



WEST WIMMERA SHIRE COUNCIL

Contract Description: The Supply of Meals for Delivery

Contract No: CM0550

FORMAL INSTRUMENT OF AGREEMENT

THIS DEED is made on _____ 2021

BETWEEN

1 **WEST WIMMERA SHIRE COUNCIL**
having its municipal office at 49 Elizabeth Street, Edenhope, Victoria, Victoria
(Principal)

2 **CONTRACTOR**
ABN Contractors ABN
of Contractors Address
(Contractor)

1 BACKGROUND

1.1 The Principal may from time to time in accordance with its business needs require the supply of the Services.

1.2 The Contractor makes a standing offer to perform the Services for the Principal from time to time in accordance with the terms of this Agreement.

2 AGREEMENT

It is agreed that –

2.1 this Formal Instrument of Agreement;

2.2 the General Conditions;

2.3 the Schedules;

2.4 any documents incorporated by reference –

together comprise and evidence the agreement between the parties (**Agreement**).

3 CONTRACT PAYMENTS

The basis on which the payments are to be made to the Contractor for the performance of the Services is set out in Schedule 4.

Executed as a deed by the parties on the date set out at the commencement of this Formal Instrument of Agreement:

1 **Execution clause for the Principal**

1.1 Signed under delegation:

SIGNED, SEALED AND DELIVERED by)
_____)
on behalf of the Principal in the presence of:

[specify title]

Witness

2 **Execution clause for the Contractor** (delete alternatives which are not applicable)

2.1 If the Contractor is a company and it must execute documents under seal:

SIGNED, SEALED AND DELIVERED by)
_____)
in accordance with section 127(1) of the)
Corporations Act 2001 by being signed)
by authorised persons:

.....
Director

.....
*Director/company secretary
*Delete whichever is inapplicable

.....
Full Name

.....
Full Name

.....
Usual Address

.....
Usual Address

2.2 If the Contractor is a company and is not required to execute documents under seal, it must execute this Agreement by being signed by those persons who are authorised to sign for the company:

SIGNED, SEALED AND DELIVERED by

..... Director *Director/company secretary *Delete whichever is inapplicable
..... Full Name Full Name
..... Usual Address Usual Address

2.3 If the Contractor is an individual:

SIGNED, SEALED AND DELIVERED)
 by)
 _____ in)
 the presence of: _____

Witness

2.4 If the Contractor is a partnership (add extra execution clauses for each partner, as necessary):

SIGNED, SEALED AND DELIVERED)
 by)
 _____)
 in the presence of: _____

Witness

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General Conditions

1 Definitions and interpretation

1.1 Definitions

In this Agreement, the following terms shall, if not inconsistent with the context, have the meanings indicated:

- 1.1.1 **Adjustment** has the meaning set out in section 195-1 of the GST Act;
- 1.1.2 **Adjustment Note** has the meaning set out in section 195-1 of the GST Act;
- 1.1.3 **Agreement** has the meaning given in the Formal Instrument of Agreement;
- 1.1.4 **Agreement Information** means any Information created by the Contractor or its Personnel on or following the Commencement Date in the course of, or as a consequence of, performing its obligations under this Agreement;
- 1.1.5 **Annexure** means the Annexure to these General Conditions;
- 1.1.6 **Business Day** means Monday to Friday excluding public holidays in Victoria;
- 1.1.7 **Commencement Date** means the date in Item 1 of Schedule 1;
- 1.1.8 **Claims** includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law (including negligence) or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;
- 1.1.9 **Completion Date** has the meaning ascribed to it by clause 4.2;
- 1.1.10 **Confidential Information** means all information of the Principal of any nature and in any form which is disclosed, made available, communicated by the Principal or delivered to or obtained by the Contractor in connection with this Agreement, which is about the Principal or its operations, dealings, organisation, Personnel, business, strategies, ideas, designs, Intellectual Property Rights, trade secrets or know how or is otherwise designated by the Principal as confidential (including the terms of this Agreement) or is by its nature confidential, but excludes information which:
 - (a) is in or which subsequently enters the public domain other than as a result of a breach of the Agreement or which the Contractor can demonstrate was in its possession prior to the Commencement Date;
 - (b) the Contractor can demonstrate was independently developed by the Contractor; or
 - (c) is lawfully obtained by the Contractor from another person entitled to disclose such information;

- 1.1.11 **Conflict of Interest** includes any potential, perceived or actual conflict between:
- (a) the duties of the Contractor or any of its Personnel under this Agreement; and
 - (b) any personal, business, financial or other interest that the Contractor or any of its Personnel may have in relation to any of the Services;
- 1.1.12 **Consequential Loss** means loss or damage caused by a breach of contract, tort (including negligence), under statute or any other basis at law or equity limited to:
- (a) loss of, or diminution in, profits, revenue, overhead recovery, savings or anticipated savings; and
 - (a) loss of, or denial of, opportunity, anticipated or future business or anticipated or future contract or custom;
- 1.1.13 **Contractor** means the person described in the Formal Instrument of Agreement;
- 1.1.14 **Contractor's 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;
- 1.1.15 **Contractor's Representative** has the meaning ascribed to it by clause 8.1;
- 1.1.16 **Contractor Information** means all Existing Information provided to the Principal by the Contractor under this Agreement;
- 1.1.17 **Defects Liability Period** means, with respect to each Project, the period stated in Schedule 1 from the date at which the Superintendent determines that Project to have reached Practical Completion;
- 1.1.18 **Existing Information** means all Information, other than Agreement Information, which is made available by a party under this Agreement, including Third Party Information;
- 1.1.19 **Formal Instrument of Agreement** means the document given the name evidencing the agreement of the parties;
- 1.1.20 **GST** means the goods and services tax within the meaning of the GST Act;
- 1.1.21 **GST Act** means the *A New Tax System (Good and Services Tax) Act 1999* (Cth);
- 1.1.22 **Indemnified Parties** means the Principal and each of its directors, officers, employees, contractors and agents individually or collectively, as the case may be;
- 1.1.23 **Information** means anything in a material form including equipment, hardware, computer software, data, documentation, designs, drawings, reports, notes, calculations, specifications, photographs, audio-visual

materials, recordings, manuals and tools (and includes information stored in an electronic form);

- 1.1.24 **Initial Term** means the period described in Item 3 of Schedule 1;
- 1.1.25 **Insurance Act** means the *Insurance Act 1973* (Cth);
- 1.1.26 **Intellectual Property** means copyrights, patents, trade marks, designs (registered or unregistered), trade secrets and know how;
- 1.1.27 **Law** includes, as amended from time to time and whether or not existing at the Commencement Date, all applicable principles of law or equity, standards, codes and guidelines, industry standards and other industry standards to the extent that such standards, codes and guidelines are relevant to the Services, directions or notices issued by any Authority and fees, rates, taxes, levies and charges payable in respect of the things referred to in this definition;
- 1.1.28 **License** includes permits, licences, authorisations and accreditations;
- 1.1.29 **Loss** means any loss, cost, expense, damage or liability (including any fine or penalty) whether direct or indirect or consequential, present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of the Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution), but excluding Consequential Loss;
- 1.1.30 **Materials** means any goods or materials to be supplied by the Contractor as part of the Services;
- 1.1.31 **Motor Policy** has the meaning ascribed to it by clause 18.3;
- 1.1.32 **Municipal District** means the municipal district of the Principal;
- 1.1.33 **OH&S** means occupational health and safety;
- 1.1.34 **OH&S Incident** has the meaning given in Part 5 of the OH&S Act and, for the purpose of this Agreement, also means any event or circumstance relating to health or safety that causes or is likely to cause:
- (a) a lost time injury, medical treatment injury, first aid injury or a near miss;
 - (b) an interruption of services to customers;
 - (c) a threat to the Principal's systems or infrastructure;
 - (d) a threat to community health and safety;
 - (e) a threat to the environment;
 - (f) a threat to public or private property; or
 - (g) the creation of the need for urgent action under statute or legislation.

- 1.1.35 **Optional Term** has the meaning given in clause 2.2.2;
- 1.1.36 **Other Contract Documents** means the documents set out in Schedule 2;
- 1.1.37 **Party's Representative** means the Superintendent in respect of the Principal and the Contractor's Representative in respect of the Contractor;
- 1.1.38 **Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- 1.1.39 **Personnel** means employees, agents, contractors or subcontractors including representatives;
- 1.1.40 **Practical Completion** means, in relation to a Project, that stage when –
- (a) all Services to be performed in relation to that Project have been completed;
 - (b) any tests which are required to be carried out and passed in relation to the Services have been carried out and passed; and
 - (c) all documents which the Contractor is required to supply to the Principal in relation to the Services have been supplied to the Principal –
- as determined by the Superintendent;
- 1.1.41 **Principal Information** means any Existing Information provided to the Contractor by the Principal under this Agreement;
- 1.1.42 **Principal Policies and Procedures** means the policies and procedures made available by the Principal to the Contractor from time to time;
- 1.1.43 **Project** has the meaning ascribed to it by clause 3.1;
- 1.1.44 **Project Programme** has the meaning ascribed to it by clause 4.2;
- 1.1.45 **Public Holiday** means a public holiday under the *Public Holidays Act 1993* applying in the Municipal District;
- 1.1.46 **Public Liability Policy** has the meaning ascribed to it by clause 18.2;
- 1.1.47 **Relevant Party** means:
- (a) the Contractor and the Contractor's employees, agents or sub-contractors;
 - (b) an associate of the Contractor or the Contractor's employees, agents or sub-contractors;
 - (c) a company in which the Contractor or the Contractor's employees, agents or sub-contractors are involved, whether as an officer, shareholder, employee or otherwise; or

- (d) any other person with whom the Contractor or Contractor's employees, agents or sub-contractors has or have a financial or business association, whether directly or indirectly;

1.1.48 **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002*;

1.1.49 **Services** means –

- (a) performance of work;
- (b) the supply of materials or goods; and
- (c) all other things required to be done –

under this Agreement by the Contractor and includes any matters reasonably to be inferred from this Agreement;

1.1.50 **Site** has the meaning ascribed to it by clause 3.5;

1.1.51 **Start Date** has the meaning ascribed to it by clause 4.1;

1.1.52 **Superintendent** means –

- (a) the person nominated as such in Schedule 1; or
- (b) any other person nominated by the Principal from time to time in writing –

and includes any person:

- (c) to whom powers or functions have been delegated by a person referred to in clause (a) or clause (b);
- (d) the authority of whom the Contractor has been notified; and
- (e) in respect of whom no notice of the revocation of his or her authority has been given to the Contractor;

1.1.53 **Tax Invoice** has the meaning set out in section 195-1 of the GST Act; and

1.1.54 **Taxable Supply** has the meaning set out in section 195-1 of the GST Act.

1.1.55 **Term** has the meaning ascribed to it by clause 2.1;

1.2 Interpretation

1.2.1 This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

1.2.2 In this Agreement, except where the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to:
- (1) a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
 - (2) a person includes the legal personal representatives, successors and permitted assigns of that person;
 - (3) any 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 first-mentioned body;
 - (4) '\$' or 'dollars' is a reference to Australian dollars;
 - (5) a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (6) this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (d) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- (e) where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'; and
- (f) a payment or other act is required to be made or done on a day which is not a Business Day, must be made or done on the next following Business Day.

1.2.3 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that 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 as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

1.3 Priority of documents

If there is any inconsistency between any of the documents forming part of the contract entered into by the parties under clause 4.7, those documents will be interpreted in the following order of priority:

- 1.3.1 the Formal Instrument of Agreement;
- 1.3.2 the General Conditions;
- 1.3.3 the Schedules to this Agreement (in numerical order);
- 1.3.4 any other documents created under this Agreement or incorporated into it by reference or any special conditions in Item 11 of Schedule 1.

2 Term

2.1 Initial Term

This Agreement starts on the Commencement Date and continues for the Initial Term, unless extended under clause 2.2 or terminated earlier in accordance with its terms (**Term**).

2.2 Extension of Term

2.2.1 The Principal may extend the Initial Term for the further period or periods specified in Item 5 of Schedule 1 (each an Optional Term), on the terms and conditions then in effect, by giving written notice to the Contractor before expiry of the then current Term.

2.2.2 Any extension exercised by the Principal under clause 2.2.1 takes effect from the end of the then current Term.

3 Obligation to provide Services

3.1 Contractor's Obligation

The Contractor must provide the Services in accordance with this Agreement during the Term when directed to do so by the Superintendent.

On each occasion when the Superintendent directs the performance of the Services, the Superintendent will nominate which items of the Services are to be performed and, where relevant, the quantities to be performed. The Principal is not obliged to make payment for any Services not nominated under this clause.

On any occasion where the Superintendent directs the performance of the Services, the Superintendent may direct that the work to be performed shall constitute a "Project", in which case, clause 4 will apply.

3.2 No Obligation on Principal

The Principal is under no obligation to obtain:

3.2.1 any of the Services from the Contractor; or

3.2.2 the Services exclusively from the Contractor.

It is acknowledged and agreed that the Principal may elect to obtain the Services by any means which it considers appropriate (including, without limitation, a selective quotation process or public tender) and the Principal is not obliged to give the Contractor an opportunity to participate in any such process.

3.3 Unavailability

3.3.1 If, at any time during the Term, the Contractor is unable for whatever reason provide the Services from the Principal in accordance with clause 3.1 of this Agreement, the Contractor must immediately notify the Superintendent and Principal in writing. The written notice must specify the period during which the Contractor is unable to provide the Services.

- 3.3.2 The Principal request Services from the Contractor under this Agreement during the period specified in a notice given by the Contractor under clause 3.3.1.
- 3.3.3 Nothing in this clause 3.3 limits or otherwise affects the Contractor's obligation to provide Services when the Superintendent directs the performance of the Services, the Superintendent.

3.4 Timing non-Project Services

With respect to any direction by the Superintendent to perform the Services, where the Superintendent has not directed that the work to be performed will constitute a Project, the Contractor must commence providing the Services on such date as the Superintendent specifies and -

- 3.4.1 at the time; or
- 3.4.2 between any times –

specified by the Superintendent and perform the Services expeditiously and within any time limits that the Superintendent may reasonably specify.

3.5 Location

The Services must be provided at any site within the Municipal District nominated by the Superintendent in a direction given in accordance with clause 3.1 (**Site**).

The Contractor must comply with all directions of the Superintendent with respect to each Site, including, without limitation, any directions with respect to access to the Site, working hours at the Site, OH&S at the Site and security of the Site.

3.6 Quotations

The Superintendent may, prior to directing the Contractor to provide the Services in accordance with clause 3.1, direct the Contractor to provide a quotation of the number of hours which it will take the Contractor to perform any particular work (**Services Quotation**). The Contractor must provide a Services Quotation within seven (7) days of a direction from the Superintendent.

The Superintendent may seek Services Quotations from service providers other than the Contractor.

If the Contractor is directed to perform Services which have been the subject of a Services Quotation, then, notwithstanding any other provision of the Agreement, the Principal shall only be liable to make payment to the Contractor with respect to the number of hours stated in the Services Quotation for the performance of the Services which are the subject of the Services Quotation.

The Contractor must perform any Services which are the subject of a Services Quotation in full accordance with the terms of the Agreement, notwithstanding that the time taken to complete the Services may exceed that stated in the Services Quotation.

4 Projects

4.1 Application of clause to Projects

Clause 4 only applies to the performance of the Services where the Superintendent has directed that the work to be performed will constitute a Project.

4.2 Establishment of Completion Date

Within two (2) days after receiving a direction from the Superintendent to commence providing the Services with respect to a particular Project, the Contractor must provide to the Superintendent a programme for the Project, including proposed start and completion dates. Prior to the commencement of the provision of the Services for a particular Project, the Superintendent and the Contractor must agree on a programme for the Project (**Project Programme**), including the date on which the Contractor will commence the Project (**Start Date**) and the date on which the Project will reach Practical Completion (**Completion Date**).

If the Supervisor and the Contractor cannot agree on a Project Programme, the Superintendent may direct the Contractor not to perform the Services. No compensation or any other amount shall be payable by the Principal to the Contractor with respect to any such direction.

4.3 Date for Practical Completion

The Contractor must perform the Services for each Project diligently and in accordance with the Project Programme for that Project.

Without limiting the Contractor's obligations under clause 4.3, the Contractor must:

- 4.3.1 commence each Project on the Start Date for that Project; and
- 4.3.2 except as provided in clause 4.3, bring each Project to Practical Completion by the Completion Date for that Project.

4.4 Delays

If the Contractor is delayed in performing a Project by –

- 4.4.1 any act or omission of the Principal or the Principal's staff or agents; or
- 4.4.2 any cause specified in Schedule 1 –

the Contractor may apply to the Superintendent for an extension of time for completing a Project, within seven (7) days of the act or omission or first occurrence of the cause. The Superintendent may, if he or she considers that an extension of time is warranted having regard to the nature of the act, omission or cause and its impact on the performance of the Services, grant the Contractor such extension of time to complete the Project as the Superintendent considers appropriate and the Completion Date shall be extended accordingly.

4.5 No additional payments

The Principal is not liable to make any additional payment to the Contractor in respect of any delay in the performance of the Services.

4.6 Notice of Completion

The Contractor must give the Superintendent notice when a Project has or will, in the opinion of the Contractor, reach Practical Completion.

A Project shall not be deemed to have reached Practical Completion until the Superintendent gives the Contractor notice that the Project has reached Practical Completion. The notice must specify the date on which the Project is deemed to have reached Practical Completion.

The issue of any such notice does not constitute:

- 4.6.1 approval of any work;
- 4.6.2 evidence of the value of any work;
- 4.6.3 evidence that any work was performed or performed satisfactorily; or
- 4.6.4 any admission of liability by the Principal or the Superintendent with respect to any work.

4.7 Defects Liability Period

Without prejudice to any other rights of the Principal or the Superintendent, any rights conferred on the Superintendent and the Principal under clause 5 may be exercised with respect to a Project during the Defects Liability Period for that Project.

4.8 Risk

Until handover of a Project to the Principal, all risk in the Project shall rest with the Contractor and the Contractor is responsible for care of the works. Without limiting the Contractor's obligations under this clause, the Contractor must rectify all damage to a Project arising from vandalism, weather conditions or any other cause.

The Contractor must indemnify the Owner for loss arising out of personal injury or property damage.

5 Defects

5.1 Defective Works

If the Superintendent finds material or work provided or performed by the Contractor which is not in accordance with the Agreement, or the Contractor has omitted any material or work required by the Agreement, the Superintendent may direct the Contractor to:

- 5.1.1 remove the material from the Site;
- 5.1.2 demolish the work;
- 5.1.3 reconstruct, replace or correct the material or work;
- 5.1.4 not deliver the work or material to the Site;
- 5.1.5 perform the omitted work or provide the omitted material; and/or

- 5.1.6 make good any damage or other work affected by the doing of anything referred to in clause 5.1.

The Superintendent may direct the times within which the Contractor must commence and complete anything referred to in clause 5.1. The Contractor must comply with any such direction.

5.2 Principal may appoint other contractor

If the Contractor does not comply with a direction under clause 5.1 the Contractor may have the work carried out by others and the costs shall be determined by the Superintendent moneys due to the Principal.

5.3 Compensation

The Contractor must pay to the Principal, on demand, the amount of any loss or damage caused to the Principal, or for which the Principal may become liable, due to any work not being in accordance with any of the requirements of this Agreement. The Superintendent must determine the amount of any loss, damage or liability incurred by the Principal for the purposes of this clause.

6 Materials

6.1 Conditions

If the provision of the Services by the Contractor involves the supply of Materials by the Contractor, it is a condition of the Principal's purchase of the Services that:

- 6.1.1 the Materials will be new, unless stated otherwise in a direction given by the Superintendent in accordance with clause 3.1;
- 6.1.2 the Materials will be fit for the purpose for which items of the same kind are commonly supplied;
- 6.1.3 the Materials are of merchantable quality and free from defects;
- 6.1.4 the Contractor is capable of passing title in the Materials free of encumbrances and all other adverse interests at the time that title to the Materials passes in accordance with clause 6.2; and
- 6.1.5 the Materials carry any applicable manufacturers' warranties, the benefits of which are deemed to be assigned to the Principal, without further liability to the Principal, on the supply of the Materials. The Contractor must do anything necessary to ensure that the Principal may have the benefit of the manufacturers' warranties.

6.2 Title

If the provision of the Services by the Contractor involves the supply of Materials by the Contractor, title to the Materials, free of encumbrances and all other adverse interests, will pass to the Principal upon the Materials coming into the possession of the Principal's agents or employees or being incorporated into any works comprising a Project.

7 Further obligations of the Contractor

7.1 Liaison

The Contractor's Representative must liaise with the Superintendent during the performance of the Services. The Contractor's Representative must keep the Superintendent fully informed as to the progress of the Services and any critical decisions, factors or circumstances which may influence the performance of the Services.

If it is necessary for the Contractor to consult with any members of the Principal's staff or any third parties to perform the Services, contact must be made with such staff or third parties through the Superintendent unless otherwise agreed in writing by the Superintendent.

7.2 Standard of Services

7.2.1 The Contractor must provide the Services:

- (a) in a diligent manner;
- (b) in conformity with all applicable standards issued by Standards Australia and the International Organization for Standardisation;
- (c) in accordance with the principles of quality assurance;
- (d) in a tradesmanlike manner ;
- (e) with a level of care, skill, knowledge and judgement in accordance with best industry practice;
- (f) so that the they are fit for their intended purpose; and
- (g) in accordance with this Agreement.

7.2.2 The Contractor will remain responsible for the performance of Services notwithstanding the acceptance or review of the Services, or any element of the Services, by the Superintendent, the Principal or any member of the Principal's staff.

7.2.3 The Contractor warrants that:

- (a) it has examined and carefully checked the documents comprising the Agreement and satisfied itself that the documents adequately and appropriately describe the Services in sufficient detail to enable the Contractor to properly perform the Services;
- (b) the Principal's intended purpose in commissioning the Services is ascertainable from the Agreement; and
- (c) the Services will be executed in a manner which meets and is fit for the Principal's intended purpose.

7.3 Fees

The Contractor must pay all fees, charges and costs incurred in its performance of the Services, unless otherwise stated in Schedule 1.

7.4 Statutory requirements

The Contractor must obey and must 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 Agreement.

7.5 The media

The Contractor must:

- 7.5.1 not either itself or through its employees, agents or sub-contractors make any statement to the media on behalf of the Principal or in relation to the performance of the Services;
- 7.5.2 refer all enquiries from the media relating to the performance of the Services to the Superintendent;
- 7.5.3 not attract public or media attention which may be prejudicial or otherwise detrimental to the Principal's name, messages or reputation; and
- 7.5.4 notify the Superintendent immediately of any event arising in the course of performing the Services which may receive media attention.

7.6 Contractor to protect Principal's Information

The Contractor must ensure that all Principal Information in the custody and control of the Contractor are protected at all times from unauthorised access or use by any person, and from misuse, damage or destruction by any person.

8 Contractor's staff

8.1 Contractor's representative

The Contractor must 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**).

The Contractor must notify the Superintendent of the name of the Contractor's Representative prior to the Commencement Date and must notify the Superintendent immediately should a new Contractor's Representative be appointed.

8.2 Conduct of staff

The Contractor must ensure that its employees and sub-contractors, and any employees of such sub-contractors:

- 8.2.1 conduct themselves towards members of the public and staff of the Principal in a civil and inoffensive manner;
- 8.2.2 obey all relevant Acts, regulations and local laws;
- 8.2.3 perform the Services with as little nuisance as possible;
- 8.2.4 have suitable qualifications, registration and licences, are suitably trained and experienced and are capable of supplying the Services; and

8.2.5 comply with all the Contractor's obligations under this Agreement.

8.3 Staff not to be employed

The Superintendent may give notice that any person not be employed or engaged in the performance of the Services by the Contractor. The Contractor must comply with any such notice from the Superintendent.

8.4 Industrial requirements

Without limiting any other obligations under this Agreement, the Contractor must comply with the terms of any relevant law or agreement in respect of their personnel.

8.5 The Principal not responsible

The Contractor acknowledges and agrees that:

- 8.5.1 the Principal is not and must not at any time be construed as the employer of any of the Contractor's Personnel for the purposes of any law;
- 8.5.2 the Contractor is solely responsible and liable for the making of any payments in respect of superannuation, payroll or any other tax, WorkCover premium or any similar payments in relation to its Personnel; and
- 8.5.3 it remains fully responsible for the supply of all Services under this Agreement and for all costs incurred in respect of its Personnel.

9 Intellectual Property rights

9.1 Property of Principal

The Intellectual Property in any documents or information supplied to the Contractor by the Principal for the purposes of performing the Services remains the property of the Principal. Any such documents must be returned to the Principal by the Contractor on the conclusion of the performance of the Services or the earlier termination of this Agreement.

9.2 Intellectual Property

Ownership of, and the Intellectual Property in, any documents, data, designs, models, computer software and other information created by the Contractor in the course of performing the Services vests in the Principal. The Contractor must:

- 9.2.1 deliver all such documents, data, designs, models, computer software and other information to the Principal at the conclusion of the performance of the Services, or earlier termination of this Agreement, if they have not previously been delivered to the Principal in accordance with this Agreement; and
- 9.2.2 on demand, execute any waivers, notices or assignments necessary to enable the Principal to register or otherwise obtain title to the Intellectual Property in such documents, data, designs, models, computer software and other information.

10 Warranties

10.1 Warranties

The Contractor warrants and represents to the Principal that:

- 10.1.1 it has full legal capacity and power to enter into and to perform its obligations under this Agreement;
- 10.1.2 it holds all Licences required for it to perform its obligations under this Agreement;
- 10.1.3 while on premises owned or controlled by the Principal, it will comply with the Principal's lawful directions and the Principal Policies and Procedures;
- 10.1.4 the Services will be performed in a timely and professional manner in accordance with this Agreement using appropriately trained and experienced Personnel;
- 10.1.5 the Contractor will not contract with any suppliers that will bring the reputation of the Principal into disrepute.
- 10.1.6 it will not attempt to provide any the Principal Personnel with any kickback, payment, gift or anything of value in connection with this Agreement;
- 10.1.7 it has policies and procedures in place designed to ensure that it and its Personnel at all times comply with the any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the Services;
- 10.1.8 the Agreement Information and the Contractor Information, and the Principal and its Personnel's use of that Information as permitted under this Agreement, will not infringe the Intellectual Property Rights or Moral Rights of any person;
- 10.1.9 it has entered into this Agreement in reliance on its own investigations and enquiries and does not rely on any information or documentation provided by or on behalf of the Principal other than as expressly set out in this Agreement; and
- 10.1.10 it will ensure all Personnel employed in the Services will comply with the requirements of the Agreement, including clause 8.2.

10.2 Duration

The warranties given by the Contractor in this Agreement are given with effect on the date of this Agreement and at all times during the Term.

10.3 Reliance

The Contractor acknowledges that the Principal has entered into this Agreement in reliance on the warranties given by the Contractor in this Agreement.

11 Contract management

11.1 Contract Managers

The Contractor's Representative and the Superintendent:

- 11.1.1 manages and administer this Agreement on behalf of the party he or she is representing; and
- 11.1.2 has authority to give and receive notices under this Agreement.

11.2 The Superintendent

The Superintendent must exercise any powers conferred on the Superintendent (including the making of a determination on any issue) under clauses 16.5.1, 16.5.2, 23.2.3 and 24 reasonably and independently of the parties. Except as expressly provided in this clause or elsewhere in this Agreement, the Superintendent may exercise any powers conferred, and perform any other duties imposed or functions conferred on the Superintendent in the Principal's interests.

11.3 Notices

- 11.3.1 A notice required or permitted to be given by one party to another under this Agreement must be in writing, addressed to the party to receive it, and:
 - (a) handed to the Party's Representative for that party;
 - (b) delivered to that party's address;
 - (c) sent by email to that party's email address; or
 - (d) sent by pre-paid mail to that party's address.
- 11.3.2 A notice given to a party in accordance with clause 11.3.1 must be treated as having been duly given and received:
 - (a) if posted:
 - (1) within Australia to an Australian postal address, – 5 Business Days after the date of posting; or
 - (2) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;
 - (b) if delivered by hand during a Business Day – on the date of delivery;
 - (c) if emailed – subject to clause 11.3.2(d) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered; and
 - (d) except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

- 11.3.3 For the purposes of clause 11.3.1 the parties address and email address are set out in Item 10 of Schedule 1 (or as varied by any notice).

11.4 Consultation

- 11.4.1 The parties must act in close consultation and cooperation with each other in relation to the performance of their obligations under this Agreement.
- 11.4.2 The Contractor must immediately inform the Superintendent of any event, activity, or OH&S Incident becoming known to the Contractor that will, or is reasonably likely to, prevent or materially limit supply of the Services by the Contractor.

11.5 Conflict of interest

- 11.5.1 The Contractor must promptly notify the Superintendent if, at any time during the Term, a Conflict of Interest arises relating to the performance of this Agreement by the Contractor or any of its Personnel.
- 11.5.2 If the Contractor notifies the Superintendent under clause 11.5.1 of a Conflict of Interest, or the Principal otherwise becomes aware of a Conflict of Interest, the Superintendent will consult with the Contractor to determine an appropriate course for managing the Conflict of Interest and the Contractor must implement any course of action that the Principal determines appropriate as soon as possible.
- 11.5.3 The Principal may terminate this Agreement under clause 16 if a Conflict of Interest is not managed or resolved by the Contractor to the Principal's reasonable satisfaction.

11.6 Investigations and FOI requests

At the request of the Principal, the Contractor must, at its own cost, cooperate with and assist the Principal in connection with any enquiry or investigation by an Authority, including the Victorian Ombudsman, the Victorian Auditor-General and the IBAC.

12 Records and audit

12.1 Obligation to maintain records

The Contractor must maintain complete and accurate Records and securely store and ensure the integrity of those records in accordance with all applicable standards issued under the Records Act.

12.2 Audit

During the Term and for 12 months after termination or expiry of this Agreement, the Contractor must, within 5 Business Days of receiving notice from the Principal, allow the Principal and its representatives to access the Contractor's premises, facilities, systems and any information or documentation in the Contractor's possession or control which is connected to the Services or this Agreement (including the Records) for the purpose of the Principal or its nominee performing an audit to verify the Contractor's compliance with this Agreement. Access must be provided at no cost to the Principal, and the Contractor must permit the Principal to take copies of documentation (including Records).

13 Confidential Information

13.1 Contractor's duty of confidentiality

The Contractor must not, during or after this Agreement, disclose, or cause or permit the disclosure to any person of, any of the Confidential Information (or any opinion in respect of it) except as permitted under clause 13.2.

13.2 Use and disclosure by the Contractor

Subject to clause 14, the Contractor may:

13.2.1 use the Confidential Information only for the purposes of this Agreement (including to exercise rights and perform obligations in connection with this Agreement); and

13.2.2 disclose or permit the disclosure of the Confidential Information only –

- (a) to its legal advisors, auditors or insurance advisors on a confidential basis for the purpose of providing information or advice to the Contractor in connection with this Agreement;
- (b) to its Personnel on a needs to know basis for the purposes of this Agreement; and
- (c) if required by Law in connection with any legal proceedings connected to this Agreement, but only after notifying the court or relevant Authority or person of the obligations of confidence the Contractor owes to the Principal and using reasonable endeavours to have the relevant information disclosed on a confidential basis –

provided that the Contractor first notifies the Principal in writing of its intention to disclose the Confidential Information as soon as reasonably practicable.

13.3 Return of Confidential Information

On termination or expiry of this Agreement or at the request of the Principal, the Contractor must return or destroy (at the Principal's election) all Confidential Information including any copies of the Confidential Information (stored in any medium) which is in its or its Personnel's possession or control.

14 Privacy

14.1 Privacy Principles

The Contractor agrees to be bound by the Information Privacy Principles and any Code of Practice (**Principles**) (with respect to any act done or practice engaged in by the Contractor under or in connection with this Agreement in the same way and to the same extent as the Principal would have been bound by the Principles in respect of that act or practice had it been directly done or engaged in by the Principal.

14.2 Compliance with privacy laws

The Contractor must not (and will ensure that its Personnel do not) collect, use, disclose, store, transfer or otherwise handle Personal Information collected in

connection with the Services or this Agreement except to the extent reasonably necessary to perform its obligations under this Agreement, and only in compliance with the Privacy and Data Protection Act or any other privacy Law applying to the Principal.

14.3 Notice

The Contractor must immediately notify the Principal when it becomes aware of any breach of (or potential breach of) this clause 14 by any of the Contractor's Personnel.

15 Financial provisions

15.1 Payments

Subject to clause 4.5, if the Contractor complies with its obligations under this Agreement, the Principal must make the payment or payments specified in the Formal Instrument of Agreement on the basis stated in the Formal Instrument of Agreement.

The Contractor may submit a payment claim to the Superintendent where entitled to do so under the Formal Instrument of Agreement. The Superintendent must assess each payment claim and issue to the Contractor and the Principal, within 10 Business Days of the receipt of the payment claim, a payment schedule stating:

- 15.1.1 any amount due from the Principal to the Contractor under the Agreement;
- 15.1.2 any amount due from the Contractor to the Principal under the Agreement; and
- 15.1.3 taking into account the amounts referred to in clauses 15.1.1 and 15.1.2, the sum payable by the Principal to the Contractor or the Contractor to the Principal, as the case may be.

The party to which payment must be made under a payment schedule issued by the Superintendent, must issue a Tax Invoice, in accordance with clause 15.6, for the sum stated in the payment schedule to the party to make the payment within five (5) Business Days of its receipt of the payment schedule. The party receiving the Tax Invoice, must pay the sum specified in the Tax Invoice to the party to which payment is due within 10 Business Days of its receipt of the Tax Invoice, subject to clause 15.2.

In so far as necessary to ensure compliance with the Security of Payment Act, the Superintendent is deemed to issue any payment schedule as the agent of the Principal.

If the Contractor makes any payment claim under the Security of Payment Act, the Contractor must separately identify any excluded amount (within the meaning of the Security of Payment Act) and state that the excluded amount is not claimed under the Security of Payment Act.

If the Contractor does not issue a payment claim to the Superintendent in accordance with clause 15.1, the Superintendent may nonetheless issue a payment schedule.

15.2 Set Off

The Principal may set off any amount payable by the Contractor to the Principal under this Agreement or otherwise against any amount payable by the Principal to the Contractor under, in relation to or in connection with this Agreement.

15.3 Payment on account only

The making of any payment by the Principal to the Contractor under this Agreement is made on account only and payment of any amount is not:

- 15.3.1 evidence or an admission that the Services have been performed in accordance with this Agreement;
- 15.3.2 evidence of the value of the Services performed;
- 15.3.3 an admission that the Services were satisfactorily performed;
- 15.3.4 an admission of liability; or
- 15.3.5 acceptance or approval of the Contractor's performance of the Services.

15.4 Goods and Services Tax

To the extent that the performance of the Services constitutes a Taxable Supply:

- 15.4.1 if a payment under clause 15.1 is calculated on a basis which is described as exclusive of GST, the payment must 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);
- 15.4.2 the Contractor must provide to the Principal a valid Tax Invoice prior to the time of, and as a condition of, payment of any GST Amount; and
- 15.4.3 if any Adjustment occurs in relation to the Taxable Supply, the Contractor must issue an Adjustment Note to the Principal within seven (7) days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within seven days (7) after the date of receipt of the Adjustment Note.

15.5 Records

Where any payment to be made to the Contractor under clause 15.1 is calculated by reference to time spent by the Contractor performing the Services (**Chargeable Time**), the Contractor must maintain detailed records (including, without limitation, daily individual time sheets) and retain such records for a period of at least five (5) years.

The Superintendent, or any person nominated by the Superintendent, may inspect and audit the Contractor's documents which record the Chargeable Time. For this purpose, the Contractor must make available to the Superintendent, or any person appointed by the Superintendent, all documents and information relating to the performance of the Services necessary to establish or verify the Chargeable Time.

15.6 Tax Invoices

Any Tax Invoice submitted to the Principal for the purposes of clause 15.4.2 must include:

- 15.6.1 the Contractor's ABN;
- 15.6.2 the value of the Taxable Supply;
- 15.6.3 the GST applicable to the Taxable Supply;
- 15.6.4 the words "Tax Invoice";
- 15.6.5 the date of issue of the Tax Invoice;
- 15.6.6 the name of the Contractor;
- 15.6.7 the name of the Principal as the recipient of the Taxable Supply;
- 15.6.8 the ABN of the Principal;
- 15.6.9 a brief description of each element of the Taxable Supply; and
- 15.6.10 if relevant, the quantity or volume of the Taxable Supply.

16 Defaults and termination

16.1 Default by Contractor

Should the Contractor –

- 16.1.1 default in the performance or observance of any obligation it has under this Agreement; or
- 16.1.2 refuse or neglect to carry out or give effect to any order, instruction, direction or determination which the Principal or the Superintendent is empowered to give or make under this Agreement and which is given or made in writing to the Contractor –

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

Such notice must:

- 16.1.3 not be unreasonably given;
- 16.1.4 indicate that it is a notice under this clause; and
- 16.1.5 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 Superintendent offers reasonable assurance that –

- 16.1.6 the default will be rectified; or

16.1.7 the Principal's or Superintendent's order, instruction, direction or determination will be carried out or given effect to –

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

16.1.8 suspend payment under this Agreement; or

16.1.9 terminate this Agreement –

by notice to the Contractor.

The suspension of payment under this clause by the Principal, will not in any way affect the continuing obligations of the Contractor under this Agreement. 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.

16.2 Termination for Convenience

The Principal may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Contractor 28 days' written notice.

16.3 Termination of Agreement by the Principal

16.3.1 If this Agreement is terminated by the Principal under clause 16.1:

(a) the Principal may itself or by engaging or employing any other person –

(1) complete the performance of the Services; or

(2) such part of the performance of the Services as the Principal considers it desirable to complete –

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

(b) the Principal may take possession of and permit other persons to use such of the Contractor's Plant as it considers necessary for the completion of:

(1) the performance of the Services; or

(2) such part of the performance of the Services as the Principal considers it desirable to complete.

16.3.2 If this Agreement is terminated by the Principal under clause 16.2, the Principal may itself or by engaging or employing any other person:

(a) complete the performance of the Services; or

(b) such part of the performance of the Services as the Principal considers it desirable to complete.

16.4 Payments on termination

16.4.1 Limit of payments

If this Agreement is terminated by the Principal under clause 16.1, the Principal is liable to make payments to the Contractor only in respect of:

- (a) any part of the Services which have been properly performed and not paid for at the date of termination; and
- (b) the use by the Principal of the Contractor's Plant for the purpose of completing the performance of the Services or part of the Services (but without payment for fair wear and tear).

16.4.2 Payment for losses and expenses

If this Agreement is terminated under clause 16.1, the Contractor must, within 14 days, or such longer period as the Superintendent may specify, pay to the Principal the amount of the loss and expenses incurred by the Principal due to, or in connection with, the termination (including, without limitation, indirect losses, consequential losses and all legal costs on a full indemnity basis, and any amount by which the cost to the Principal of completing the Services exceeds the amount which would otherwise have been payable to the Contractor), as determined by the Superintendent.

16.4.3 Limit of payments for termination for convenience

Upon termination of this Agreement by the Principal under clause 16.2, the Principal must, after taking into account amounts previously paid under this Agreement, make payments to the Contractor only in respect of:

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

The Contractor must not charge any margin or profit on the material or goods referred to in clause 16.5.3. Each party must take any steps determined by the Superintendent to effectively transfer ownership and possession of the material or goods under clause 16.5.3(b).

The Contractor's entitlement to payment under this clause 16.5.3 upon termination of this Agreement under clause 16.2 shall be the Contractor's sole entitlement to compensation.

16.4.4 Superintendent's determination

The amounts payable by the Contractor and the Principal under clauses 16.5.1, 16.5.2 and 16.5.3 and any steps required to effectively transfer ownership and possession of any materials or goods referred to

in clause 16.5.3(b) (including the proportions in which each party to this Agreement is to bear the costs of the taking of any such steps) must be determined by the Superintendent. The Superintendent must give notice of his or her determination under clause 16.5 to the Contractor. Subject to clause 16.5.5, any amounts payable under clause 16.5 must be paid within 14 days of the receipt of notice of the Superintendent's determination.

16.4.5 The Principal may retain moneys

The Principal may retain any moneys payable to the Contractor under clause 16.5.1 until any amount payable by the Contractor to the Principal under clause 16.5.2 has been determined by the Superintendent and paid by the Contractor. If the Principal has taken possession of the Contractor's Plant under clause 16.3.1(b), the Contractor's Plant may be held as security for the payment of any amounts payable by the Contractor to the Principal under clause 16.5.2.

16.5 Termination of the Agreement by the Contractor

16.5.1 Contractor's right to terminate

If the Principal has failed to pay to the Contractor any amount due under clause 15.1, other than an amount being the subject of a dispute or difference under this Agreement or any legal proceedings commenced in respect of this Agreement, within 14 days of any period for payment stated in Schedule 4, the Contractor may give notice in writing to the Principal stating that notice of termination under this Agreement may be served if payment is not made within a further 14 days. If the Principal fails to make payment within 14 days of the receipt of such notice, the Contractor may, by notice to the Principal, either suspend the performance of the Services or terminate this Agreement. Any suspension of the Services by the Contractor under clause 16.6.1 will not prevent it terminating this Agreement during the period that the performance of the Services is suspended.

16.5.2 Payments upon termination

Upon termination of this Agreement by the Contractor under clause 16.6.1, without prejudice to the accrued rights or remedies of either party or the other liabilities of the parties under this Agreement which may have accrued prior to termination, the Principal must, after taking into account amounts previously paid under this Agreement, make payments to the Contractor in respect of:

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

The amount of any payments to be made by the Principal under this clause and any steps required to effectively transfer ownership and

possession of any materials or goods referred to in clause 16.6.2(b) (including the proportions in which each party to this Agreement is to bear the costs of the taking of any such steps) must be determined by the Superintendent. Each party must take any steps determined by the Superintendent to effectively transfer ownership and possession of the material or goods under clause 16.6.2(b).

16.6 Insolvency of Contractor

If the Contractor –

16.6.1 being a person:

- (a) becomes bankrupt, or files or is served with a petition in bankruptcy;
- (b) is served with a bankruptcy notice;
- (c) makes an assignment for the benefit of his or her creditors;
- (d) becomes bound as a debtor by any scheme of arrangement;
- (e) executes, as a debtor, any deed of assignment or deed of arrangement; or
- (f) has a mortgagee or other creditor take possession of any of his or her assets;

16.6.2 being a partnership:

- (a) is dissolved;
- (b) any of the partners becomes bankrupt, or files or is served with a petition in bankruptcy;
- (c) any of the partners is served with a bankruptcy notice;
- (d) any of the partners makes an assignment for the benefit of his or her creditors;
- (e) any of the partners becomes bound as a debtor by any scheme of arrangement;
- (f) any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or
- (g) any of the partners has a mortgagee or other creditor take possession of any of his or her assets; or

16.6.3 being a company or other body corporate:

- (a) 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;
- (b) 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;

- (c) has a mortgagee or other creditor take possession of any of its assets;
- (d) an administrator is appointed, or steps are taken for the appointment of an administrator, under Part 5.3A of the *Corporations Act 2001* (Cth) in respect of it;
- (e) 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
- (f) 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 Principal may terminate this Agreement immediately and clause 16.5 shall, to the extent that it is applicable, operate as if the termination had been made by the Principal under clause 16.1.

17 Sub-contracting and assignment

17.1 Sub-contracting

17.1.1 General

The Contractor must not sub-contract the whole or any portion of its obligations under this Agreement, except with the prior written consent of the Superintendent, which may be given subject to such conditions as the Superintendent considers appropriate. Except in so far as any consent given by the Superintendent under clause 17.1.1 expressly provides otherwise, no sub-contractors will have any rights under this Agreement against the Principal or be entitled to receive any payments under this Agreement from the Principal.

17.1.2 Contractor to provide information

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

17.1.3 Contractor still to be liable

Unless otherwise agreed in writing by the Superintendent, no sub-contracting of any obligations of the Contractor under this Agreement will relieve the Contractor from any liability under this Agreement or at law in respect of the performance or purported performance of this Agreement 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.

17.2 Assignment

17.2.1 Assignment by Contractor

The Contractor must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Principal.

17.2.2 Assignment by Principal

The Principal may assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the Contractor to any State government department, administrative office or other entity in the event of a State government restructure or other reorganisation. The Contractor must execute such documents and do such things as the Principal may reasonably require to give effect to any such assignment, novation or transfer by the Principal.

18 Insurances

18.1 Insurances and indemnities

18.1.1 Accident Compensation Act

The Contractor must –

- (a) Itself effect; and
- (b) ensure that each of its sub-contractors effects –

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

18.1.2 Other legislation

The Contractor must –

- (a) itself comply; and
- (b) 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 Superintendent, 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 –

- (c) for an amount;
- (d) with an insurer; and
- (e) in a form –

to the satisfaction of the Superintendent.

18.1.3 Indemnity

The Contractor must indemnify, keep indemnified and hold harmless the Principal and all of the Principal'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 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) which:

- (a) deems any employees or agents of the Contractor, or any employees or agents of any sub-contractor to the Contractor, to be employees or workers of the Principal or the Principal's employees, sub-contractors or agents; or
- (b) otherwise makes the Principal, or any of the Principal'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 Principal or any of the Principal's staff, sub-contractors or agents.

18.2 Public liability insurance

The Contractor must, at all times during the Term, be the holder of a current public liability policy of insurance (**Public Liability Policy**) in the name of the Contractor providing coverage for an amount per event of at least that stated in Schedule 1.

The Public Liability Policy must be effected with an insurer which is authorised to carry on non-life insurance business in Australia under the Insurance Act.

The Public Liability Policy must –

- 18.2.1 cover such risks;
- 18.2.2 be subject only to such conditions and exclusions; and
- 18.2.3 be subject only to such excess –

as are approved by the Superintendent.

18.3 Motor vehicle insurance

If the performance of the Services involves the utilisation of motor vehicles or mobile plant by the Contractor, the Contractor must, at all times during the Term be the holder of a comprehensive motor vehicle insurance policy (**Motor Policy**) with a cover equivalent to the value of the motor vehicles and mobile plant to be used in the performance of the Services and providing coverage for an amount per event of at least that stated in Schedule 1 with respect to third party property damage.

The Motor Policy must be effected with an insurer which is authorised to carry on non-life insurance business in Australia under the Insurance Act.

The Motor Policy must –

- 18.3.1 cover such risks;
- 18.3.2 be subject only to such conditions and exclusions; and
- 18.3.3 be subject only to such excess –

as are approved by the Superintendent.

18.4 Evidence of insurance

18.4.1 Provision of evidence

The Contractor must produce to the Superintendent policies of insurance and receipts showing that the insurances referred to in clauses 18.1, 18.2 and, where relevant, 18.3 have been paid not less than seven (7) days before the Commencement Date.

18.4.2 Certificates of currency

The Contractor must provide the Superintendent with certificates of currency in respect of the insurances referred to in clauses 18.1, 18.2 and, where relevant, 18.3:

- (a) each 12 months (beginning 12 months after the Commencement Date); and
- (b) within two (2) days after a written request being made by the Superintendent.

18.4.3 Failure to insure

If the Contractor fails to comply with its obligations under clauses 18.1, 18.2 or, where relevant, 18.3, the Principal may:

- (a) in the case of a failure by the Contractor to comply with its obligations under clauses 18.2 or, where relevant, 18.3, effect or maintain the Public Liability Policy or the Motor Policy, as the case may be, and pay the premiums thereof, the cost of which must be paid on demand by the Contractor to the Principal or may be deducted by the Principal from any moneys due or becoming due to the Contractor under this Agreement, at the option of the Principal; or
- (b) immediately terminate this Agreement. If this Agreement is terminated under clause 18.4.3(b), clause 16.5 will operate, to the extent that it is applicable, as if the termination had been made by the Principal under clause 16.1.

18.4.4 Proof of failure to insure

Any failure by the Contractor to comply with its obligations under clause 18.4.1 or clause 18.4.2 will constitute conclusive proof of its failure to effect or maintain the insurances, as the case may be, for the purposes of clause 18.4.3.

18.4.5 Powers not restricted

The exercise of a power by the Principal under clause 18.4.3(a) in relation to a breach of clause 18.1, 18.2 or 18.3 does not prevent the Principal terminating the Agreement under clause 18.4.3(b) in respect of that or any subsequent breach of clause 18.1, 18.2 or 18.3.

18.5 Sub-contractors

The Contractor must ensure that any sub-contractor to the Contractor complies with clauses 18.2, 18.3 and 18.4 as if it were the Contractor. For the avoidance of doubt,

clauses 18.4.3, 18.4.4 and 18.4.5 apply to any failure of a sub-contractor to the Contractor as if the failure was made by the Contractor.

19 Liability

19.1 Indemnity

19.1.1 The Contractor indemnifies each of the Indemnified Parties from and against any Loss suffered or incurred by the Indemnified Party (including any Losses incurred or sustained in connection with a third party Claim) arising out of or in connection with this Agreement and:

- (a) the death of, disease or injury to, any person caused or contributed to by the Contractor or the Contractor's Personnel;
- (b) the loss of, or damage to, any property caused or contributed to by the Contractor or the Contractor's Personnel;
- (c) any breach of Law by the Contractor or the Contractor's Personnel;
- (d) any negligent, fraudulent, unlawful, reckless or wilfully wrongful act or omission of the Contractor or the Contractor's Personnel;
- (e) any breach of this Agreement by the Contractor or any of the Contractor's Personnel; and
- (f) any Claim that the Principal's use of the Agreement Information or Contractor Material as permitted by this Agreement infringes the Intellectual Property Rights of any third party.

19.1.2 The Contractor's obligation to indemnify an Indemnified Party under clause 19.1.1 will be reduced proportionally to the extent that a negligent act or omission of, or breach of this Agreement, by the Indemnified Party has contributed to the Loss.

19.1.3 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and does not limit any other right of an Indemnified Party or require an Indemnified Party to incur expense or make payment before enforcing the right of indemnity.

19.1.4 The Contractor acknowledges and agrees that any indemnity under this Agreement in favour of an Indemnified Party other than the Principal is held on trust by the Principal and may be enforced or recovered by an Indemnified Party in any manner acceptable to the Principal and the Indemnified Party.

19.2 Consequential loss

Notwithstanding any other provision in this Agreement, neither party will have any liability to make any payment to the other party, by way of indemnity, damages or otherwise, in respect of any Consequential Loss incurred or suffered by the other party as a result of any act, omission or neglect of the first party.

19.3 Effect of legislation

Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which cannot by Law be excluded, restricted or modified.

20 Occupational Health and Safety

20.1 General occupational health and safety requirements

The Principal 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 and sub-contractors, staff of the Principal and members of the public, who may be affected by the performance of the Services.

The Contractor must comply with all Principal Policies and Procedures.

The Contractor must immediately comply with any and all directions by the Superintendent relating to OH&S.

20.2 Legislative compliance

The Contractor must –

20.2.1 comply with; and

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

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

20.3 Contractor 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 (**OH&S Management System**).

The OH&S Management System must be submitted to the Superintendent for approval prior to the Commencement Date.

The Contractor must review and update the OH&S Management System as necessary to ensure that the OH&S Management System remains current in the context of any –

20.3.1 changes in Acts, regulations, local laws, codes of practice, compliance codes, guidelines and Australian Standards which are in any way applicable to OH&S and the performance of the Services;

20.3.2 any changes to the nature of or scope of the Services or the manner in which the Contractor performs the Services; and

- 20.3.3 changes to best practice OH&S standards in the industry in which the Contractor is engaged –

and submit a report on each review and details of any proposed changes to the OH&S Management System to the Superintendent for approval prior to implementing the changes to the OH&S Management System.

The Contractor must make any amendments to the OH&S Management System submitted for the approval of the Superintendent, which the Superintendent may direct.

The Contractor must implement the OH&S Management System.

The Contractor must, when requested by the Superintendent, provide evidence of the Contractor's ongoing implementation of the OH&S Management System.

20.4 Specific obligations

Without limiting clause 20.1 to 20.3, in performing its obligations under this Agreement, the Contractor must work proactively to ensure, so far as is reasonably practicable, the safety and health of all persons involved in or affected by the supply of the Services, including by ensuring that:

- 20.4.1 each work environment (including any place of work or places near places of work that are under the Contractor's control and the systems of work operating in such locations) does not expose people to health or safety hazards;
- 20.4.2 the Contractor's Personnel receive appropriate safety training, information and supervision as is necessary to enable them to work in a manner that does not expose them to any health or safety hazard;
- 20.4.3 procedures are in place to deal with emergencies or OH&S Incidents that may arise during the supply of the Services;
- 20.4.4 all management and supervisory structures necessary to comply with occupational health and safety requirements are provided, including safety issue identification, resolution and response procedures, safe working systems, safety training requirements, access requirements and appropriate recording, reporting, inspection and auditing control measures relating to the supply of the Services; and
- 20.4.5 all things are provided and all measures taken as necessary, so far as is reasonably practicable, to protect and ensure the safety of people and property affected by the supply of the Services.

21 Security

21.1 Bank guarantee

~~Upon the execution of this Agreement, the Contractor must deliver to the Superintendent an unconditional and irrevocable bank guarantee payable to the Principal for the sum stated in Schedule 1 (Performance Security).~~

21.2 Recourse to security

In the event of any failure by the Contractor to carry out and complete its obligations under this Agreement, the Principal may have recourse to the Performance Security in respect of any moneys for which the Contractor may be liable to the Principal under this Agreement or otherwise. Without limiting the rights of the Principal under this clause, the Principal may deduct from the Performance Security any sum payable to the Principal under clause 16.5.

21.3 Return of security

Unless the Principal has exercised a right under clause 21.2, the Performance Security must be returned to the Contractor at the conclusion of the performance of the Services.

21.4 Further rights and obligations

If the Principal has exercised a right under clause 21.2 and the Agreement has:

21.4.1 been terminated or the Services have been completed, the Principal must, after making any deductions from the Performance Security that it is entitled to make under this Agreement, pay to the Contractor the remainder of the Performance Security, provided that the Principal is not required to make any payment to the Contractor under this clause until all payments due on termination of the Agreement under clause 16.5 have been made; or

21.4.2 not been terminated and the Services have not been completed, the Contractor must provide a supplementary unconditional and irrevocable bank guarantee payable to the Principal for an amount equivalent to the moneys paid to the Principal by the bank in accordance with clause 21.2.

21.5 Principal's right to terminate

If the Contractor fail to meet any of its obligations under clause 21.1 or 21.4.2 the Principal may immediately terminate this Agreement. If this Agreement is terminated under clause 21.5, clause 16.5 will operate, to the extent that it is applicable, as if the termination had been made by the Principal under clause 16.1.

22 Dispute resolution

22.1 Notice of dispute

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

Such notice:

22.1.1 must not be unreasonably given; and

22.1.2 must signify that it is a notice under this clause; and

- 22.1.3 must 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.

22.2 Alternative dispute resolution

Within seven (7) days of the receipt of any notice of dispute under clause 22.1 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.

22.3 Referral to litigation

Unless a dispute or difference of which notice has been given under clause 22.1 is previously settled, either party may, not less than seven (7) days after the notice of dispute or difference was given, refer the dispute or difference to litigation.

22.4 Work to continue

If it be reasonably possible, work under the Agreement must continue during legal proceedings, and no payment due or payable by the Principal, which is not in dispute, must be withheld on account of the legal proceedings, unless so authorised by the Contractor or by this Agreement.

23 Security of Payment Act

23.1 Copies of Communications

The Contractor shall ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the Security of Payment Act (including, without limitation, a payment claim under the Security of Payment Act), is provided to the Superintendent at the same time.

23.2 Suspension under the Security of Payment Act

23.2.1 Notice of intention to suspend

The Contractor shall first give the Superintendent, as the Principal's nominee for this purpose, at least two Business Days' notice of its intention to suspend the Services under the Security of Payment Act.

23.2.2 Suspension of work under the Agreement by a sub-contractor under the Security of Payment Act

If the Contractor becomes aware that a sub-contractor is entitled to suspend work pursuant to the Security of Payment Act, the Contractor shall promptly and without delay give to the Superintendent a copy of any written communication of whatever nature that the Contractor receives from the sub-contractor pursuant to the Security of Payment Act.

If a sub-contractor under its sub-contract for work under the Agreement suspends the whole or part of its sub-contract work pursuant to the Security of Payment Act:

- (a) the suspension shall not of itself affect any date for completion of the Services or part of the Services under the Agreement;
- (b) the Principal shall not be liable for any costs, expenses, losses or other liability, including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of a suspension pursuant to this sub-clause; and
- (c) the circumstances of such suspension is a breach of this Agreement to which clause 16.1 applies.

23.2.3 **Contractor's further indemnity**

Except for a payment default by the Principal, the Contractor indemnifies and shall keep indemnified the Principal against all damage, expense (including legal costs and the Principal's administrative costs), loss (including consequential and economic loss) or liability of any nature suffered or incurred by the Principal arising out of:

- (a) a wrongful suspension by the Contractor, or a suspension pursuant to the Security of Payment Act by a sub-contractor of work under the Agreement; or
- (b) a failure by the Contractor to comply with this clause 23.

The amount of such sum shall be determined by the Superintendent and shall then be a debt due by the Contractor to the Principal.

24 General

24.1 Amendment

This Agreement may only be amended or replaced by a document executed by the parties.

24.2 Entire understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous Contracts, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

24.3 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 Agreement.

24.4 Consents and approvals

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of the Principal or is within the discretion of the Principal, then consent or approval may be given or the discretion exercised conditionally or unconditionally or withheld by the Principal in its absolute discretion unless express provision to the contrary is made.

24.5 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

24.6 Waiver and exercise of rights

A right relating to this Agreement may only be waived by a written notice signed by the party waiving the right. A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

24.7 Rights and remedies

The rights and remedies conferred on a party by this Agreement are in addition to all other rights and remedies of that party.

24.8 Assignment

24.8.1 The Contractor must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Principal.

24.8.2 The Principal may assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the Contractor to any State government department, administrative office or other entity in the event of a State government restructure or other reorganisation. The Contractor must execute such documents and do such things as the Principal may reasonably require to give effect to any such assignment, novation or transfer by the Principal.

24.9 Insolvency Event

The Contractor must immediately notify the Principal in writing if it experiences an Insolvency Event.

24.10 No relationship

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

24.11 No merger

The warranties, undertakings, contracts and continuing obligations in this Agreement do not merge on completion.

24.12 Rule of construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this Agreement or any part of it.

24.13 Counterparts

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

24.14 Status of Contractor

If the Contractor consists of two or more parties, this Agreement shall bind each of them severally and jointly.

24.15 No fettering of Principal's powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the powers or discretions of the Principal 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.

24.16 Survival of rights and obligations

The rights and obligations of the parties under clauses 7.5, 9, 11.5, 11.6, 12, 13, 14, 15.1, 15.5, 16.3, 16.4, 16.5.2, 18.1.3, 18.3, 18.4, 18.5, 19, 21.2, 22 and 23 shall survive the termination or expiry of this Agreement.

24.17 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 Agreement 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 Agreement.

25 Price adjustment

25.1 Adjustment process

The Agreement shall not be subject to rise and fall, except as indicated in clause 25.

Subject to clause 25.2, on each anniversary of the Commencement Date each –

25.1.1 rate and price set out in Schedule 4 to the to the Formal Instrument of Agreement; and

25.1.2 other amount or rate payable by the Contractor to the Principal under the Agreement, whether as of right or in particular circumstances –

(**Contract Charge**), shall be adjusted in accordance with the formula set out below:

$$A = B \times [1 + \{(D-C) / C\}]$$

Where:

A = the adjusted Contract Charge;

B = the Contract Charge nominated in Schedule 4;

C = the Consumer Price Index: All Groups (Melbourne) Index Number most recently published issued by the Australian Bureau of Statistics at the Commencement Date; and

D = the Consumer Price Index: All Groups (Melbourne) Index Number most recently published issued by the Australian Bureau of Statistics at the date of the adjustment.

If the Consumer Price Index: All Groups (Melbourne) Index Number is no longer published by the Australian Bureau of Statistics, the Superintendent may select another index to be used instead for the purposes of adjustments under this clause 25.1.

The adjusted Contract Charge(s) shall apply until the next anniversary date, subject to clause 25.2.

25.2 Time limit for adjustments

Either party may initiate the adjustment of the Contract Charge(s) under clause 25.1 by giving written notice to the other party of the adjustments to be made, including evidence of the variations to the relevant index and the calculation of the adjustments to the Contract Charge(s).

If neither party gives notice to the other party with respect to the adjustment of the Contract Charge(s), in accordance with this clause 25.2, within 60 days of an anniversary of the Commencement Date, the Contract Charge(s) shall not be adjusted with respect to that anniversary of the Commencement Date and shall remain at the then current figure(s) until the next anniversary of the Commencement Date.

For the avoidance of doubt:

- 25.2.1 if there is more than one (1) Contract Charge and a party has given notice in accordance with this clause 25.2 of the adjustment of one (1) or more, but not all, of the Contract Charges, all of the Contract Charges shall be adjusted in accordance with clause 25.1 (unless agreed otherwise by the parties in writing) notwithstanding that notice has not been given with respect to the adjustment of any particular Contract Charge within 60 days of the relevant anniversary of the Commencement Date; and
- 25.2.2 any adjustment to a Contract Charge will only take effect from the date on which a party gives notice with respect to the adjustment of the Contract Charge under clause 25.2 (subject to clause 25.2.1) and any payments made pursuant to a Contract Charge between the last anniversary of the Commencement Date and the date on which the notice is given shall not be retrospectively adjusted.

25.3 Lodgement of Tenders

Tenders will be received only until the time and date stated in the Tender Details.

- 25.3.1 Quotations must be lodged:
- (a) by electronic mail into the electronic tender box at www.eprocure.com.au/westwimmera/ (“**Electronic Tender Box**”); or
 - (b) in the tender box (in person) at 25 Baker Street Kaniva (“**Tender Box**”).

- 25.3.2 Tenders can be uploaded into the Electronic Tender Box in Microsoft Office or Adobe PDF document format. The size of uploaded files is limited to a maximum of 500MB. The system will allow a maximum of 10 files to be uploaded at one time with a total file size of 2GB. Council's preference is for a zipped file to be uploaded containing tender submissions with other relevant document files.
- 25.3.3 Tenders lodged in person or by courier must be enclosed and sealed in an envelope clearly marked with the Quotation Number and Quotation Description from the cover page of the Quotation Documents.
- 25.3.4 Tenders lodged by mail must be enclosed in an envelope clearly marked with the Tender Number and Tender Description from the cover page of the Tender Documents and then be enclosed in a plain outer envelope addressed as follows:

CM0550 The Supply of Meals for Delivery
West Wimmera Shire Council
Ms Taryn Carter
PO Box 15
KANIVA VIC 3419

Tenders lodged by mail must be posted such that they arrive prior to, and can be placed in the Tender Box by, the Closing Time for Tenders. The Principal expressly disclaims any liability for a failure to place any quotation received by mail in the Tender Box.

- 25.3.5 The Principal will not consider late tenders. A tender lodged after the Closing Time for Tenders will be returned to the tenderer. Tenderers will not be able to upload tenders into the Electronic Tender Box after the Closing Time for Tenders.

Schedule 1 – Agreement Details

Item	Description	Details	
1.	Commencement Date (clause 1.1.7):	1 January 2022	
2.	Defects Liability Period (clause 1.1.17):		
3.	Initial Term (clause 1.1.24):	2 years	
4.	Superintendent (clause 1.1.52):	Ms Julie Van Driel – Procurement and Contracts Manager	
5.	Optional Term (clause 2.2.2):	1 year	
6.	Causes of delay (clause 4.4.2):		
7.	Fees, charges and costs for which the Contractor is not to be responsible (clause 7.3):	NIL	
8.	Insurance (clause 18):	20,000,000	
	8.1 Minimum amount of coverage under the Public Liability Policy (clause 18.2):	20,000,000	
	8.2 Minimum amount of coverage for third party property damage under the Motor Policy (clause 18.3):	20,000,000	
9.	Amount of the bank guarantee (clause 21.1):	NIL	
10.	Notices (clause 11.3)		
	10.1 The Principal	Address:	49 Elizabeth Street Edenhope, Victoria 3318
		Email:	taryncarter@westwimmera.vic.gov.au
		Procurement and Contract Manager:	Julie Van Driel

	10.2 The Contractor	Address:	[insert]
		Email:	[insert]
		Contract Manager:	[insert]
11.	Special Conditions (clause 1.3.4)	<p>Upon request by the Superintendent, the Contractor must provide evidence that all employees, sub-contractors and agents:</p> <ol style="list-style-type: none"> 1 working on the Site hold a Construction Induction Card; and 2 hold certificates of competency for activities that may place the contractor at risk of injury while undertaking works; 3 working on the Site (whether as an officer, has a valid Victorian Working With Children Check which must be provided to the Superintendent prior to the person attending the Site. 	

Schedule 2 – Other Contract documents

Previously supplied quantities based on meals delivered from 1 July 2020 to 30 June 2021

TOWNSHIP	MEALS DELIVERED
Edenhope	1284
Goroke	438
Harrow	270
Kaniva	1865

Schedule 3 – Specification

1 AIMS OF SERVICE

The contract shall provide a community meal delivery service that the West Wimmera Shire Council's Commonwealth Home Support Program (CHSP), and Home and Community Care Program for Younger People (HACC PYP) clients with a consistently high quality meal in terms of taste, appearance, temperature, nutrient composition and microbiological safety, and which is relevant to the age and dietary requirements of the client.

The meal will be delivered to them in their own homes so that they remain in the community environment for longer that would otherwise have been possible.

2 GENERAL REQUIREMENTS

- ✓ To supply a 3 course meal consisting of entrée, main and dessert from an approved menu from Monday to Friday each week.
- ✓ Frozen meals, collected weekly, or on Friday for the weekend may be required at times.
- ✓ During hot weather a cold meat meal (that is not a salad) or cold meat & salad may be provided with prior approval from the supervisor.
- ✓ Contractors must supply their own containers and may use either disposable foil eating containers, or machine sealed eating containers suitable for hot delivered meals and must be eco-friendly where possible.
- ✓ The requirements of clients with ethnic backgrounds will be addressed as the need arises.
- ✓ Hot meals will be provided at above 65 degrees Celsius. Cold meals will be provided below 5 degrees Celsius.

MENU REQUIREMENTS:

- ✓ A rotation of menu.
- ✓ The Supervisor shall have input into Menu Planning and must approve the menu prior to its use. The menus suggested must be non-repetitive.
- ✓ Assessment of client's eligibility for the service is the responsibility of the Supervisor. No meal shall be provided without this assessment process taking place. Supervisor or representative shall notify CONTRACTOR of new clients and frequency of meals.
- ✓ The co-ordination of Volunteers for delivery for meals is the responsibility of the Supervisor.
- ✓ Temperature testing by the Supervisor or their representative will take place on a regular basis.
- ✓ The Supervisor prepares delivery sheets and takes cancellations, etc. from client.
- ✓ Contact between the Contractor and the meal recipient is generally not required. In the event of the recipient contacting the Contractor they should be advised in a polite,

appropriate manner that the correct channel of communication is through the Supervisor.

- ✓ Any variations to the standard meal must be approved by the Supervisor, and in such event there will be no price variation. Multiple meals will not be provided.

3 ENVIRONMENTAL HEALTH REQUIREMENTS

Contractors preparing meals under this contract must be registered with the West Wimmera Shire Council's Environmental Health Department.

Contractors preparing meals under this contract must have a current Food Safety Plan approved by the Council's Environmental Health Department.

Contractors preparing meals under this contract must have a food safety supervisor trained in the required two modules "Follow Workplace Hygiene Procedures" and "Implement Food Safety Procedures".

4 MEAL SPECIFICATIONS

Meals are provided on the basis of an entrée, a main course, dessert, as defined by the Department of Health & Human Services

All weights are **minimum** weights required but menu items may contain more.
All references are to one serving or portion.

Food Content of Entrée's (Soup or Sandwiches or Salads)

SOUPS (250ml minimum to be provided) (One of three types specified)

Meat/Legume and Vegetable Soup

Refers to meat and meat alternative based soups combined with one or more vegetables including:

- 30g Beef, chicken, lamb, fish OR
- 75g Cooked legumes/peas/lentils

Combination Soup

Refers to a soup containing a combination of ingredients including:

- 30g Beef, chicken, lamb, fish OR
- 30g Cooked legumes/peas/lentils

Vegetable Soup

Refers to a soup with 1 or more vegetable varieties including:

- 75g Vegetables

All soups must include:

- 45g vegetables for the meat/legume and vegetable soup, and the combination soup
OR
- 20g pasta or rice (for combination soups)

Notes to be aware of

- To increase the energy and protein content of the soups, consider the following additions where suitable for the type of soup (e.g. additional legumes to a vegetable soup, or skim milk powder to a pumpkin soup)
- A combination soup containing legumes should be combined with a main meat meal or wet dish and/or dairy dessert on the menu
- A vegetable soup should be combined with a main meat meal or wet dish and/or dairy dessert on the menu
- Soups are to be made fresh daily – no soup bases are to be used that include monosodium glutamate. Soup bases may be prepared up to five (5) days prior to use.

SANDWICHES (Either Combination Sandwiches or Plain Sandwiches)

A serving of an entrée sandwich should contain the following minimum quantities of ingredients.

Entrée Combination Sandwich

Refers to a sandwich of four points (a sandwich cut diagonally into 4 triangles) which contains a meat or protein source with salad vegetables

Protein Requirements for Combination Sandwiches

- 30g Beef, chicken, lamb, fish OR
- 20g Cheese OR
- 50g Egg

Entrée Plain Sandwich

Refers to a sandwich of 4 points with a single filling of meat/protein source or a salad

Protein Requirements for Plain Sandwiches

- 45g Beef, chicken, lamb, fish OR
- 30g Cheese OR
- 50g Egg

Salad Vegetables

- 35g (min.) salad vegetables for entree combination sandwich OR
- 50g (min.) salad vegetables for plain salad sandwich

Starch Ingredient (For plain & combination sandwiches)

- 80g bread OR
- 80g bread roll OR
- 80g flat bread

Spread (For plain & combination sandwiches)

- 10g spread (eg margarine, butter)

Condiments (For plain & combination sandwiches)

- 12g (min.) relish, mustard, pickles or mayonnaise

Notes to be aware of

- Sandwiches can be presented as combination sandwiches or as a single/plain type
- It needs to be highlighted that a plain salad sandwich is lower in energy and has minimal protein.
- An entrée plain salad sandwich should be combined with a higher protein main meal, and dessert, or include a protein filling as well as the salad filling.

SALADS (Either Meat Salad or Meat Alternative Salad)

A serving of an entrée salad must contain the following minimum weights of ingredients

Meat Salad

- 30g Beef OR
- 30g Chicken/Turkey OR
- 30g Lamb OR
- 30g Fish

Meat Alternative Salad

- 30g Cheese OR
- 30g Egg OR
- 30g Cooked legumes/peas/lentils

All entrée salads must include:

- 35g Salad vegetables of 3 or more different types PLUS
- 12g dressing or mayonnaise

Food Content of Main Course (Meat Dish or Wet Dish or Main Salad or Combination Dish)**Meat Dish**

Refers to single ingredients of meat or other protein sources such as a grill, roast, baked, fried

Examples: Roast Lamb, Beef Steak, Chicken Schnitzel, Poached Fish with Lemon and Parsley Sauce

- 100g Cooked Beef, Pork, Lamb, Chicken, Turkey OR
- 120g Cooked Fish, Salmon, Tuna

Wet Dish

Wet dish with a high meat/ protein content such as a stew, casserole, braise, stir-fry

Examples: Chicken Casserole, Osso Bucco, Pork Stew with Prunes, White Bean Pea Casserole

- 100g Cooked Beef, Pork, Chicken, Lamb, Turkey OR
- 120g Cooked Fish, Salmon, Tuna OR
- 75g Cooked/Canned Beans/Chickpeas/Lentils* OR
- 75g Tofu* (Only provide this meal on request/in choice menu)

Main Salad

Refers to single ingredients of meat, fish, chicken or protein sources

Examples: Ham, Chicken, Tuna, Salmon, Egg Salad

- 100g Cooked Beef, Pork, Chicken, Lamb, Turkey OR
- 120g Cooked Fish, Salmon, Tuna OR
- 100g 2 Large Eggs OR
- 170g Cooked/Canned Beans/Chickpeas/Lentils* OR
- 40g Cheese

Combination Dish

The bulk of the dish is made up of primarily two to three components totalling a minimum of 340g or 190g served with a separate vegetable component weighing 150g

Examples: Beef Lasagne, Spinach Pie, Tuna Bake, Noodle and Vegetable Stir Fry with Cashews

Weights are recommendations only for combination dishes.

- 45g Cooked Beef, Pork, Chicken, Lamb, Turkey OR
- 45g Cooked Fish, Salmon, Tuna OR
- 45g Tofu* OR
- 45g Cooked/Canned Beans/Chickpeas/Lentils* OR
- 45g Cheese

All main dishes must include the following:

Starch Component

- 90g Potato (roast, mashed, wedges, chips etc) OR
- 90g Rice (white, brown, basmati, etc) OR
- 90g Pasta (penne, spaghetti, fettucine etc) OR
- 90g Noodles (Hoikken, Singapore, Udon etc) OR
- 90g Couscous, Polenta

PLUS

Vegetables

- 150g Cooked vegetables, including both green and yellow/orange/red/purple vegetables OR

- 150g Salad vegetables or cooked legumes

PLUS

Dressing

- 40mL Gravy, sauce etc OR
- 12mL Salad Dressing

Notes to be aware of

- Please be aware that vegetarian protein* meals will have a lower protein content compared to other meals. This is because the equivalent amount of beans/chickpeas/lentil or tofu will not result in a quality product that can be presented well. These should be combined with other higher protein meal components (e.g. legume and vegetable soup and dairy based dessert) to improve the protein profile.
- The main meal can be presented as a combination dish meal (e.g. stir fry with rice) or as a traditional meat and vegetable meal. This combination dish aims to include a 45g serve of meat; however this type of meal is also incorporated for variety, so not all items offered will meet the 45g serve. In such cases it will be important that a higher protein soup and dessert are offered on those occasions. These Guidelines also promote the use of higher protein, entrees, main meals and desserts.
- When a main meat salad is offered it would be in place of a hot meat dish or a wet dish as the nutrient contributions are similar. As such it should be kept between 1 and 5 degrees Celsius.

Food Content of Dessert

Desserts should come from one of four main groups being Dairy Desserts, Pies and Crumbles, Cakes and Puddings or Fruits plus Dairy.

Dairy Desserts

Refers to a dish where the main ingredient is dairy based such as a cheesecake, blancmange, baked custards (rice, bread & butter, sultana) or crème caramel

Pies and Crumbles

Refers to a pastry dough/grain product that covers or contains a filling such as a fruit pie, Danish, strudel or fruit crumble

Cakes and Puddings

Refers to a sponge-like consistency made from a dough/heavy batter which has been boiled, steamed, or baked, such as a steamed pudding, shortcake, fruit/vegetable cake, basic foundation cake or heavy cake (e.g. mud cake). Min weights below.

- 130g Puddings
- 80g Sponges
- 90g Foundation Cakes

- 100g Vegetable Based Cakes

Fruit plus Dairy Desserts

Refers to a fruit based dish (eg fruit salad, stewed/canned fruit) with a serving of dairy.

- 150g canned, stewed fruit

All desserts must contain the following:

- 80g (min.) custard, yoghurt OR
- 80g (min.) dairy dessert (eg tapioca, creamed rice) OR
- 50g (min.) cream (Please see notes below)

Notes to be aware of

- Minimum serving of any dessert is 180g in total. The cake option will be an exception here as the sponge cake often weighs ~80g. The addition of 80g custard will result in at least a 160g total.
- Whilst 50g of cream adds 700kJ energy, there is very little protein (1g) and calcium (30mg) as compared to the other dairy product additions.
- A small amount of sugar as part of a balanced meal plan is suitable for people with Diabetes. For this population, artificial sweeteners and diet products are not required as they do not have any nutritional benefit and may often take the place of more nutritious foods and drinks.
- A simple way to increase calcium and protein is to add extra milk powder to the custards, dairy desserts etc. All of these desserts when served with yoghurt or custard or dairy alone will provide at least 100mg of calcium per serve (e.g. in original form as a baked custard or cheesecake, or as the additional custard or yoghurt).

5 SPECIAL DIETARY MEALS

Special dietary meals are provided as a consequence of dietary advice. The following meal types may be required and will be subject to authorisation by the Supervisor and provided on the delivery list.

- Diabetic
- Gluten free
- High protein.
- Individual allergies
- Low cholesterol
- Low fat
- Modified food textures (IDDSI)
- No dairy food
- No or low salt
- Soft
- Vegetarian
- Vitamised puree

No additional payment to the contracted rates will be made for meals provided in the above categories.

6 CELEBRATION MEALS

Certain occasions throughout the year are to be nominated by the supervisor at the start of the contract that will be designated celebration dates.

On these dates, such as Christmas, a special menu must be provided with relevant festive options. For these days the menu must be provided to the supervisor two weeks prior to the day for approval.

Preferably, meals will be provided hot on the day of the celebration to maintain the feeling of the celebratory day.

If the option of delivery on the day is not possible as these celebration meals will often fall on public holidays. The meals should be provided frozen or chilled on the day prior to the celebration day. If the previous day also falls on a weekend or public holiday, the meal must be provided frozen on the closest meal delivery before the celebration date. As such, care should be taken to offer a menu that can be reheated from frozen for these days.

No additional payment to the contracted rates will be made for meals provided off of the celebration menu.

7 PACKAGING AND DELIVERY ARRANGEMENTS

Soup is to be provided in individual polystyrene cups with tight fitting lids or machine sealed eating containers suitable for hot liquids. Individual meals for home delivery are to be packaged in aluminium containers with lids tightly fitted, or machine sealed containers to prevent heat loss and spillage. These containers are to be packed into insulated boxes.

The insulated boxes for delivery are supplied by the Supervisor. Cleaning of these boxes to be carried out by the Contractor. Cleaning of the boxes is deemed to be included in the contracted rates and no additional payment will be made for such activities. The repair or replacement of these boxes is the responsibility of the Supervisor. The Contractor will be required to notify the Supervisor of needs as required for replacement or repair.

The contents of packaged meals are to be clearly labelled on the top of the container, with the recipient's name and meal component details if special diet meal, e.g. diabetic, pureed, vegetarian.

All food will be prepared, stored and packaged at a temperature that meets food safety standards (as set out in the Food Act 1984).

Hot meals to be maintained at a minimum of 65°C at all times.

Cold desserts and salads to be maintained at less than 5°C and to be packed separately.

The Contractor shall report in writing to the Supervisor any problems immediately such problems are observed or detected.

8 DELIVERY VEHICLES

All delivery vehicles must be kept clean and fit for purpose.

9 OTHER REQUIREMENTS

1. Meals provided will be required to be ethnically and culturally relevant for recipients, as determined through assessment by the Supervisor on the meals sheet.
2. Meals provided will be required to conform to any special dietary requirements advised by the Supervisor, e.g. diabetic, pureed, low salt, vegetarian.
3. High salt meals (i.e. corned and cured meats) may not be served more than once per week.
4. No bicarbonate soda or monosodium glutamate is to be used in cooking.
5. Meals are to be cooked as close to delivery time as possible in order to lessen nutrient loss from over cooking.
6. A rotating menu is to be approved by the West Wimmera Shire Council and is to be prepared so that meals:-
 - meet recipient preferences;
 - meet all nutritional requirements;
 - provide for a combination of textures and flavours within the meal;
 - do not have strong flavours combined; and
7. The same menu item should not appear on the same day of the week for two consecutive weeks.
8. In all cases meals are to be prepared using fresh, first quality food and are to smell appetising and have good eye appeal.
9. All health and safety responsibilities for kitchen operations are to be complied with.
10. All meals must meet the dietary and portion requirements of the Australian National Meal Guidelines.
11. All food containers

10 ADMINISTRATIVE ARRANGEMENTS

Confirmation of Meal Numbers

Approximate numbers of meals will be notified by the Supervisor, or representative, to the Contractor at least 48 hours in advance of the meals being prepared.

Cancellation to numbers of meals and any special dietary requirements will be advised by the Supervisor to the Contractor by 9.30am. each day for deliveries for Monday to Friday.

Distribution Time of Meals

Meals are required to be ready for collection from distribution centre by volunteers at 11.50 a.m. each day Monday to Friday inclusive.

Pricing

The individual cost per meal as accepted as part of the contract will be fixed for a period of twelve months from the commencement date of the contract.

Any price increases for the subsequent two years of the contract will be formulated using the Consumer Price Index for Victoria for the preceding twelve months and will be applied from the beginning of the contractual year.

Payment

Accounts for payment are to be rendered on a monthly basis and contain the following information:-

- (a) Dates covered by the account.
- (b) Number of delivered meals prepared for period from Monday to Friday (which includes weekend service) and the names of clients.

Accounts will be paid by Council monthly in accordance with Council's standard financial practices. All payments will be made by E.F.T.

Errors in Accounts

Any errors in accounts rendered are to be notified as soon as possible by the party detecting the error and corrected in a manner agreed between the Contractor and the Supervisor.

Sub-Contracting

The Contractor may not sub-contract the service unless approved in writing by the Supervisor.

Public Liability Insurance

Evidence of the Contractor's insurance cover for Public Liability Risk (\$10 million) and proof of WorkCover registration will be required by Council.

Quality of Materials and Work Practices

The quality of materials, work and preparation areas are to be in accordance with the Food Act 1984 as amended.

The Contractor shall provide a Certificate of Registration from the relevant Health Department of the municipality in which the meals are prepared, and a copy of Food Safety Program and Food Safety Audit.

The Supervisor reserves the right to inspect the supplier's premises, and take food samples on an ongoing basis. Food samples be tested randomly for:-

- Nutritional content and dietary requirements (RDI)
- Microbiological levels
- Temperature

No additional fee will be payable to the contractor for samples taken by the Supervisor as part of this testing process.

Defective Materials or Work Practices

If the Supervisor or any other person discovers materials provided by the Contractor or work practices used, which are not in accordance with the Health Regulations, the Supervisor who will take the appropriate action in accordance with those prescribed Regulations.

Performance Appraisal

An annual appraisal will be conducted of the Contractor's performance. This appraisal will be conducted by the Procurement and Contracts Manager, Team Leader Health & Community Services and General Manager Corporate and Community Services in the presence of the Contractor.

Key performance indicators:

- Number of complaints
- Ability to supply & deliver meals as required
- Ability to supply & deliver meals on time

11 OCCUPATIONAL HEALTH & SAFETY

The purpose of this clause is to establish the general health and safety requirements, which must be adhered to during all phases of work, carried out for and on behalf of the West Wimmera Shire Council.

Whilst it is recognised that Council as (Procurement and Contracts Manager) has certain responsibilities for health and safety matters for its employees (including Contractors), it is the Contractor's responsibility (as an employer) to ensure that Occupational Health and Safety requirements are complied with (for matters under the Contractor's control).

The following constitutes a minimum guideline and is not intended to alter or revise any Commonwealth or State Laws, but is in support of and supplements those Laws.

Contractors are reminded of their common law duty of care to:

- Provide competent personnel to carry out the work,
- Provide a safe place for the personnel to work,
- Provide a safe plant, tools and equipment for their personnel to carry out the work for which they have been employed.
- Provide a safe system or method of work to complete the tasks for which they have been engaged, and
- Provide instruction on correct operation and maintenance when no operator is supplied with an item of plant or equipment.

It is the responsibility of the Contractor to ensure that all facets of work over which they have control comply with the requirements of the Occupational Health and Safety Act 2004, it's subsequent Regulations and various Codes of Practice. Facets would include maintenance of plant, equipment and tools, planning of works, supervision and site access and egress.

Contractors shall supply their employees with all required safety protective equipment relevant to the particular task.

Contractors shall ensure that their employees are instructed in the correct usage and maintenance of their safety protective equipment.

Contractors are specifically reminded of their obligations that they and their employees hold the appropriate licences, registration or certificates necessary to perform particular functions.

12 HAZARD ANALYSIS

The Contractor shall submit a Hazard Analysis prior to commencing the works under the Contract.

The Council has identified risks associated with this Contract as follows:

Activity	Hazard
Cooking - Stove/Oven	Burns & Scalds
Food Preparation	Spillage on Floor causing Slips
Food Preparation	Cut fingers
Food Storage	Incorrect Temperature
Manual Handling	Back/muscle strain

A risk is the possibility that personal injury, property loss or environmental harm will occur when working with or near a hazard. The goal of hazard analysis is to find ways to minimise the chance of injury, loss or harm.

13 QUALITY MANAGEMENT

13.1 Investigation and Rectification of Complaints

The Contractor must:

- (a) investigate all complaints within two (2) hours of their receipt by the Contractor;
- (b) rectify any breach of this Contract within four (4) hours of being notified of the breach; and
- (c) advise the Supervisor of the result of the investigation within four (4) hours of the receipt of each complaint.

13.2 Audits

The Principal may audit, or engage third parties to audit, the performance of the Meals for Delivery service at any time without notice to the Contractor. The Contractor must provide any assistance requested by a member of the Principal's staff, or a third party engaged for this purpose by the Principal, in checking the Contractor's compliance with any of its obligations under this Contract. Without limiting the obligations of the Contractor under this clause, it must permit any person nominated by the Supervisor to inspect the Meals for Delivery service for any period nominated by the Supervisor.

13.3 Records

The Contractor must maintain records of:

- (a) all complaints and queries received in respect of its performance of the Meals for Delivery service;
- (b) the results of any investigations made into complaints;
- (c) any accidents or other incidents where a possibility of injury to persons or property damage arose;
- (d) any breach of this Contract by the Contractor.

14.4 Quality Plan

14.4.1 Preparation of Quality Plan

The Contractor must prepare a quality plan and submit it to the Supervisor for his or her approval prior to the Commencement Date.

The Supervisor may direct that the Contractor make any amendments to the quality plan that he or she considers appropriate.

14.4.2 Performance of the Meals for Delivery Service

The Contractor must perform the Meals for Delivery Service in accordance with the approved quality plan.

14.4.3 Review of Quality Plan

The Contractor must review the quality plan annually and submit any amendments to the Supervisor for his or her approval.

14.4.4 Content of Quality Plan

The quality plan must identify all critical quality aspects of the Meals for Delivery Service and establish procedures for meeting the Contractor's obligations in respect of the critical quality factors which must, without limitation, include:

- (a) the Contractor's Meals for Delivery methodology;
- (b) the procedure for breakdowns in the Contractor's cooking/preparation equipment;
- (c) the procedure for staff back-up in case of unavailability;
- (d) procedures for continuous improvement.