CONTRACT FOR THE PROVISION OF CURATION AND DELIVERY OF LIVE@LUNCH - WOLLONGONG CBD (2027-2028)

PART A CONTRACT PARTICULARS (SPECIFICATION)

THE COUNCIL OF THE CITY OF WOLLONGONG ABN 63 139 525 939 of 41 Burelli Street, Wollongong **(Council)** and the **Contractor** agree to carry out their respective obligations in accordance with this Contract.

CONTRACT *(clause 1.1)*	For provision of **CBD SOUNDS / PROVISION OF CURATION AND DELIVERY OF LIVE@LUNCH - WOLLONGONG CBD (2027-2028)** to Council (Services) The Contract documents comprise the following parts: • Part A – Contract Particulars including: Attachment 1 – Specification Attachment 2 - Contractor's Offer to Council • Part B – Contract Conditions with Schedules; • Part C – Council's Code of Business Ethics	
COUNCIL'S REPRESENTATIVE	**Name**	**Carla Yamine**
	Mobile Phone	
	Office Phone	**02 4277 8129**
	Email Address	**cyamine@wollongong.nsw.gov.au**
CONTRACTOR	**Name**	
	Trading Name	
	ABN or ACN	
	Address	
	Postal Address	
	Phone	
	Email Address	
	Internet Address	
CONTRACTOR'S REPRESENTATIVE	**Name**	
	Mobile Phone	
	Office Phone	
	Email Address	

Fee (Contract Price) *(clause 1.1)* *[tick whichever applies]*	☑ A lump sum of [$ amount] , exclusive of GST ☐ The amount calculated by multiplying the quantity of Services performed in accordance with the Contract by the applicable rates or prices in the Schedule of Rates for those Services as set out in Attachment 2 ☐ Reimbursement of disbursements and expenses reasonably and properly incurred in connection with the Services with the prior written approval of the Council's Representative [modify as appropriate (e.g. if disbursements require approval only if over certain value, etc) if insufficient room to describe basis for reimbursement, attach description to Contract Particulars and note 'as attached'	
Services *(clause 1.1)*	As set out in Attachment 1	
Schedule of Rates *(clause 1.1)*	If applicable, as set out in Attachment 2	
Contract *(clause 1.1)*	Contractor's offer to Council as set out in Attachment 2	
Amount of Professional Indemnity Insurance *[clause 3.1(a)(ii)]*	$5m	
Term	As set out in Attachment 1	
Contractor's Key People *[clause 4.4(a)(iii)]*	**Position** [Position]	**Person** [Name]
	Position [Position]	**Person** [Name]
	Position [Position]	**Person** [Name]
Quality Assurance System *[clause 5.2(a)]*	N/A	

Signed as an agreement on _____ (this is the Contract Date)

Signed for and on behalf of **Council** in accordance with authorities delegated under the *Local Government Act 1993* and not withdrawn:

Signature of Witness	Signature of authorised Council Officer
Name of Witness	Name of authorised Council Officer

Signed for and on behalf of the **Contractor** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director	Signature of Director or Secretary
Name of Director	Name of Director or Secretary

PART A – CONTRACT PARTICULARS

Refer ATTACHMENT 1 – SPECIFICATION (COUNCIL'S REQUIREMENTS)

Attached and marked as Attachment 1 is the Specification, which when read together indicate the final agreement.

ATTACHMENT 2 – CONTRACTOR'S OFFER TO COUNCIL

Attached and marked as Attachment 2 is the Contractor's offer to Council which when read together indicate the final agreement. This includes the Expression of Interest and the successful supplier's response to the Expression of Interest.

PART B - CONDITIONS

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1 Interpretation

1.1 GLOSSARY OF TERMS

Unless the context otherwise indicates, whenever used in this Contract:

(a) each word or phrase which appears in bold in the Specification or in this clause 1.1 has the meaning given to it in the Contract Particulars or this clause 1.1 *(as the case may be)*;

(b) 'including' (and any variant) is to be read as if followed by the 'without limitation'; and

(c) terms defined in GST Legislation have the meaning given to them in GST Legislation.

(d) in this Contract the singular includes:

(i) both the plural; and

(ii) the possessive forms of the term;

(iii) and the use of male, female or neutral gender imputes the other genders, used wherever and whenever applicable and appropriate and vice versa.

Business Day means any day other than a Saturday, Sunday or a public holiday, or 27, 28, 29, 30 or 31 December.

Claim includes any claim for an increase in the Fee or otherwise for payment of money:

(a) arising out of or in any way in connection with, the Contract, any direction of the Council's Representative or the Services; and

(b) whether under the Contract or otherwise at law or in equity.

Conflict of Interest means a conflict of interest as defined under the *Financial Services Reform Act,* 2004 or any other conflict of interest that arises as a result of a commitment the Contractor has or may have to another party that compromises or that could potentially compromise the Contractor's ability to properly represent Council or otherwise meet the Contractor's obligations under this Contract.

Contract means the contractual relationship between the parties constituted by:

(a) the Council Services Contract (Part A) Specification to which these Contract Conditions (Part B) are attached;

(b) these Contract Conditions (Part B); and

(c) any other documents referred to in the Specification as forming part of the Contract.

Contract Material means all material:

(a) provided to the Contractor by the Council; or

(b) brought, or required to be brought, into existence by the Contractor,

as part of, or for the purpose of, carrying out the Services.

Contractor means the person or entity shown in Part A – Contract Particulars with whom Council has entered into this Contract.

Council's Representative means the person nominated in the Specification or any other person nominated by the Council from time to time, who acts as the agent of the Council *(and not as a certifier)* in discharging each of its functions under the Contract.

Fee means the total of the amounts specified in or calculated in accordance with the Specification, as adjusted under the Contract.

GST means the tax payable on Taxable Supplies under the GST Legislation.

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Input Tax Credit has the meaning given to it in the GST Legislation.

Insolvency Event means:

(a) the Contractor informing the Council in writing, or its creditors generally, that the Contractor is insolvent or is unable to proceed with the Contract for financial reasons;

(b) execution being levied against the Contractor by a creditor; or

(c) if the Contractor is:

(i) an individual person or a partnership including an individual person, he or she: committing an act of bankruptcy; having a bankruptcy petition presented against him or her or presenting his or her own petition; being made bankrupt; making a proposal for a scheme of arrangement or a composition or having a deed of assignment or deed of arrangement made, accepting a composition, being required to present a debtor's petition or having a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth); or

(ii) a corporation: notice being given of a meeting of creditors with a view to the Contractor entering into a deed of company arrangement; the Contractor entering a deed of company arrangement with creditors; a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator being appointed to the Contractor; an application being made to a court for the winding up of the Contractor and not stayed within 14 days; a winding up order being made in respect of the Contractor; the Contractor resolving by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or a mortgagee of any property of the Contractor taking possession of that property.

Intellectual Property includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

Other Contractor means any person or firm engaged by the Council to provide services other than the Contractor and its subcontractors.

Schedule of Rates means the schedule of rates (if any) described in the Specification.

Services means all those things that a provider of services must perform in order to discharge the Services to Council as a Local Government Authority (LGA) and all those things the Contractor must do and deliver in order to comply with its obligations under this Contract including the services (if any) described in Part A – Contract Particulars (Specification) and as required from time to time by the Council or the Council's representative.

Specification means the Contract Particulars (Specification) - Part A to which these Contract Conditions - Part B are attached.

Tax Invoice means an invoice that satisfies the requirements of the GST legislation.

Variation means any change to the Services or the Contract Particulars.

Variation Order means a document served upon the Contractor by Council's representative for the purposes of effecting a Variation.

1.2 MISCELLANEOUS

(a) This Contract is subject to, and is to be construed in accordance with, the laws of New South Wales and of the Commonwealth of Australia.

(b) This Contract constitutes the entire agreement and understanding between the Contractor and Council in respect of its subject matter and replaces all previous agreements. There is no other agreement, warranty or representation, whether express or implied, that extends, defines or otherwise relates to the subject matter of this Contract.

(c) No rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part.

(d) In circumstances where conflict or ambiguity arises between the documents which comprise the contract, the Contractor must perform the Contract in accordance with the following priority of documents:

- these Contract Conditions (Part B);
- the Specification; and
- any other documents forming part of the Contract.

2 ROLE OF THE CONTRACTOR

2.1 ENGAGEMENT

(a) During the period of the Contract shown in Part A – Contract Particulars, the Contractor must carry out the Services in accordance with this Contract for Council.

(b) At all times the Contractor must allocate sufficient resources to deliver the Services to Council's satisfaction.

(c) The Contractor must discuss with Council's Representative any changes in the Services to be performed as it or Council may require. Such changes are to be made with the written agreement of both the Contractor and Council and will then form part of the Services to Council, such agreement not to be unreasonably withheld by either party.

(d) The Contractor must undertake the Services in a timely manner including but not limited to:

(i) compliance with the stipulations contained in any or all of this Contract, and

(ii) in accordance with any reasonable direction of Council's Representative.

(e) In carrying out the Services, the Contractor must ensure that both the execution of the Services and the Services themselves comply with any law or other requirements incumbent upon both the Contractor or Council legally, whether relating to any place where the Services are to be carried out or as otherwise applicable to the Services.

2.2 STANDARD OF CARE

The Contractor:

(a) must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of a skilled professional provider of the Services contemplated by the Contract, acting in accordance with the principles of best practice for such provider;

(b) must use its best endeavours to ensure that the Services will be fit for their intended purpose; and

(c) is deemed to be at all times acting, in respect of this Contract and to the extent of this Contract only, as an agent of Council and must in all things act only in Council's best interests in discharging the Contractor's duties under this Contract. In addition, the Contractor will exercise utmost good faith in all its dealings under this Contract, ensuring the best interests of Council are protected at all times. Further, it will keep Council fully and regularly informed about all matters affecting or relating to the Service or otherwise.

2.3 AUTHORITY TO ACT

(a) Other than as expressly authorised, the Contractor has no authority to, and must not:

(i) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of the Council; or

(ii) take any act or step to bind or commit the Council in any manner, whether as a disclosed agent of the Council or otherwise.

(b) The Contractor is an independent contractor and is not, and must not purport to be, a partner or joint venturer of the Council.

2.4 NOTICE OF MATTERS IMPACTING ON SERVICES

Without limiting its obligations under clause 2.2, if the Contractor becomes aware of any matter which is likely to change or which has changed the scope or timing or cost of the Services, the Contractor must promptly give written notice of that matter to the Council's Representative including the Contractor's recommendation as to how to minimise its impact upon the scope, timing and cost of the Services.

2.5 CO-ORDINATION OF OTHER CONTRACTORS

The Contractor must:

(a) fully co-operate with any Other Contractor;

(b) carefully co-ordinate and integrate the Services with the services carried out by each Other Contractor; and

(c) carry out the Services so as to avoid interfering with, disrupting or delaying the services carried out by each Other Contractor.

2.6 CONFLICT OF INTEREST

The Contractor warrants that:

(a) as at the date on which it signs this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract; and

(b) if any such conflict of interest or risk of such conflict of interest arises, the Contractor will:

(i) notify the Council's Representative immediately in writing of that conflict or risk; and

(ii) take all possible steps to avoid or minimise the possible effect of any conflict of interest referred to in subparagraph (i), including any steps required by the Council's Representative.

2.7 SUBCONTRACTING AND ASSIGNMENT

(a) The Contractor must not without the prior written consent of the Council's Representative:

(i) subcontract any Services; or

(ii) assign any of its rights or liabilities under the Contract; and

if consent to subcontract is given in writing by Council under this Contract, the Contractor will remain fully responsible for carrying out the Services as if the Contractor is providing the Service.

(b) The Council may assign any of its rights, interests or liabilities under or in connection with this Contract at any time.

2.8 SECURITY

(a) The Contractor must provide security in the form and amount set out in the Specification within seven days of the date of this Contract.

(b) Council is not obliged to pay interest on the security provided under this clause 2.8 or on the proceeds of any such security if it is converted to cash and does not hold the proceeds or security referred to in this clause 2.8 on trust for the Contractor.

(c) The Contractor accepts that Council may call upon the security provided under this clause 2.8 at any time and the Contractor must not seek an injunction against either Council or the issuer of any security provided under this clause 2.8 preventing a demand on payment under such security.

(d) Within seven (7) days of the date of this Contract the Contractor must provide a Deed of Guarantee and Indemnity in the form required by Council duly executed by, and enforceable against, the person named in the specification.

2.9 CONTRACTOR'S OFFER TO COUNCIL

The Contractor warrants the accuracy of all information contained within the Contractor's Offer to Council (Attachment 2) and that the Contractor does not breach any duty to any third party by entering into the Contract.

3 INSURANCE

3.1 CONTRACTOR INSURANCE OBLIGATIONS

(a) The Contractor must from the commencement of the Services effect and have in place until the termination of the Services:

(i) an occurrence based policy of insurance for public and products liability arising out of the actions or omissions of the Contractor in respect of personal injury or death or loss of or damage to property arising out of or in connection with the Services for an amount not less than $20,000,000 for any one originating cause and in the annual aggregate for products liability;

(ii) a policy of insurance for professional indemnity liability arising out of or in connection with the Contract for the actions or omissions of the Contractor in connection with the Services for its respective rights, interests and liabilities; the limit of the insurance cover is to be not less than the amount set out in the Contract Particulars for any one originating cause and in the annual aggregate; and

(iii) workers' compensation insurance as required by law.

(a1) The Contractor must ensure that its subcontractors hold relevant insurance policies for not less than the amounts prescribed under this Contract. The Contractor must:

(i) obtain copies of its subcontractors' certificates of currency issued by the insurer in respect of each policy; and

(ii) if required by the Council's Representative, provide the Council's Representative from time to time with copies of those certificates of currency.

(b) The Contractor must -

(i) effect all insurance policies with an underwriter who holds a current licence to underwrite insurance in Australia or, if not so licensed, holds an S&P rating of at least A- ;

(ii) ensure that each of its subcontractors has similar insurance to the workers compensation insurance covering the subcontractors' employees;

(iii) where it bears the risk of the relevant loss or damage under the Contract or is required to indemnify Council under the Contract, the Contractor bears the cost of any excesses in the Contractor's insurance;

(iv) obtain accreditation with Council's on-line contractor management service provider Conserve at https://conserve.com.au/ prior to commencement of the Services and maintain such accreditation throughout the term of the contract; and

(v) provide the Council's Representative, as required by the Council's Representative from time to time, with certificates of currency issued by the insurer in respect of each policy.

(c) The insurance policy required by clause 3.1 (a)(i) must note the interests of Council for its vicarious liability it may suffer as a result of the Contractor's negligent acts or omissions in the Contractor's performance of the Contract.

4 SERVICES

4.1 GENERAL

The Contractor must undertake the Services:

(a) in a timely manner (including, if the Specification or a direction by the Council's Representative specifies a time for delivery of certain Services, in accordance with those requirements); and

(b) in accordance with:

(i) any direction of the Council's Representative given or purported to be given under a provision of the Contract to the Contractor or the Contractor's Representative;

(ii) Council's Code of Business Ethics;

(iii) Council's Community Engagement policy (available on Council's website), where the Services require the Contractor to undertake community engagement; and

(iv) the other requirements of the Contract.

4.2 STATUTORY REQUIREMENTS

In carrying out the Services, the Contractor must ensure that the Services comply with any law (whether relating to any place where the Services are to be carried out or otherwise) applicable to the Services.

4.3 WORKPLACE HEALTH, SAFETY AND REHABILITATION MANAGEMENT

Without limiting its obligations under clause 4.2, the Contractor must ensure that in carrying out the Services:

(a) it complies with all laws, and other requirements of the Contract, for workplace health, safety and rehabilitation management arising out of or in connection with its duties under this Contract;

(b) its officers, employers, servants or agents, subcontractors and their employees, servants or agents comply with the requirements referred to in paragraph (a); and

(c) it immediately reports to the Council's Representative any personal injury or death or property damage at or near where the Services are being carried out.

4.4 PERSONNEL

(a) The Contractor must in carrying out the Services and otherwise in the execution of its duties under this Contract:

(i) only employ persons who are careful, skilled and experienced in their respective professions, trades and callings and, in situations involving access or proximity to children, persons who are not prohibited by the *Child Protection (Offenders Registration) Act* 2000 from seeking, undertaking or remaining in child-related employment;

(ii) without limiting its obligations under subparagraph (i), employ the key people specified in the Specification, including the Contractor's Representative, in the Positions specified in the Contract Particulars; and

(iii) not replace the key people referred to in subparagraph (ii) without the Council's Representative's prior written approval (in which case the Contractor must replace them with persons approved by the Council's Representative of at least equivalent experience, ability and expertise).

(b) The Council's Representative may, in his or her absolute discretion, direct the Contractor to remove from any place where the Services are being carried out or otherwise from involvement in the Services, any person employed by the Contractor.

(c) Failure by the Contractor to comply strictly with the terms of this clause shall constitute a material breach of this Contract by the Contractor, entitling Council to terminate the Contract at its discretion without penalty to Council.

4.5 OWNERSHIP OF INTELLECTUAL PROPERTY

(a) All Intellectual Property rights of whatever kind in any Contract Material brought into existence by the Contractor is assigned by the Contractor to the Council upon the creation of the relevant Contract Material.

(b) The Council grants to the Contractor a non-exclusive, irrevocable licence to use the Contract Material referred to in paragraph (a) for the Services.

(c) Ownership of rights in any pre-existing Intellectual Property which is contributed by a party for the purpose of carrying out the Services will remain with the contributing party. Where the pre-existing Intellectual Property is contributed by the Contractor, the Contractor grants to Council a non-exclusive, non-transferable, royalty-free, perpetual licence to use, modify or adapt that Intellectual Property as it sees fit.

4.5A THE COUNCIL'S INTELLECTUAL PROPERTY

(a) Except to the extent permitted by this Contract, the Contractor must not:

(i) use Intellectual Property belonging to the Council for any purpose other than the Services;

(ii) register or use any Intellectual Property belonging to the Council as part of a corporate name, business name or trading name;

(iii) do anything concerning Intellectual Property belonging to the Council which might lead to its dilution or which might cause confusion or deception to the public concerning the origin of the rights which are the subject of the Intellectual Property;

(iv) use any business or trading name which is similar to any name forming part of Intellectual Property belonging to Council or which is capable of being confused with any name forming part of such Intellectual Property; or

(v) disclose to any person any confidential information forming part of Intellectual Property belonging to Council.

(b) For the purposes of this clause:

(i) 'Intellectual Property belonging to Council' includes but is not limited to the Intellectual Property assigned by the Contractor to the Council under clause 4.5 of this Contract.

(ii) 'Contractor' includes an entity of which the Contractor is a shareholder, officer or in which the Contractor is otherwise interested or otherwise involved whether as employee, consultant or otherwise.

Clauses 4.5 and 4.5A shall survive the completion or termination of this Contract.

4.6 INFRINGEMENT OF INTELLECTUAL PROPERTY

(a) The Contractor must ensure that the Services do not infringe any Intellectual Property.

(b) The Contractor will indemnify the Council against:

(i) all claims which may be brought or made against the Council by any person in respect of:

A any infringement of Intellectual Property right by the Contractor, its sub-contractors or any of their officers, employees, servants or agents in the course of, or incidental to, carrying out the Services; or

B the use by the Council of any Contract Material; and

(ii) any costs (including legal costs on a solicitor and own client basis), losses or damages suffered or incurred by the Council arising out of, or in any way in connection with, any Claim referred to in subparagraph (i).

This clause 4.6 shall survive the completion or termination of this Contract.

4.7 MORAL RIGHTS

The Contractor:

(a) must ensure that it does not infringe any moral right of any author of an artistic work in carrying out the Services;

(b) must ensure that it obtains irrevocable written consent, for the benefit of the Council and the Contractor, from the author of any artistic work to be incorporated into, or used in connection with the performance of the Services, including any necessary consents from its employees and any Contractors engaged by it, to:

(i) any non attribution or false attribution of the artistic work; and

(ii) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the artistic work; and

(c) indemnifies the Council against any claims against, or costs, losses or damages suffered of incurred by the Council, arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights arising out of or in any way in connection with the Services, or arising in the future out of or in connection with any change, alteration, relocation or destruction of the artistic work.

The terms artistic work and attribution have the meaning given to them in the Copyright Act 1968 (Cth).

This clause 4.7 shall survive the completion or termination of this Contract.

4.8 CONFIDENTIALITY

The Contractor must:

(a) not disclose or provide to any person, other than to persons engaged in the Services or, where required

to do so by law, any information concerning the Contract, the Services or any Contract Material or any other confidential information with which it has been entrusted by the Council, the Council's Representative or any contractor engaged by the Council, without the prior consent in writing of the Council's Representative; and

(b) ensure that its subcontractors and the officers, employees, servants or agents of the Contractor and its subcontractors comply with this clause.

This clause 4.8 shall survive the completion or termination of this Contract.

4.9 PRIVACY

The Contractor must comply with all privacy laws, including the provisions of the Privacy and Personal Information Protection Act 1998 and all Council policies concerning the protection of privacy and personal information.

5 QUALITY OF SERVICES

5.1 REVIEW AND APPROVAL

(a) The Contractor must:

(i) if required by the Council's Representative, submit any Services or Contract Material prepared by the Contractor to the Council's Representative for its review and approval; and

(ii) revise any of the Services which fail to comply with the Contract and are not approved by the Council's Representative at the Contractor's cost until approved by the Council's Representative.

(b) Although the Council's Representative may review and approve the Services, it does not do so as a certifier and Council is relying on the skill and expertise of the Contractor. Therefore no review, approval, recommendation or direction by the Council's Representative in relation to the Services will relieve the Contractor from, or alter or affect the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law.

(c) The Contractor must, as required by Council's Representative, submit anything arising from the Service or any Contract Material prepared by the Contractor to Council's Representative for review and approval and revise anything which fails to comply with the Contract and is not approved by Council's Representative at the Contractor's cost until approved by Council's Representative.

5.2 QUALITY ASSURANCE

The Contractor:

(a) must implement the quality assurance system specified in the Specification;

(b) must allow the Council's Representative access to the quality system of the Contractor and its

subcontractors so as to enable monitoring and quality auditing; and

(c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:

(i) the implementation of, and compliance with, the quality assurance requirements of the Contract;

(ii) any direction by the Council's Representative concerning the Contractor's quality assurance system or the Contractor's compliance or non-compliance with that system.

6 SUSPENSION

6.1 DIRECTION BY COUNCIL'S REPRESENTATIVE

The Council's Representative may, in his or her absolute discretion, direct the Contractor to suspend, or to recommence performance of, all or a part of the Service.

6.2 NO CLAIM

The Contractor:

(a) will not be entitled to make any Claim for compensation, fees or costs against the Council; and

(b) expressly acknowledges that it has made an allowance in the Fee and (if applicable) the Schedule of Rates for the risk of bearing all costs, losses and damages which it may incur or suffer,

arising out of or in connection with any instruction to suspend given under clause 6.1.

7 VARIATIONS

7.1 VARIATIONS

The Council's Representative may direct the Contractor to carry out a Variation by service upon the Contractor of a written document titled Variation Order.

7.2 COST OF VARIATION

The Fee will be adjusted for all Variations which have been the subject of a Variation Order issued under clause 7.1 by the Council's Representative by a reasonable amount:

(a) agreed between the Contractor and Council; or

(b) failing agreement, determined by the Council's Representative.

7.3 OMISSIONS AND DELETIONS

If a Variation, the subject of a direction by the Council's Representative, omits any part of the Services, the Council may thereafter carry out this omitted work either itself or by engaging others.

8 PAYMENT

8.1 TAX INVOICES

(a) The Contractor must render a Tax Invoice for that portion of the Fee then payable in accordance with this Contract:

(i) on the 5th Business Day of each month; or

(ii) if the Specification specifies that Tax Invoices are to be submitted upon completion of certain Services, upon completion of those Services in accordance with the Contract; or

8.2 PAYMENT

(a) The Council will pay correctly rendered Tax Invoices::

(iii) as agreed between the Parties and evidenced in writing.

(b) subject to subparagraph (ii),

(i) by the end of the calendar month after the calendar month in which it has received a Tax Invoice in accordance with clause 8.1; or

(ii) if the payment claim under clause 8.1(a) is received after the 5th Business Day of the relevant calendar month, by the end of the second calendar month after the calendar month in which it has received the Tax Invoice,

pay the Contractor the amount determined under paragraph (a).

8.3 SET-OFF

The Council may at any time deduct from any monies otherwise due to the Contractor from Council any debt or other monies due from the Contractor to the Council or any other claim which the Council may have against the Contractor, whether under this Contract or otherwise relating to the Services.

8.4 PAYMENT ON ACCOUNT

Payment of moneys to the Contractor under clause 8.2 is:

(a) not evidence of the value of the Service or that the Service has been satisfactorily carried out in

accordance with the Contract or an admission of liability; and

(b) is to be taken as payment on account only.

8.5 GST

(a) Where any supply occurs under or in connection with the Contract or the Services for which GST is not otherwise provided (other than any payment on account of the Contract Price), the party making the supply (Supplier) shall be entitled to increase the amount payable for the supply by the amount of any applicable GST.

(b) Where under the Contract the Contractor is entitled to any adjustment to the Fee, and such adjustment is based on the reasonable or actual cost to the Contractor of performing any work, any input tax credits available to the Contractor, or its representative member, in relation to performing such work will be deemed to reduce the cost of such work.

(c) Where the amount payable to the Supplier for a supply under or in connection with the Contract or the Services (other than any payment on account of the Fee) is based on the actual or reasonable costs incurred by the Supplier, the amount which the Supplier is entitled to be paid in respect of that supply will be limited to the actual or reasonable costs incurred by the Supplier less any input tax credits available to the Supplier, or its representative member, in respect of such costs.

(d) A party will not be obliged to pay any amount in respect of GST on a supply to the other party unless and until a tax invoice that complies with the GST Legislation has been issued in respect of that supply. Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to enable or assist the other party to claim input tax credits to the maximum extent possible or itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under the Contract.

(e) The Contractor must give Council Tax Invoices for all matters it invoices Council that comply with all laws, rulings and determinations made by the Australian Taxation Office.

(f) Where the Contractor engages third parties in the provision of the Services to Council, the third-party costs, together with all GST applicable thereto, are to be incorporated within tax invoices to be submitted to Council by the Contractor.

9 TERMINATION

9.1 NOTICE OF DEFAULT

If the Contractor is in breach of Contract, the Council may give a written notice to the Contractor, requiring it to remedy the breach, stating:

(a) that it is a notice under this clause 9.1;

(b) the breach relied upon; and

(c) that the breach must be remedied within the time and manner stated in the notice.

9.2 TERMINATION FOR INSOLVENCY OR BREACH

If:

(a) an Insolvency Event occurs to the Contractor; or

(b) the Contractor:

(i) does not remedy a breach of Contract the subject of a notice under clause 9.1 to the absolute satisfaction of Council within the time stated in the notice; or

(ii) commits a breach, or is in breach of Contract, which cannot be remedied; or

(iii) commits a breach or is in breach of Contract and the Council has previously issued at least two notices under clause 9.1 to remedy any breach of Contract (regardless of whether or not in respect of the same breach and regardless of whether or not those breaches have been remedied),

the Council may, without prejudice to any other right which it may have, immediately terminate the Contract by written notice to the Contractor.

9.3 THE COUNCIL'S ENTITLEMENTS AFTER TERMINATION

If the Council terminates the Contract under clause 9.2, or if the Contractor repudiates the Contract and the Council otherwise terminates the Contract, the Council will:

(a) not be obliged to make any further payments to the Contractor; and

(b) be entitled to:

(i) recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and

(ii) require the Contractor to novate to the Council or the Council's nominee, any or all subcontracts between the Contractor and its subcontractors relating to the Services.

9.4 TERMINATION FOR CONVENIENCE

Without prejudice to any of the Council's other rights, the Council may:

(a) at any time for its sole convenience terminate the Contract by written notice to the Contractor; and

(b) either itself or by a third party complete any uncompleted part of the Services.

9.5 CONSEQUENCES OF TERMINATION

If the Council terminates the Contract under clause 9.4:

(a) the Contractor will be entitled to payment of the unpaid Contract value of all Services completed in accordance with the Contract prior to the date of termination, as determined by the Council's Representative, in full compensation for the termination and the Contractor will not be entitled to make any Claim against the Council in respect of the termination other than for the amount payable (if any) under this paragraph (a); and

(b) the Council will be entitled to require the Contractor to novate to the Council or the Council's nominee, any or all subcontracts between the Contractor and its subcontractors relating to the Services.

(c) On receipt of a notice of termination for whatever reason, the Contractor must:

(i) give Council, at the Contractor's expense, any documents the Contractor is required to give to Council; and

(ii) give Council any amount owed by the Contractor to Council; and

(iii) Council will provide reasonable access (including making copies) to files and documents should the Contractor need to review them in the future for the purpose of addressing any allegations, claims or actions or circumstances which may be made against the Contractor or where the Contractor is legally compelled to disclose documents to third Contractor and Council.

On termination, the Contractor agrees to:

(d) co-operate in good faith to facilitate a smooth transition of the services to Council or its nominated Contractor; and

(e) return all copies of Contract Material and any Confidential Information.

This clause 9.5 shall survive termination of this Contract.

10 GENERAL

10.1 THE COUNCIL MAY ACT

The Council may, either itself or by a third party, perform an obligation which the Contractor was obliged to perform but which it failed to perform. The costs, expenses and damages suffered or incurred by the Council in performing such an obligation will be a debt due from the Contractor to the Council.

10.2 INDEMNITY

(a) The Contractor must indemnify Council or its officers, employees, agents or licensees, or other person or entity which has been nominated to the Contractor by Council, against all costs, expenses, liabilities,

losses and damages incurred or suffered by the Council as a result of a breach of this Contract by the Contractor, provided such indemnity is reduced to the extent that any liability, loss or cost is caused by or contributed to by the act, error or omission of Council.

(b) If Council causes or contributes to the loss or damage, the Contractor's liability is reduced to the extent to which Council caused or contributed to it.

This clause 10.2 shall not limit Council's rights to any other remedies under the Contract, at law or in equity and shall survive the completion or termination of this Contract.

10.3 NOTICES

(a) Any notice to be given or served under or arising out of a provision of this Contract must, unless the Contract otherwise provides, be in writing and delivered by hand or sent by prepaid post or email, as the case may be, to the relevant postal or email address stated in the Specification or last notified in writing to the party giving the notice for the party to whom or upon which the notice is to be given or served.

(b) A notice delivered or sent in accordance with paragraph (a) will be deemed to have been given and received:

(i) if delivered by hand, upon delivery;

(ii) if posted, on the seventh Business Day after the letter was posted;

iii) if sent by email, when received by the addressee,

but if the result is that the notice would be taken to be given on a day that is not a Business Day or is given after 5:00pm (addressee's time), the notice will instead be taken to have been given at 9:00am on the next Business Day.

10.4 SEVERABILITY

Any provision of this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any of the other provisions of the Contract.

10.5 NON-DISCLOSURE AND MEDIA CONTACT

(a) Any information disclosed by Council to the Contractor must not be used or disclosed by the Contractor without the Council's Representative's written consent, except for the explicit purposes of performing the Service and

(i) giving Council quotes for additional Service;

(ii) meeting a statutory obligation to disclose the information.

(b) In circumstances where the Contractor is requested by a person who is not party to this Contract to make

a comment on the works/services being provided under this Contract, the Contractor must not comment in response to such request.

(c) The Contractor must refer all requests for comment to Council's Manager Public Relations who will respond to the requests on behalf of Council.

This clause 10.5 shall survive the completion or termination of this Contract.

10.6 AMENDMENT IN WRITING

This Contract cannot be amended except by the written agreement of the Contractor and Council.

10.7 SOCIAL ETHICS AND CODE OF BUSINESS ETHICS

The Contractor undertakes to:

(a) pay its employees wages and benefits that comply with or are better than all applicable laws and regulations;

(b) not engage in or support discrimination in its operations in:

- hiring
- salary benefits
- access to training for employees
- promotion of employees
- termination or retirement based on:
  - race
  - religion
  - sex transgender
  - homosexuality
  - marital status
  - pregnancy
  - disability
  - sexual orientation
  - age
  - HIV/Aids
  - union membership, or
  - political affiliation;

(c) not allow any of its employees to be threatened by or subject to any form of harassment including any form of physical, sexual, psychological or verbal harassment or bullying;

(d) recognise and respect the right of its employees to freedom of association and the right to collective bargaining where not explicitly proscribed by national and local laws;

(e) provide family-friendly working arrangements, including flexible work schedules, flexible leave arrangements, paid and unpaid parental leave, job sharing, carers leave, access to child care or subsidised child care;

(f) have in place individual training, development and mentoring programs for new or young employees to foster their career development;

(g) allow for open communication and effective ways for its employees to participate in the Contractor's decision making;

(h) have a public charter (or policy) which:

- recognises the rights of consumers,
- offers recourse where such rights are violated, and
- has an effective complaints resolution system in place;

(i) have formal procedures in place for consultation with all stakeholders, including communities directly affected by the activities of the Contractor, and incorporate feedback gathered from stakeholders into the Contractor's planning and decision-making processes, including decisions made that will affect the livelihoods of communities;

(j) comply with Council's Code of Business Ethics; and

(k) occupy and operate from premises which comply with all required statutory and other approvals.

10.8 ENVIRONMENTAL

The Contractor undertakes to:

(a) have a current documented environmental policy or statement;

(b) have an environmental management system;

(c) clearly identify environmental responsibilities for all levels of its personnel;

(d) consider environmental impacts in its design of products including:

- reducing the environmental impact,
- increasing the service life,
- labelling for consumer information/protection,
- developing new and environmentally preferable products;

(e) carry out environmental audits;

(f) have a procedure for employees to report management concerns over environmental problems or suggestions for environmental improvements;

(g) have an environmental monitoring program;

(h) pursue cost savings and efficiency of improvements through tracking of environment-related costs and/or material and energy flows;

(i) keep records of its level of compliance with environmental legislation, licences, permits, development or operating approvals;

(j) apply the same level of environmental performance standards across all of its off-shore operations;

(k) have had the environmental claims of its products independently verified;

(l) adopt initiatives in relation to reducing environmental impacts including:

- use of paper,
- energy conservation,
- employee travel/car fleets,
- transport/distribution of inputs/goods/services,
- solid waste production,
- water conservation;

(m) adopt a policy of packaging reduction including accepting packaging back for reuse, recycling or recovery.

10.9 PROBITY AND CONDUCT

10.9.1 PURPOSE OF THIS CLAUSE

This clause is intended to prevent corrupt conduct on the part of the Contractor and its agents, employees and sub-contractors.

10.9.2 Contractor to acquaint itself and comply with Council policies and codes of conduct

The Contractor must acquaint itself thoroughly with and comply at all times with:

(i) the codes and policies forming annexure Part C of the Contract,

(ii) the Council's other codes and policies for procurement as published from time to time,

insofar as they are relevant and apply to this Contract.

10.9.3 CHANGE OF POLICIES AND CODES

The Contractor agrees that the Codes of Conduct and policies referred to in clause 10.9.2 may be changed from time to time and it is the responsibility of the Contractor to ensure that it remains acquainted with them as varied from time to time.

10.9.4 NO CONFLICT OF INTEREST

In performing its obligations under the Contract the Contractor must not have and must not permit to arise any conflict of interest and in particular (but without limiting the generality of the foregoing) will have no conflict with

its duties and obligations to any other customer or client or other third party and will have no conflict between its own interests and those of the Council.

If any such conflict of interest or risk of such conflict of interest arises, the Contractor will:

(i) notify the Council's Representative immediately in writing of that conflict or risk; and

(ii) take all possible steps to avoid or minimise the possible effect of any conflict of interest referred to in sub-paragraph (i), including any steps required by the Council's Representative.

10.9.5 NO CORRUPT OR COLLUSIVE CONDUCT

The Contractor must not engage in any corrupt, collusive or anticompetitive conduct and warrants to the Council that it has not done so. Without limiting the generality of that obligation, the Contractor warrants that it has not:

(i) (**No agreement, etc**) entered into any agreement, arrangement or understanding with any competing supplier as to who would be appointed by the Council to supply the goods and services to be supplied under the Contract;

(ii) (**No collusive meetings or communications**) held any meeting, discussion or communications with any competing supplier about any submission or proposal to the Council by the Contractor or the competing Contractor without an authorised representative of the Council being present;

(iii) (**No price discussions etc**) held any discussion or other exchange of information with any competing supplier concerning pricing, submissions or proposals given to the Council;

(iv) (**No agreement or reward for failure**) entered into any agreement or arrangement with any competing suppliers for the payment of money or the securing of reward or benefit for any competing suppliers not appointed by the Council to supply the goods and services to be supplied under the Contract (or any other goods or services);

(v) (**No secret commissions, etc**) entered into any agreement or arrangement to receive from, pay or provide any fee, commission or other benefit or reward to any third party, including any agent, adviser, broker or other person who is in or may be in a position to influence the Council to select the Contractor to provide the goods and services to be supplied under the Contract (or any other goods or services) to it or to do so at a particular price or on particular terms, where such agreement or arrangement has not been fully disclosed to the Council in writing before the Commencement Date;

(vi) (**No fixing of prices or any aspect of prices**) entered into any agreement or arrangement with any competing suppliers to fix prices, margins, discounts, price formulae or conditions of contract;

(vii) (**No assistance in preparation of proposals**) given any assistance to or received any assistance from any competing supplier to make a proposal, submission or response to the Council which has been deliberately priced or framed in order to be unsuccessful; and/or

(viii) (**No Competition and Consumer Act breach or similar**) been guilty of any conduct which constitutes a breach of the provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Act of any state or territory of Australia.

10.9.6 NO INDUCEMENTS OR BRIBES

The Contractor must not engage in any conduct or enter into any agreement or arrangement with any Council personnel as an inducement for the Council to select the Contractor to supply the goods and services to be supplied under this Contract (or any other goods or services) to it or to do so on any particular terms, conditions or for any particular price or to otherwise alter its conduct towards the Contractor in any manner.

Without limitation of that obligation, the Contractor warrants that it has not given or offered at any time any benefit, inducement or reward which is not specified in the Contract to any Council personnel including but not limited to:

(i) canvassing, coercing or lobbying Councillors, Council employees or advisers about any Invitation or its outcome;

(ii) payment of monies, goods or services, the issuing of shares or the transfer of any property or the provision of goods, services, shares or other property at a discounted price or on more favourable terms than are ordinarily offered by the Contractor;

(iii) the payment or reimbursement of fees or expenses;

(iv) the provision of travel or accommodation benefits;

(v) the provision of funds or other resources for research or other projects;

(vi) allowing Council personnel or related persons the use of premises, technology or other resources or facilities of the Contractor; or

(vii) any offer of employment or contract work at any time.

10.9.7 CONTRACTOR WARRANTIES RE PROBITY

The Contractor warrants that:

(i) (**No corrupt access to information**) it has not had corrupt access to information, information technology or other resources of the Council which may have given the Contractor an advantage over its competitors in bidding for appointment to provide the goods and services to the Council under the Contract (or any other goods or services); and

(ii) (**Relationships disclosed**) it has fully and accurately disclosed to the Council, in writing, prior to entering into the Contract, the existence of any relationship between the Contractor (and any party related to the Contractor) and the Council personnel which may cause the Council and the Contractor to interact on other than an arm's length basis.

10.9.8 CONSEQUENCES OF BREACH OF THIS CLAUSE

If the Contractor breaches any of the provisions of this clause, including any warranty, the Council may, at its option:

(i) suspend the Contract pending further investigation;

(ii) terminate the Contract;

(iii) withhold payment of monies payable to the Contractor; and/or

(iv) recover compensation or any other remedy available at law or in equity,

and the exercise of any one or more of the foregoing rights or remedies will not prevent the exercise, by the Council of any of the other aforementioned rights or remedies or its other remedies under the Contract, at law or in equity.

11 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 – SECTION 121

(a) If the specification to this contract requires the Contractor to provide services to the public on behalf of the Council the Council has an immediate right of access to the following information contained in records held by the Contractor:

(i) information that relates directly to the performance of the services by the Contractor;

(ii) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services; and

(iii) information received by the Contractor from the Council to enable it to provide the services.

(b) The Contractor will provide copies of any of the information in sub-clause (a) as requested by the Council at the Contractor's own expense.

(c) Any failure by the Contractor to comply with any request pursuant to sub-clause (a) or (b) will be considered a breach incapable of remedy and will allow the Council to terminate the Contract in accordance with sub-clause 9.2.

12 **RECORDKEEPING** – State Records Act 1998 (NSW)

(a) Records of (the outsourced business)

The contractor must create and keep records that fully document the operation and delivery of this contract and the contracted services. This includes records generated and kept using electronic technologies, such as e-mail.

(b) Records format

The contractor must ensure that any records relating to the contract or contracted services, if created and maintained in electronic format, are kept in an acceptable format that will be easily migratable to Council's systems. In this case, the acceptable formats are:

(i) Portable Document Format (PDF), or

(ii) any other format approved by Council after the commencement of this contract.

(c) Access to records

Council retains the right to access any records of the contractor relevant to the delivery of the contracted services, for the purposes of monitoring compliance with this contract.

The contractor must ensure that:

(i) data cannot be used for applications not specified in the contract (for example, to data match with databases owned by other clients of the contractor),

(ii) files and other official records are not shown to a third party without the written agreement of Council, and

(iii) records are documented in manual or electronic control systems with basic identifying information, including (but not limited to) a unique identifier and location details.

(d) Records storage and handling

The contractor must ensure that:

(i) records created in relation to this contract are kept in a stable environment, within the range of 15 degrees Celsius to 27 degrees Celsius in temperature and 30% to 60% relative humidity,

(ii) storage areas for magnetic media are protected from magnetic fields, and

(iii) records that are in electronic format are backed up regularly, with a copy of backed up data kept off-site.

(e) Reporting

A report containing copies of all records created by the contractor is to be forwarded to the Council's Representative every three months, starting three months after the commencement of this contract.

All records forwarded to Council must be in the following electronic formats only:

(i) Portable Document Format (PDF), or

(ii) any other format approved by Council after the commencement of this contract.

(f) Authorised disposal of records

The contractor is required to retain all records not yet forwarded to Council in accordance with this contract.

When a record has been forwarded to Council and is no longer needed by the contractor, the contractor may only destroy the record in a secure manner.

The contractor is not permitted to destroy any records created in compliance with this contract corruptly or fraudulently, for the purpose of concealing evidence of wrongdoing, or for any other improper purpose.

The contractor is not permitted to transfer records created in compliance with this contract to a third party

for any purpose unless authorised to do so by Council.

(g) Return of records on completion of contract

All records created in compliance with this contract and not yet forwarded to Council, must be returned to Council by the completion of this contract.

13 INFORMATION TECHNOLOGY

13.1 The Contractor must:

13.1.1 properly secure and maintain any computer systems (hardware and software applications) used in the performance of this contract in order to protect the confidentiality and integrity of records and prevent the unauthorised use or disclosure of those records;

13.1.2 notify Council, without delay, of any:

(i) fraudulent activity affecting the conduct of the contractor's ability to perform its activities under this contract;

(ii) unauthorised access to, or modification or misuse of, its data storage systems, client records, or any other personal information pertaining to Council held by the contractor;

(iii) instances the contractor becomes aware of where any of its clients are the subject of fraudulent activity in relation to:

(a) personal information held by the contractor, or

(b) the contractor's bank account details for remittance of contract payments.

14 PAYMENT CARD INDUSTRY - DATA SECURITY STANDARD

14.1 For the purpose of this clause:

Agent includes subcontractors, and any other third party provider of payment processing services.

Cardholder Data means the numbers and other data assigned by card issuers to identify cardholders' accounts (including all data within the magnetic stripe), data about card transactions and other Personal Information of cardholders.

Council includes Council, its employees and agents.

Payment Application Data Security Standard means the requirements maintained by the Payment Card Industry Security Standards Council to help software vendors develop secure payment applications that support PCI DSS compliance.

PCI-DSS means the Payment Card Industry Data Security Standard developed by the PCI Security Standards Council (as amended, varied or replaced from time to time).

PCI-SSC means the PCI Security Standards Council, LLC being the global open body formed to develop, enhance, disseminate and assist with the understanding of security standards for payment account security.

Personal Information will have the meaning given to that term in the *Privacy Act 1988* (Cth).

Qualified Security Assessor means a person who has been certified by the PCI Security Standards Council to audit merchants for PCI DSS compliance.

14.2 The Contractor agrees that it will, and must ensure that its agents will:

14.2.1 at all times fully comply with:

(i) the requirements of the PCI-DSS, or any similar standards developed the PCI-SSC or any other relevant body advised by Council from time to time;

(ii) all other applicable payment card industry standards having to do with the protection or security of Cardholder Data, as such standards may be modified from time to time;

(iii) all applicable laws and regulations having to do with the protection or security of Cardholder Data or any parts of Cardholder Data ('Cardholder Applicable Law'); and

14.2.2 use its best endeavours to ensure that any payment application software (other than any payment application software supplied by Council) used in the processing, storing, handling or transmitting of Cardholder Data is a payment application that is certified as compliant with the Payment Application Data Security Standard, as modified from time to time by the PCI SSC;

(requirements specified in 14.2.1 and 14.2.2 jointly referred to as 'PCI Requirements').

14.3 The Contractor agrees that it, and must ensure that its agents, will only use the Cardholder Data stored, processed, handled, or transmitted under, or in accordance with, this Contract to process card transactions, provide fraud-control services, perform their obligations under this Contract, and comply with Cardholder Applicable Law.

14.4 In the event the Contractor provides Cardholder Data to third parties, where the Cardholder Data will be retained by the third party or transmitted through such third party's systems/networks ('Third Parties' or 'Third Party'), the Contractor will ensure that such Third Party is certified as compliant with the most recent version of the PCI Requirements.

14.5 The Contractor must not, and must ensure that its agents and its Third Parties do not, through their acts or omissions, cause the Council to be in violation of the PCI Requirements and the Contractor will indemnify the Council for all expenses, costs or losses incurred by the Council as a result of any and all such acts or omissions.

14.6 If the Contractor discovers that unauthorised access has been, or may have been, gained to Cardholder Data stored, processed, handled, or transmitted by the Contractor, its agents or Third Parties, the Contractor will immediately notify Council and provide the applicable card company, the acquiring financial institution, and their respective designees access to Contractor's, its agents' or Third Parties' facilities (as the case may be) and all relevant records and information.

14.7 The Contractor agrees that it, and must ensure that its agents and Third Parties, will fully cooperate with the Council and permit the Council, its agents or representatives access to conduct any reviews of their facilities and records necessary to monitor and verify compliance with the obligations of the Contractor, its agents and Third Parties with their obligation under this clause.

14.8 The Contractor will promptly provide the Council with all certifications and other information reasonably requested by the Council to enable the Council to show to card companies that the Contractor and, if applicable, any Third Party is complying with the PCI Requirements. The Contractor must provide proof of their PCI Requirements compliance by either:

(a) providing a report of compliance (ROC) to the Council showing compliance with the PCI-DSS and which has been audited by an approved Qualified Security Assessor no earlier than 12 months prior to the date of the ROC, or

(b) a Self-Assessment Questionnaire validation type for which the Contractor qualifies pursuant to PCI-SSC demonstrating compliance with every requirement.

14.9 If in the process of obtaining certification or validating compliance with the PCI Requirements the Contractor determines there are areas of non-compliance, the Contractor will promptly take appropriate action to remedy such non-compliance, including non-compliance by any Third Party.

14.10 The Contractor will indemnify and hold the Council harmless from any and all costs, expenses, fines, damages, penalties, assessments and actions (including solicitor fees and costs on a full indemnity basis) arising from any allegations, claims or investigations in any way related to the Contractor's (its agents or Third Party's) non-compliance with this clause including, but not limited, to those related to allegations of breach and/or compromise of the PCI Requirements. Any amount payable under this indemnity is payable on demand and this indemnity will survive the termination or expiry of this agreement.

PART C

ADOPTED BY COUNCIL: 8 MAY 2023

PURPOSE

This Code of Business Ethics provides guidance on the standards of ethical behaviour Wollongong City Council expects and adheres to.

Our Values

Integrity

We must not place ourselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence us in the performance of our duties.

Leadership

We have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the Council.

Selflessness

We have a duty to make decisions in the public interest and not act to gain financial or other benefits for ourselves, our family, friends, or business interests.

Impartiality

We make decisions on merit and in accordance with our statutory obligations when carrying out public business.

Accountability

We are accountable to the public for our decisions and actions and should consider issues on their merits, taking into account the views of others.

Openness

We have a duty to be as open as possible about our decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands.

Honesty

We have a duty to act honestly. We must declare any private interests relating to our public duties and take steps to resolve any conflicts arising in such a way that protects the public interest.

Respect

We must always treat others with respect. We do not use derogatory terms towards others, we observe the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision making.

We respect, apply, and comply with the law, support human rights, and equal opportunity, protect the environment, achieve operational excellence and work for the benefit of our communities.

Reporting Unethical Behaviour

Council is committed to promoting ethical behaviour, reports can be made in relation to:

- Unethical Behaviour
- Fraud
- Corruption
- Maladministration or waste

Reports can be made to the following Council Officers:

- General Manager
- Public Officer
- Professional Conduct Coordinator

External reporting can also be made to:

- The Independent Commission Against Corruption – 8281 5999
- NSW Ombudsman – 9286 1000
- NSW Office of Local Government – 4428 4100

For more information contact Wollongong City Council (02) 4227 7111 wollongong.nsw.gov.au

WHAT WE ASK FROM YOU

We require all who do business with Council to observe the following principles when doing business with Council:

- Be familiar with and comply with Council's procurement policies and procedures.
- Provide accurate and reliable advice and information when required.
- Declare conflicts of interest as soon as you become aware of the conflict.
- Obey all relevant laws and contractual obligations.
- Assist Council to prevent unethical practices in our business relationships.
- Provide Council with a quality product or service on time that gives value for money, and
- Not offer gifts, benefits or hospitality to our staff at any time.

All providers of goods and services to Council must declare to Council (at the earliest opportunity) if they:

- Have been convicted of fraud or a fraud-related offence; or
- Have been declared bankrupt, or are a director of a company that has entered a Deed of Company Arrangement, been placed into External Administration or into Liquidation; or

- Have had any corrupt findings recorded against them, or been identified as a person of interest, by the Independent Commission Against Corruption (ICAC).

The above disclosure requirements equally apply to Directors of a company providing goods or services to Council.

WHAT YOU CAN EXPECT FROM US

Council ensures that all policies, procedures, and practices related to tendering, contracting and the purchase of goods or services are consistent with best practice and the highest standards of ethical conduct.

All Council procurement activities are based upon the following core business principles –

- Transparency of process
- Accountability
- Ethical management of conflicts of interest
- Obtaining best value, and
- Monitoring and evaluation of performance.

In maintaining these business principles, Council will ensure that:

- Potential suppliers will be treated with impartiality and fairness and given equal access to information and opportunities to submit bids.
- Procurement activities and decisions will be fully and clearly documented to provide an effective audit trail and to allow for effective performance review of contracts.
- Tenders will not be invited unless Council has a firm intention to proceed to contract, and
- Council will not disclose confidential or proprietary information.

We always act with honesty and integrity in an open and transparent manner, performing roles efficiently, effectively, and fairly, thereby attracting the highest level of confidence from our community.

COUNCIL'S CODE OF CONDUCT

Council staff are bound by Council's Code of Conduct. When doing business with external parties, Council staff are accountable for their actions and are required to:

- Use public resources effectively and efficiently.
- Deal fairly, honestly, and ethically with all individuals and organisations
- Avoid any conflicts of interest.
- Treat all tenderers for supply of goods and services equitably.
- Meet public interest and accountability standards.
- Abide by all relevant and applicable laws and regulations.
- Respect and follow Council's policies and procedures.
- Promote fair and open competition while seeking best value for money.

- Protect confidential information.
- Never solicit or accept remuneration, gifts or other benefits from a supplier or applicant for the discharge of official duties, and
- Respond promptly to reasonable requests for advice and information.

APPROVAL AND REVIEW	
Responsible Division	Governance and Customer Service
Date adopted by Council	8 May 2023
Date/s of previous adoptions	27/05/2019, 30/10/2017, 14/10/2013, 27/05/2008
Date of next review	8 May 2026