender includes all other genders;
- 5.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 5.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 5.2.4 writing includes writing in digital form;
- 5.2.5 'this Deed' is to this Deed as amended from time to time;
- 5.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 5.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 5.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 5.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 5.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 5.2.11 any body (Original Body) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

---

**6. General**

**6.1 Variation**

This Deed may only be varied, supplemented, replaced or novated by a document executed by the parties.

**6.2 Authority to execute**

- 6.2.1 Each of the parties warrants to the others that:
- (a) it has full power and authority to enter into and perform its obligations under this Deed; and
  - (b) its obligations under this Deed are valid, binding and enforceable against it in accordance with its terms.

6.2.2 Any individual executing this Deed on behalf of a party represents and warrants that he or she has been fully empowered to execute this Deed and that all necessary action to authorise the execution of this Deed has been taken.

**6.3 Severability**

6.3.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

6.3.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

**6.4 Waiver**

The failure of a party at any time to insist on performance of any provision of this Deed is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Deed.

**6.5 Further assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

**6.6 No merger**

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

**6.7 Business Day**

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

**6.8 Counterparts**

This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.

**6.9 Governing law**

This Deed is governed by the law applying in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

**6.10 Disputes**

Disputes arising under or in connection with this Deed must be dealt with on the same basis as set out in clause 20 of the Council Purchase Contract.

**6.11 Notices**

Notices in respect of this Deed must be given and will be deemed received on the same basis as set out in clause 22 of the Council Purchase Contract.

**Executed** by the parties as a deed

[Execution clauses to be inserted]

## ATTACHMENT 1

### Annexure Conditions of Contract

This annexure forms part of the Conditions of Contract and shall be read as part of the Contract.

#### Contract No 21015

#### Description: Environmental Health Shared Services

|   |   |
|---|---|
| The Commencement Date is (clause 1.1):  | [To be inserted]  |
| The Contract Documents in order of precedence are: (clause 1.1 and 1.3.3)   | [To be inserted]  |
| The Contractor is (clause 1.1.3)  | [To be inserted]  |
| The Council is (clause 1.1.3):  | [To be inserted]  |
| The Initial Contract Term is (clause 1.1.3):  | [To be inserted]  |
| The Options Terms are (clause 2.2.2)  | [To be inserted]  |
| The Council's Representative is (clause 1.1):   | [To be inserted]  |
| The address of the Council is (clause 1.5.3):   | [To be inserted]  |
| The address of the Contractor is (clause 1.5.3)   | <b>17 Prendergast Lane,<br/>North Melbourne, Victoria, 3051</b> |
| <br>  |   |
| The maximum period for which the Contract may be extended is (clause 1.1 and 2.2.2):  | [To be inserted]  |
| The period prior to the expiration of the Initial Contract Term by which notice of an extension must be given is (clause 2.2.2):    | [To be inserted]  |
| The hours on each day during which the Contractor's Representative is to be available and able to be contacted are (clause 2.5.1.4) | [To be inserted]  |
| The pre-existing intellectual property is (clause 2.10.3)   | [To be inserted]  |
| Period of Payment (clause 6.5.1)  | [To be inserted]  |
| The Minimum amount of coverage under the Public Liability Policy is (clause 9.2.1):   | [To be inserted]  |
| The amount by which the coverage under the Public Liability Policy must be increased each year is (clause 9.2.3):                   | [To be inserted]  |
| The Minimum amount of coverage under the Professional Indemnity Policy is (clause 9.3.2):   | [To be inserted]  |
| Other Policies of Insurance to be effected and maintained are (clause 9.4):   | [To be inserted]  |
| The amount of coverage under the Motor Vehicles Policy is (clause 9.4):   | [To be inserted]  |
| Performance security required (clause 11.1.1):  | [To be inserted]  |

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*Conditions of Contract*

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The party or parties required to execute the Deed of Guarantee are (clause 11.3): **[To be inserted]**

Continuing Obligation (clause 12.1.2) **[To be inserted]**

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*Bass Coast Shire Council, City of Casey and Cardinia Shire Council*

*Conditions of Contract*

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## **ATTACHMENT 2**

Services Contract

[Services Contract to be inserted]

## Schedule 2 – Joint Contract Manager Responsibilities

| Function  | Joint Contract Manager   | Council Representative for a Participating Council that has executed a Deed of Adoption |
|---|--------------------------|---|
| Decision to enter, extend, cease or vary Contract   | Facilitate               | Facilitate locally  |
| Contract payments and invoicing between Participating Councils  | Facilitates              | Facilitate locally  |
| Periodic review of compliance documents   | Facilitates              |   |
| Contract management meetings  | Facilitates (non-voting) |   |
| Monitoring performance of Contract  | Facilitates              |   |
| Developing consistent processes/procedures for benefit of Participating Councils  | Facilitates              |   |
| Issue resolution between Participating Councils   | Facilitates              | Facilitates locally   |
| Establishing functional working relationship with Contractor Manager  | Responsibility           |   |
| Establishing functional working relationship with local contractor team leader / service delivery lead  |                          | Responsibility  |
| Prosecution and enforcement decisions <ul style="list-style-type: none"> <li>• exercise of enforcement discretions</li> <li>• review of infringements</li> <li>• business registration refusals etc</li> <li>• issuing improvement and prohibition notices</li> </ul> |                          | Responsibility  |
| Local communications and press releases   |                          | Responsibility  |
| Emergency management arrangements or programs   |                          | Responsibility  |
| Customer complaints about Contractor performance or staff in execution of duties  | Records                  | Responsibility  |
| Contractor integration with broader organisations   |                          | Responsibility  |
| Contractor access to facilities   |                          | Responsibility  |
| Contractor onboarding, IT and office support  |                          | Responsibility  |
| Staff authorisations  |                          | Responsibility  |
| Local strategies, priorities or initiatives outside of Contract specifications  |                          | Recommending  |
| Other day-to-day requirements to support Contractor to perform agreed services  |                          | Responsibility  |

## Schedule 3 – Payment Schedule

Payments to the Contractor will consist of two components, payable monthly in arrears:

1. Management Fee; and
2. Services and Travel Fee,

to be calculated in the manner described below.

### 1. Management Fee

- 1.1 The Management Fee is \$9,182.08 per month which is payable by each Participating Council in the manner described below.
- 1.2 The amount of the Management Fee payable by each Participating Council will depend on the volume of services used by that council. For example, if 40% of the Services were performed for the benefit of Council (with the remaining 60% performed for the benefit of one or more of the other Participating Councils), then Council (under this Contract) will be required to pay 40% of the Management Fee in that month.

### 2. Services and Travel Fee

The Services and Travel Fee is \$47,157.75 per month. The Services and Travel Fee for any Participating Council that executes a Deed of Adoption will be established on the basis set out in the Contractor's Tender.

### 3. Schedule of Rates

## DAY WORK RATES

Day work rates used for pricing of variations to the existing contract.

| Description  | Hourly Rates (\$)* |
|--|--------------------|
| Manager  | \$112.00           |
| Team Leader  | \$97.00            |
| Senior Environmental Health Officer                    | \$84.00            |
| Environmental Health Officer                           | \$75.00            |
| Environmental Health Technician                        | \$60.00            |
| Administrative Officer                                 | \$54.00            |
| <i>Public Holiday Rates will incur a 50% surcharge</i> | <i>+50%</i>        |
| <i>* Rates are GST exclusive</i>                       |                    |

**NB: Daywork Rates include all overhead administrative costs, all operator costs including allowances, mobilisation costs, fuel, servicing, other costs and profits.**



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Bass Coast Shire Council, City of Casey and Cardinia Shire Council

Conditions of Contract

**Contract Agreement  
Contract No. 21015  
Environmental Health Shared Services**

This agreement is made the 30th day of June 2021  
between **KERNOW ENVIRONMENTAL SERVICES PTY. LTD. ABN 53 070 348 999**  
("the **Contractor**")  
of 17 Prendergast Lane, North Melbourne, Victoria, 3051  
and **BASS COAST SHIRE COUNCIL** ("the **Principal**")  
of 76 McBride Avenue, Wonthaggi, VIC 3995

It is agreed that the General Conditions of Contract - Services and all other documents listed as the Contract Documents in the Annexure to the General Conditions of Contract - Services together comprise and evidence the Contract between the parties, and that it is agreed that each party to this agreement has been given access and is aware of the contents of all the documents listed in the Annexure.

Executed as a deed by the parties on the date set out at the commencement of this Form of Agreement.

**SIGNATURES**

**SIGNED AND DELIVERED**  
on behalf of  
**BASS COAST SHIRE COUNCIL**



Ali Wastie  
Chief Executive Officer

**EXECUTED** by

**KERNOW ENVIRONMENTAL SERVICES  
PTY LTD ABN 53 070 348 999**

by being signed by those persons who are  
authorised to sign for the company:



Print name: \_\_\_\_\_  
Position (e.g. Director): \_\_\_\_\_



## 6.4 Financial Reports

### 6.4.1 Variation of contract 21-032 Environmental Health Shared Service

**Responsible GM:** Owen Hardidge  
**Author:** {author-name-do-not-remove}

#### Recommendation(s)

That Council note the contents of this report and approve the variation to the contract 21-032 for Environmental Health Services to increase the Year 3 contract price to be \$1,441,504 (excl GST). [Text - Refer to reference document]

#### Attachments

Nil

#### Executive Summary

Text - Refer to Reference Document

#### Background

In Dec 2021, Council resolved to award the tender and enter a shared service contract with Bass Coast Shire Council and Casey City Council (member councils), to use a common provider of Kernow Environmental Services Pty Ltd (Kernow) for the above-mentioned Contract. This was established through a previous collaborative procurement tender process in June 2021 where Kernow was selected as the preferred tenderer.

The total Contract is for an initial period of 3 years with an option to extended 2 + 2 years. The current Contract expiry date is 30 June 2024.

The contract has not been previously varied.

On the 16 January 2023, Kernow wrote to member councils requesting a contract variation with issues concerning the adoption of a shared IT system. On the 17 February 2023 member councils meet with Kernow representatives who highlighted many unforeseen financial challenges that were not known at the time of providing their original tender price:

- High inflation impacting consumables,
- Significant wage growth levels,
- Major fleet and insurance increases,
- Unprecedented Environmental Health Professional workforce shortages

Further, Council staff and Kernow representatives recognise that the "shared service" model is a novel arrangement in Victoria, and that there was an inherent level of uncertainty in Councils offering, and contractors replying to, the tender.

Following negotiations between member councils and Kernow representatives, where the justification for the variation was interrogated, Kernow have agreed with the member council's proposal to vary the *total* contract price for the 2023/24 period (i.e. year 3) of \$210,929 (GST



exclusive) with this cost to be shared **across the shared service contract**. This variation will make the year 3 prices the same as Year 2. The year 3 price (i.e., the discounted price) will be deferred until such time an IT solution is in place.

As such, the variation impacting Cardinia Shire Council is proposed to increase the contract price by **\$83,147** (excl GST), bringing the total annual price to \$1,441,504.

Pending Council approval, this variation has been anticipated in the proposed 23/24FY budget.

**Table 1: Contract Variation History**

|  |                        |
|--|------------------------|
| A. Original Contract Value (23/24 FY)        | \$1,358,357 (excl GST) |
| B. Value of Variation/s to Date (if any)     | \$0                    |
| C. Value of any Extension/s to Date (if any) | \$0                    |
| D. Value of this Proposed Variation          | \$83,147               |
| E. Proposed Revised Total Contract Value     | \$1,441,504            |

Text - Refer to Reference Document

**Policy Implications**

This variation does not impact any previously adopted policies. Text - Refer to Reference Document

**Relevance to Council Plan**

**5.1 We practise responsible leadership**

5.1.2 Manage our finances responsibly and leave a positive legacy for future generations.

**Climate Emergency Consideration**

The initial tender included consideration of environmentally sensitive practices, but otherwise there is limited impact on Climate Emergency considerations. Text - Refer to Reference Document

**Consultation/Communication**

In keeping with the Shared Service approach, the request for contract variation was addressed to all member Councils to consider, and negotiations were undertaken together. The recommendation (to increase the contract cost) is consistent with Shared Service Councils, who have also supported increases to their 3<sup>rd</sup> year contract term. Text - Refer to Reference Document

**Financial and Resource Implications**

The increase to the contract cost will be \$83,147 for a total annual price of \$1,441,504. This increase has been anticipated in the proposed 23/24FY operational budget, subject to Council approval. Text - Refer to Reference Document



**Conclusion**

Due to a range of factors impacting contract costs, the 3<sup>rd</sup> year price of the contract is recommended to be increased. The proposed increase represents a negotiated figure following detailed analysis of the variation proposal, and is relatively modest (because the cost increase is spread across all member Councils).

It is therefore recommended that the contract variation be approved. Text - Refer to Reference Document

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## Memorandum of Understanding

Environmental Health Shared Service – Memorandum of Understanding  
(**MOU**) between the Casey City Council, Cardinia Shire Council and Bass Coast  
Shire Council

### 1. Background

- 1.1. Casey City Council, Cardinia Shire Council and Bass Coast Shire Council (the **Member Councils**) have agreed to work together to obtain Environmental Health Services across their three municipalities.
- 1.2. The Member Councils have agreed to participate together in a joint procurement process to establish a shared services contract model for the delivery of Environmental Health Services across the three municipalities.
- 1.3. This joint procurement process aims to identify a suitable contractor for the purposes set out in clause 1.2 of the MOU and for the Member Councils to each separately enter into a contract with a preferred tenderer for up to 3 years with 2 x 2 year extension options, a total contract period of up to 7 years, all ending on the same day, irrespective of the start date.
- 1.4. During the contract period there will also be the potential for additional councils to participate in the joint procurement contemplated by this MOU.
- 1.5. This non-binding MOU outlines the procurement, management and operational responsibilities of each Member Council, and between the Member Councils (as well as future councils as applicable), and the core principles applying under the MOU.

### 2. Overview of the joint procurement structure and contracting model

- 2.1. The joint procurement under this MOU is intended to be structured as follows:

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- 2.1.1. a Lead Council is appointed to (discussed below under the heading 'Roles and Responsibilities' at clause 4 of this MOU) act on behalf of the other Member Councils during the tender period to the extent set out in this MOU;
  - 2.1.2. the Lead Council will represent the Member Councils in dealings with tenderers, joint procurement matters and contract finalisation, with input from the other Member Councils;
  - 2.1.3. the Lead Council will sign the initial contract with the selected tenderer; and
  - 2.1.4. each Member Council will then sign a deed of adoption under the initial contract to form their own contract with the contractor.
- 2.2. Matters relevant to the joint procurement and to the Member Councils collectively will be managed in accordance with this MOU. Each Member Council will be required to manage its own contract with the contractor, except to the extent the contract and this MOU assign an ongoing management role to the Lead Council or Group Contract Manager (discussed below).

### 3. Core Operating Principles

- 3.1. The Member Councils and their representatives will apply the following principles to the joint procurement process and shared services arrangement:
  - 3.1.1. Openness –
  - 3.1.2. Trust –
  - 3.1.3. Transparency –
  - 3.1.4. Accountability –
  - 3.1.5. Confidentiality –
  - 3.1.6. Collaboration –
  - 3.1.7. Consistency –the Member Councils, where practicable, will endeavour to utilise similar processes, technology platforms and resources to gain efficiencies from the shared services, and provide improved experiences for business customers of each Member Council.
  - 3.1.8. Continuous Improvement – services delivered under the shared services arrangements will strive to ensure processes remain contemporary and deliver value for customers.
  - 3.1.9. Relationships – the establishment of the shared service and oversight committee (**Steering Committee**, as discussed at clause 10 of this MOU) will enhance the relationship between each of the Member Councils.

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#### 4. Roles and Responsibilities

- 4.1. As at the commencement of this MOU, Bass Coast Shire Council is the Lead Council during the tender phase of this joint procurement. The Lead Council will be the first point of contact for tenderers on a global level in terms of administration of matters relevant to the overall joint procurement process.
- 4.2. The Lead Council will liaise with the other Member Councils as is timely and appropriate throughout the joint procurement process and in respect of all joint procurement matters.
- 4.3. At the conclusion of the tender process, the Member Councils will jointly fund a role, referred to as the Group Contract Manager, as described further at clause 9 of this MOU.
- 4.4. At all times, all Member Councils will liaise with each other in a timely and appropriate manner.
- 4.5. Each Member Council will nominate a directly-employed staff member, referred to as a **Member Council Service Manager** (discussed below at clause 8 of this MOU), who will have direct line of communication with the contractor for its respective contract and for that Member Council's individual issues and services, and to make decisions in respect of the service within the relevant municipal area.
- 4.6. Each Member Council has responsibility for its local systems administration and management, and a responsibility to each other for the coordination, usage and management of shared data.
- 4.7. Each Member Council will report service downtimes and complaints to the Group Contract Manager.
- 4.8. Each Member Council will be responsible for identifying who in their respective Councils is authorised to make Executive decisions in respect of the contract (bearing in mind the different delegations, processes and policies of each Council). In the Responsibility Assignment Matrix these functions are referred to "Member Council Executive" functions in the Responsibility Assignment Matrix at Attachment B to the MoU.
- 4.9. Other roles and responsibilities relevant to this MOU are further specified in the Responsibility Assignment Matrix at Attachment B to this MOU.

#### 5. Legal and contractual matters

- 5.1. The Lead Council will be first to sign a contract with the successful tenderer.
- 5.2. The other Member Councils will then sign a deed of adoption to form their own contract with the contractor.

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- 5.3. Other councils that wish to be a part of this shared services arrangement may participate by signing deeds of adoption or taking any other steps as may reasonably be determined by the Steering Committee. Those other councils will also need to agree to comply with the ongoing commitments in this MOU.
- 5.4. The Member Councils will discuss, within the first 6 months of the 3<sup>rd</sup> year of the first contract (or such other applicable expiry timeframes for the initial term or optional terms), whether the option to extend the contract term (for a further 2 years or such other applicable extension term(s)) is to be exercised, with the intention that Member councils should act consistently where possible.
- 5.5. Each party will be responsible for its own ongoing legal costs resulting from variations or cessation of its contract or other legal matters related to its contract.

## 6. Finance

- 6.1. All costs as detailed in each contract, including implementation and ongoing fees, over the initial contract term and any optional extensions (if the extensions are agreed upon between the Member Councils) are the responsibility of the relevant Member Council.
- 6.2. Each Member Council remains responsible for its invoices under its contract over the contract term irrespective of whether that Member Council makes use of the contracted services.
- 6.3. Individual services, implementation, and integration costs outside and independent of the joint procurement will be met by the relevant Member Council.
- 6.4. Some costs will be split between the Member Councils at a percentage to be confirmed between the Member Councils. It is the intention of the Member Councils that these costs will be split in proportion with the proportion of contract costs procured under this MoU, and it is intended that the proportions will be agreed at the conclusion of the tender process.
- 6.5. Costs to be split in proportion in accordance with Clause 6.4 include:
  - 6.5.1. Legal advice related to the joint tender;
  - 6.5.2. Probity advisors related to the joint tender;
  - 6.5.3. Advertising and other costs associated with the tender;
  - 6.5.4. Salary costs of the Group Contract Manager, and
  - 6.5.5. any other costs related to the joint tender and ongoing services, as agreed by the Steering Committee from time to time.
- 6.6. The Member Councils, with the assistance of the Lead Council, will make available all financial information relating to the joint procurement in a timely manner to support each Member Council's annual planning and budgeting processes and cycle.



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- 6.7. All members of the Steering Committee will raise issues, events or decisions as early as possible, to ensure that any actual or potential material changes to any costs (or contribution to any costs) by Member Councils, are known in advance, in order to allow all Member Councils to make responsible and accurate forward projections of the costs of services covered by the shared services arrangement.

## 7. Implementation and implementation timeframes

- 7.1. Bass Coast Shire Council has indicated its hard deadline of Monday 1 July 2021 as the date by which the contract is to be executed and in effect for Bass Coast Shire Council (unless otherwise executed and effective on an earlier date).
- 7.2. It is intended that the contract for Cardinia Shire Council will commence on 1 July 2022 (if not earlier).
- 7.3. It is intended that the contract for Casey City Council will commence on 1 January 2023 (if not earlier).
- 7.4. Irrespective of different contract commencement dates, the Member Councils will continue to work together in accordance with this MoU to establish the Steering Committee and to achieve the objectives of this MoU.
- 7.5. Notwithstanding the different contract start dates, the Member Councils intend that the contracts will all end on the same day, unless a contract is terminated earlier for material breach.
- 7.6. Each Member Council is to provide the required resources to ensure each contract implementation step is met within the required timeframes.
- 7.7. For joint procurement tasks and requirements (including tender evaluation), the Member Councils will commit to identifying those elements and agreeing upon a time and place to jointly undertake the associated tasks to complete the joint procurement tasks and requirements within the relevant implementation timeframes.

## 8. Member Council Service Managers

- 8.1. It is recognised that each Member Council continues to be responsible for meeting legislative requirements, customer service expectations and public communications within its municipality. Many statutory decisions can only be made by Member Council employees, exercising valid delegations on behalf of that Member Council.
- 8.2. Each Member Council will appoint its Member Council Service Manager, who will be responsible for:

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- 8.2.1. establishing and maintaining functional working relationships with the contractor staff providing services within the Member Council's municipal district;
- 8.2.2. prosecution and enforcement decisions arising within the municipal district;
- 8.2.3. local communications and press releases;
- 8.2.4. responses to customer complaints about contractor performance or staff in the execution of that Member Council's statutory duties;
- 8.2.5. reporting complaints about contractor performance or staff to the Steering Committee;
- 8.2.6. contractor staff authorisations and instruments of appointment;
- 8.2.7. contractor integration within the structure of the Member Council, including access of contractor staff to facilities, IT and office equipment (if specified in the contract);
- 8.2.8. other day-to-day requirements to support the contractor to perform services within the municipal district, and
- 8.2.9. generally supporting the operation of the relevant contract.

## 9. Group Contract Manager

- 9.1. The Steering Committee will approve a staff member of one of the Member Councils to be the Group Contract Manager. The Group Contract Manager may also be a Member Council Service Manager, or another staff member of a Member Council.
- 9.2. The costs of the Group Contract Manager will be jointly met by the Member Councils, in proportion to the service volumes being performed under the contract at the relevant time.
- 9.3. The EFT, remuneration and identity of the Group Contract Manager will be agreed by the Steering Committee in advance, and reviewed quarterly, and reflect the minimum cost to Member Councils to maintain the efficient operation of the shared services arrangements.
- 9.4. The Group Contract Manager will be responsible for:
  - 9.4.1. being primary contact with the contractor on a global level in terms of issues that impact all Member Councils, as set out in the contract(s);
  - 9.4.2. establishing and maintaining functional working relationship with the Contractor Manager;
  - 9.4.3. ensuring that Member Councils agree and document payments to be made between Member Councils
  - 9.4.4. calling and facilitating Steering Committee meetings, including recording the Steering Committee's decisions;

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- 9.4.5. collating and distributing service reports, statistics and complaints for consideration by the Steering Committee;
- 9.4.6. facilitating issue resolution between Member Councils, or between the Contractor and member Councils, as expeditiously as possible (recognising that each Member Council is ultimately responsible for their own contract), and
- 9.4.7. other such roles and functions as the Steering Committee decides, from time to time, to support the shared services arrangements.

## 10. Steering Committee

- 10.1. The Member Councils will establish a **Steering Committee** comprising the Member Council Service Managers (or their representatives from time to time) of each Member Council for the purposes of:
  - 10.1.1. contract management;
  - 10.1.2. review and prioritisation of services;
  - 10.1.3. continuous improvement;
  - 10.1.4. agreeing and promoting consistency of practice within municipalities (to the extent that it is consistent with the legislative responsibilities of each Member Council); and
  - 10.1.5. agreeing on financial matters, including variations of contracts, and additional services engaged by Member Councils.
- 10.2. Meetings of the Steering Committee will be held:
  - 10.2.1. for the first 12 months of the contract period, at a frequency to be agreed by the Steering Committee, not less than once per calendar month; and
  - 10.2.2. for the remainder of the contract period, at a frequency to be agreed by the Steering Committee, but not less than once per quarter.
- 10.3. Secretariat responsibilities will be provided by the Group Contract Manager.
- 10.4. It is acknowledged that each Member Council has different cultures, values and service requirements which may result in differing requirements /expectations for individual Member Councils. Any differences that will have a material or financial impact on the contract will be dealt with by way of contract annexure to the relevant Member Council contract.
- 10.5. If a Member Council is considering terminating or not extending its contract, it must first raise the matter for discussion at the Steering Committee so that impacts of that termination on the other Member Councils can be considered.

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## 11. Steering Committee Meetings and Decision Making

- 11.1. Each Member Council will be entitled to one vote on the Steering Committee, with motions carried by a simple majority, when determining, amongst other matters, priorities and resource allocations under the joint procurement.
- 11.2. Meetings of the Steering Committee will include the Group Contract Manager and may include a contractor representative (where the representatives from Member Councils consider it appropriate), but neither of the Group Contract Manager or contractor representative may vote. In the event that the Group Contract Manager is also a Member Contract Service Manager, that person may cast one vote on behalf of their respective Member Council.
- 11.3. A quorum for decision making will be 50% +1 of the Steering Committee.
- 11.4. In the event the Steering Committee does not agree on a matter, any Member Council representative may refer the matter for resolution under the Issue Resolution arrangements below.
- 11.5. Any conflicts of interest held by Member Council representatives will be declared at the commencement of all meetings.
- 11.6. In the event of a conflict of interest arising, any affected Member Council or its representatives will remove themselves from that part of any meetings or discussions until such time as a decision has been made. If the conflict of interest is specific to the representative, the Member Council which they are representing will be entitled to send an alternative representative to that meeting at which the decision will be made.
- 11.7. The Steering Committee will work to achieve decision-making by consensus, where possible. To mitigate against disputes arising that might undermine the collaborative nature of the shared service model, any disagreements between Member Councils will be resolved under the issue resolution process at clause 13 of this MOU.

## 12. Lead Council rotation and exit strategy

- 12.1.
- 12.2. A Member Council may exit this joint procurement and this MOU's shared services arrangement with 6 months prior written notice to the other Member Councils. Any exiting Member Council:
  - 12.2.1. will be required to sign appropriate legal documents (such as a deed of resignation) to give effect to that Member Council's exit; and

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- 12.2.2. remains liable for its share of any costs incurred by the joint procurement collectively.
- 12.3. If the other Member Councils wish to continue with the joint procurement or have agreed to reconstitute the joint procurement (including with other councils or parties), the exiting Member Council must do all things reasonably necessary or requested by the other Member Councils to enable the orderly transition to the continuing shared services arrangements. The exiting Member Council must then seek its own arrangements in relation to the supply of services similar to the shared services.
- 12.4. This MOU is intended to commence upon signing and continue until the expiry of the last contract with the contractor, unless the Member Council's agree otherwise in writing.

### 13. Issue Resolution

- 13.1. The Steering Committee will review the operation of this MoU every 6 months, and will make any changes or amendments as the Member Councils consider necessary. Each review will consider and determine whether any changes or improvements should be made in respect of:
  - 13.1.1. All arrangements relating to the Group Contract Manager, and
  - 13.1.2. all proportionate costs split in accordance with Clause 6.4, and
  - 13.1.3. any other issue relating to the joint tender, services provided under the MoU, or any other aspect of the MoU.
- 13.2. Member Councils enter into this MOU in a spirit of partnership and open communication. If an issue or dispute arises in relation to this MOU or the general operation of the joint procurement, the following procedures will be implemented:
  - 13.2.1. In the first instance, issues will be discussed with the person / Member Council that it immediately relates to (e.g. if a Member Council feels another Member Council is being derelict in its responsibility to the joint procurement, a discussion will occur directly between those Member Councils). If the parties agree on a solution, a timeframe for implementation is to be agreed and followed through by the relevant Member Councils.
  - 13.2.2. If resolution is not achieved under clause 13.2.1 of this MOU, the matter will be tabled for broader discussion between all Member Councils. If agreement can be reached on a solution, a timeframe for implementation and review is to be agreed and followed through by the relevant Member Councils.
- 13.3. If resolution is not achieved under clause 13.2.2, the issue in dispute will be referred to the Chief Executive Officers of the disputing Member Councils for resolution.

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13.4. In the event of a dispute arising between the contractor and one or more Member Councils,  
the dispute resolution procedures outlined in the relevant contracts will be used for  
resolution.

Signed by:

*Glenn Patterson*

Casey City Council

Signed by:

*Carol Jeffs*

Cardinia Shire Council

Signed by:

*Alli Wastie*

Bass Coast Shire Council

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Attachment B

Responsibility Assignment Matrix

|  | Steering committee | Group Contract Manager   | Member Council Service Manager | Member Council executive (subject to member Council delegations) |
|--|--------------------|--------------------------|--------------------------------|--|
| <b>Function</b>  |                    |                          |                                |  |
| Decision to enter, extend, cease or vary contract  | Recommend          | Facilitate               | Facilitate locally             | Approval   |
| Contract payments and invoicing between Member Councils  |                    | Facilitates              | Facilitate locally             |  |
| Periodic review of compliance documents  | Approves           | Facilitates              |                                |  |
| Steering Committee meetings  | Attends            | Facilitates (non voting) |                                |  |
| Monitoring performance of contract   | Approves           | Facilitates              |                                |  |
| Developing consistent processes/procedures for benefit of Member Councils                                    | Approves           | Facilitates              |                                |  |
| Issue resolution between Member Councils   |                    | Facilitates              | Facilitates locally            | Approval   |
|  |                    |                          |                                |  |
| Establishing functional working relationship with contractor manager   | Oversight of       | Responsibility           |                                |  |
| Establishing functional working relationship with contractor staff providing service within the municipality | Oversight of       |                          | Responsibility                 |  |

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|   | Steering committee                  | Group Contract Manager | Member Council Service Manager | Member Council executive (subject to member Council delegations) |
|---|-------------------------------------|------------------------|--------------------------------|--|
| Prosecution and enforcement decisions <ul style="list-style-type: none"> <li>• exercise of enforcement discretions</li> <li>• review of infringements</li> <li>• business registration refusals etc</li> <li>• issuing improvement and prohibition notices</li> </ul> | Supports consistency where possible |                        | Responsibility                 |  |
| Local communications and press releases   | Supports consistency where possible |                        | Responsibility                 |  |
| Emergency management arrangements or programs   | Reported to                         |                        | Responsibility                 |  |
| Customer complaints about contractor performance or staff in execution of duties  | Oversight of                        | Records                | Responsibility                 |  |
| Contractor integration with broader organisations   | Supports consistency where possible |                        | Responsibility                 |  |
| Contractor access to facilities   |                                     |                        | Responsibility                 |  |
| Contractor onboarding, IT and office support  |                                     |                        | Responsibility                 |  |
| Staff authorisations  |                                     |                        | Responsibility                 |  |
| Local strategies, priorities or initiatives outside of contract specifications  | Supports consistency where possible |                        | Recommending                   | Approval   |
| Other day-to-day requirements to support contractor to perform agreed services  | Supports consistency where possible |                        | Responsibility                 |  |