



DISTRICT COUNCIL OF ROBE

Open request for tenders for the purchase and supply of bulk fuel

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1. **Structure of this RFT**

This RFT is comprised of five sections, being:

- 1.1 Section A - Background and General Information to Tenderers
- 1.2 Section B - Conditions of Tendering
- 1.3 Section C - Contract for Purchase of Goods
- 1.4 Section D - Specifications
- 1.5 Section E - Tender Response Schedules

2. Section A – Background & General Information

- 2.1 District Council of Robe (the **Council**) invites tenders from Tenderers for the purchase and supply of bulk diesel fuel (the **Goods**). The Council will enter into a two year Contract for the Purchase of Goods with the successful Tenderer.

3. Section B – Conditions of Tendering

3.1 Definitions

In this RFT, the following terms (unless inconsistent with the context) mean:

- 3.1.1 A reference to a **clause** is a reference to a clause of this RFT.
- 3.1.2 **Closing Date** means the time and date specified in clause 3.2.2.2, or such later time and date as may be notified in writing to Tenderers by the Council.
- 3.1.3 **Conditions of Tendering** means these conditions of Tendering as attached to Section B of this RFT.
- 3.1.4 **Conforming Tender** means a Tender described in clause 3.5.1.
- 3.1.5 **Contract for the Purchase of Goods** means the contract for the supply of the Goods as attached to Section C of this RFT, as may be subsequently amended by agreement between the Council and the successful Tenderer pursuant to clause 3.9.
- 3.1.6 **Goods** means the goods sought to be purchased by the Council pursuant to this RFT.
- 3.1.7 **Nominated Contact Person** means the person named in clause 3.3.1.
- 3.1.8 **Non-Conforming Tender** means a Tender does not meet the requirements set out in this RFT and/or the Tender Documents.
- 3.1.9 **Preferred Tender** means the Tenderer referred to in clause 3.9.
- 3.1.10 **RFT** means this Request for Tender.
- 3.1.11 **Specifications** means the specifications of the Goods specified in Section D of this RFT.
- 3.1.12 **Tender** means a tender submitted by a Tenderer pursuant to this RFT.
- 3.1.13 **Tender Documents** means the documents specified in clause 3.2.1.
- 3.1.14 **Tender Process** means the process for calling, receiving, evaluating and awarding of Tender(s) as proposed in clauses 3.2.6 and 3.2.7 of these Conditions of Tendering.
- 3.1.15 **Tender Response Schedules** are the forms attached to Section E of this RFT.
- 3.1.16 **Tenderer** has the meaning given to it in clause 3.2.2.
- 3.1.17 **Tenderer's Representative** means the person nominated by a Tenderer under clause 3.3.2.

3.2 Request for Tender

The Council seeks Tenders from Tenderers for the sale and purchase of the Goods, which are further described in the Tender Documents.

3.2.1 **Tender Documents**

The Tender Documents are comprised of:

- 3.2.1.1 these Conditions of Tendering;
- 3.2.1.2 the Contract for the Purchase of Goods;
- 3.2.1.3 the Specifications; and
- 3.2.1.4 the Tender Response Schedules.

3.2.2 **Obtaining a Copy of this RFT**

This RFT is open to any organisation or person who registers its interest and details with the Council and thereby obtains a copy of the Tender Documents (each such party is a **Tenderer**). Parties obtaining the Tender Documents (in soft copy) will be required to register their name and contact details at the time of issue of the documents.

- 3.2.2.1 Lodgement of Tenders
- 3.2.2.2 Tenders must be delivered to the Tender Box at the Council prior to 5pm on 30 April 2019 (the **Closing Date**).
- 3.2.2.3 Applications must be enclosed in an envelope and marked "CONFIDENTIAL" and be addressed as follows:

Tender Box
T02/2019 Tender for the Purchase of Bulk Fuel
District Council of Robe
PO Box 1, Robe SA 5276
Closing Date: 30 April 2019
- 3.2.2.4 Tenderers are required to lodge an original Tender (one).
- 3.2.2.5 Facsimile transmissions of Tenders will not be accepted.

3.2.3 **Late Tenders**

Tenders received after the Closing Date **WILL NOT** be considered or accepted.

3.2.4 ***Extension of Time for the Submission of Tenders***

3.2.4.1 The Council may, in its absolute discretion, no less than two business days before the Closing Date, extend the Closing Date by notice in writing to the Tenderers.

3.2.4.2 A Tenderer may request the Council to extend the Closing Date for the submission of a Tender by written application to the Nominated Contact Person.

(a) Any such requests must be received by the Nominated Contact Person at least five business days prior to the Closing Date, and must provide sufficient reasons to support the request.

(b) It is entirely at the Council's discretion as to whether an extension is granted.

3.2.5 ***Tender Validity Period***

3.2.5.1 All Tenders will remain open for acceptance by the Council for a period of not less than three months after the Closing Date.

3.2.5.2 Once submitted, a Tenderer cannot withdraw its Tender without the prior consent of the Council, unless the Tender is withdrawn in writing before the Closing Date.

3.2.6 ***Proposed Tender Process***

Tenders will be assessed and then submitted to a meeting of the District Council of Robe for consideration.

3.2.7 **Proposed Timing of Tender Process**

The proposed timing for the Tender Process is as follows:

Request for Tenders	3 April 2019
Closing Date	30 April 2019
Notification to successful Tenderer	15 May 2019 <i>(indicative)</i>
Execution of Contract for Purchase of Goods	22 May 2019 <i>(indicative)</i>
Commencement of Provision of Goods	To be advised <i>(indicative)</i>

3.2.8 **Copying Tenders**

Tenderers must not use this RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) for any purpose other than to prepare a Tender. This includes not copying this RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) and providing a copy to any third party not involved in the preparation of a Tender.

3.3 **Communication between the Parties**

3.3.1 **Enquiries or Requests for Information or Clarification**

3.3.1.1 Any enquiries or requests for information or clarification regarding this RFT or the Tender Documents must be made in writing and addressed to the Nominated Contact Person.

The Nominated Contact Person is Trevor Hondow
works@robe.sa.gov.au 0429 646076

3.3.1.2 The Nominated Contact Person may (but is not obligated to) respond to a Tenderer's enquiries or requests for information or clarification.

3.3.1.3 If the Council provides any information to a Tenderer by way of clarification, then the Council reserves the right to provide that information to other Tenderers.

3.3.1.4 No statement made by the Nominated Contact Person, or any other representative of the Council should be construed as modifying this RFT or any of the Tender Documents, unless confirmed in writing by the Nominated Contact Person.

3.3.2 ***Tenderer's Contact Person***

3.3.2.1 Tenderers are required to nominate a person to be the authorised contact person and supply an address for the service of any notices for the purpose of this RFT (**Tenderer's Representative**).

3.3.2.2 Each Tenderer must notify the Council of its Tenderer's Representative within 10 business days of obtaining the Tender Documents.

3.3.2.3 All communications with the Tenderer will be via the Tenderer's Representative.

3.3.3 ***Site/Industry Briefing***

3.3.3.1 The Council may conduct a site/industry briefing. The briefing (if conducted) is intended to provide Tenderers with background information, and Tenderers are not to treat any statements made at the briefing as variations to this RFT.

3.3.3.2 The Council reserves the right to require all Tenderers to attend the site/industry briefing.

3.3.3.3 Details of the briefing will be provided to Tenderers at least seven business days prior to the briefing. Tenderers may be notified of the site/industry briefing by email, and Council may post the details of the briefing on the internet.

3.3.3.4 Each attending Tenderer must advise the Nominated Contact Person of the details of that Tenderer's attendees (including name and position) at least two business days before the briefing.

3.3.4 ***Tenderer not to solicit the Council and its employees***

The Tenderer and its representatives must not interfere or attempt to interview or to discuss its Tender with Councillors or employees of the Council, other than the Nominated Contact Person. The Council reserves the right to reject any Tender submitted by a Tenderer which contravenes this clause.

3.4 **Tender Preparation**

3.4.1 ***Tenderers to be informed***

Each Tenderer must, prior to submitting its Tender, become acquainted with the Goods to be supplied to the Council, and make all necessary examinations, investigations, inspections and deductions.

3.4.2 ***Evidence of Registration or Licensing***

Each Tenderer must (if applicable) be licensed or registered for the sale of the Goods.

3.4.3 ***Conflict of Interest***

Tenderers must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the Tenderer is successful. If any conflict or potential conflict exists, the Tenderer must advise how it proposes to address this.

3.4.4 ***Use of Sub-contractors***

Where a Tenderer proposes to use resources from organisations other than the Tenderer itself, substantial information relating to the contractual arrangements for such resources must be detailed in the Tender, together with information on the relevant experience of such other organisation.

3.4.5 ***Ombudsman Act***

Tenderers should be aware that the *Ombudsman Act 1972 (SA)* has been amended so that the definition of "administrative act" under that Act includes an act done in the performance of functions under a contract with a Council. That Act also includes powers enabling the Ombudsman to investigate matters in the public interest. The Tenderer must ensure compliance with all obligations arising under that Act and any other applicable legislation.

3.4.6 ***Freedom of Information***

Tenderers should be aware that the *Freedom of Information Act 1991 (SA)* (**FOI Act**) gives members of the public rights to access documents of the Council. The FOI Act promotes openness in governance and accountability of government agencies and confers the public with a legally enforceable right to be given access to documents, including contracts entered into by the Council, except those contracts or provisions which should be kept confidential for public interest purposes, the preservation of personal privacy or are commercial in confidence.

3.4.7 ***Collusion***

The Tenderer must not collude with any other Tenderers or potential Tenderers.

3.4.8 ***Tenderer's confidential information***

3.4.8.1 Subject to clauses 3.4.8.2 and 4, the Council will treat as confidential all Tenders submitted by Tenderers in connection with this RFT.

3.4.8.2 The Council will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:

- (a) is disclosed by the Council to its advisers, officers, employees or subcontractors solely in order to conduct the RFT process or to prepare and manage any resultant agreement;
- (b) is disclosed to the Council's internal management personnel, solely to enable effective management or auditing of the RFT process;
- (c) is disclosed by the Council to the responsible Minister;
- (d) is authorised or required by law to be disclosed; or
- (e) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

3.5 **Tender Documents**

3.5.1 ***Conforming Tenders***

A Conforming Tender is a Tender which meets all of the requirements set out in this RFT and the Tender Documents.

3.5.2 ***Non-Conforming Tenders***

The Council is not required to, but may at its sole discretion, consider an incomplete, informal or a Non-Conforming Tender. Failure to respond to or meet any of the requirements set out in this RFT and the Tender Documents will result in the Tender being deemed a Non-Conforming Tender.

3.5.3 ***Content of Tenders***

3.5.3.1 Tenderers are required to complete the Tender Response Schedules and submit them to the Council.

3.5.3.2 Tenderers can also supply any other additional information or documents. The Council may have reference to such additional information or documents in evaluating the Tenders.

- 3.5.3.3 All prices quoted by Tenderers in their Tender are:
- (a) to be in Australian dollars;
 - (b) to be exclusive GST; and
 - (c) (if subject to rise and fall) to provide full details of how the rise and fall applies and the method of determining the price.
- 3.5.3.4 If a Tenderer proposes to supply the Goods on a basis different to that envisaged by the Tender Documents (whether for reasons of innovation, efficiency or otherwise) that proposal should be fully documented and justified with the Tender. The Council does not warrant that any discussion with the Council's Nominated Contact Person prior to the Closing Date in relation to such a proposal will be taken into account in evaluating the Tenders.

3.6 Acknowledgement by Tenderers

Tenderers acknowledge that the Council:

- 3.6.1 makes no representations and offers no undertakings in issuing this RFT or the Tender Documents;
- 3.6.2 is not bound to accept the lowest Tender or required to accept any Tender;
- 3.6.3 may accept all or part of any Tender;
- 3.6.4 may require one or more Tenderers (but is not obliged to require all) to supply further information and/or attend a conference or interview;
- 3.6.5 may require one or more Tenderers (but is not obliged to require all) to make presentation(s);
- 3.6.6 may undertake "due diligence" checks on any Tenderer, including verifying references and/or referees, and undertaking company searches and credit checks;
- 3.6.7 will not be responsible for any costs or expenses incurred by the Tenderer arising in any way from the preparation and submission of its Tender;
- 3.6.8 accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this RFT;
- 3.6.9 will not be liable for or pay any expenses or losses incurred by any party whether in the preparation of a Tender or prior to the signing of any Contract for the Purchase of Goods or otherwise; and
- 3.6.10 will not be bound by any verbal advice given or information furnished by any member, officer or agent of the Council in respect of the Tender Documents or this RFT, but will only be bound by written advice provided by the Nominated Contact Person.

3.7 Council's Rights

The Council reserves the right to:

- 3.7.1 amend, vary, supplement or terminate this RFT at any time;
- 3.7.2 accept or reject any Tender, including the lowest price tender;
- 3.7.3 negotiate with any supplier regarding all or any part of the Goods to be supplied pursuant to this RFT;
- 3.7.4 vary the timing and process referred to in clauses 3.2.6 and 3.2.7;
- 3.7.5 postpone or abandon this RFT;
- 3.7.6 add or remove any Tenderer;
- 3.7.7 accept or reject any Tenders whether or not they are Conforming Tenders;
- 3.7.8 accept all or part of any Tender;
- 3.7.9 negotiate or not negotiate with one or more Tenderers; and/or
- 3.7.10 discontinue negotiations with any Tenderer.

3.8 Tender Evaluation

- 3.8.1 In assessing Tenders, the Council will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):
 - 3.8.1.1 insurance;
 - 3.8.1.2 compliance with work health and safety requirements;
 - 3.8.1.3 customer service experience and capacity;
 - 3.8.1.4 the tendered prices, including the proposed pricing structure;
 - 3.8.1.5 the level of risk associated with negotiation of an acceptable Contract for the Purchase of the Goods;
 - 3.8.1.6 environmental management systems (if applicable);
 - 3.8.1.7 degree of compliance with the requirements set out in this RFT and the Tender Documents; and

- 3.8.1.8 such other matters that Council considers relevant, including:
- (a) details of current and previous relevant experience in the supply of the Goods;
 - (b) the manufacture of any of the Goods;
 - (c) financial resources;
 - (d) staff resources; and
 - (e) current and future contracts/workload.

3.8.2 ***Use of Tender Documents***

The Council may use, retain and copy any information contained in the Tenders for the evaluation of this RFT and for the finalisation of the provisions of the Contract for the Purchase of the Goods.

3.8.3 ***Debriefing of Tenderers***

If requested, Tenderers may be debriefed against the Council's evaluation criteria. Tenderers will not be provided with information concerning other Tenderers, apart from publicly available information. No comparison with other Tenders will be made.

3.9 **Acceptance of Tender**

- 3.9.1 The Council reserves the right to negotiate different terms and conditions for the Contract for the Purchase of Goods with any one or more Tenderers (each referred to as a **Preferred Tenderer**).
- 3.9.2 The Council and the Preferred Tenderer may (if required) enter into negotiations for the award and execution of a Contract for the Purchase of Goods.
- 3.9.3 If, despite their best endeavours and acting in good faith, the Council and the Preferred Tenderer are unable to negotiate and agree on the terms of the Contract for the Purchase of Goods, the Council reserves the right to negotiate with any other parties, including other Tenderers, for the supply of the Goods.

- 3.9.4 The successful Tenderer will be notified in writing by the Council of the Council's acceptance of its Tender. The successful Tenderer must not make any oral or written public statements in relation to the awarding of a Contract for the Purchase of Goods until written notice is received by the Tenderer.
- 3.9.5 The notification of the acceptance of Tender by the Council creates an obligation on the Council and the successful Tenderer to enter into the Contract for the Purchase of Goods (subject to any variations agreed pursuant to this clause 3.9).
- 3.9.6 The successful Tenderer acknowledges and agrees that all intellectual property created by the successful Tenderer arising out of the supply of Goods belongs to the Council, and the successful Tenderer will do all reasonable things necessary to assist the Council in the protection and transfer of ownership of the intellectual property resulting from the supply of the Goods.

3.10 **Unsuccessful Tenders**

Unsuccessful Tenderers must, if required by the Council, return the Tender Documents to the Council, once they have been advised that their Tender is unsuccessful.

3.11 **No Legal Requirement**

The issue of this RFT or any response to it does not commit, obligate or otherwise create a legal obligation on the Council to purchase the Goods from the Tenderers.

4. **Governing Law**

4.1 This RFT is governed by the law in South Australia.

4.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

5. **ICAC**

Tenderers acknowledge that if they enter into a contract with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act, 2012 (SA) (ICAC Act)* and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

6. **Section C – Contract for Purchase of Goods**

Refer to the Agreement for the Purchase of Bulk Fuel document.

7. Section D – Specifications for the Goods

Supply and deliver diesel fuel to the District Council of Robe depot (Robe, South Australia), approximately 90,000 litres per annum with fortnightly delivery of diesel.

Council is seeking a two year contract.

8. **Section E – Tender Response Schedules**

Schedule 1 Tender Form - Formal Offer

I/We _____ (Tenderer) on having read, understood and fully informed myself/ourselves/itself of the contents, requirements and obligations of the Request for Tender, do hereby tender to provide Goods described in the Specifications in accordance with the Contract for the amounts set out in the Tender Return Schedules attached.

The Tenderer:

1. is subject to the terms and conditions set out in the Conditions of Tendering;
2. irrevocably offers to provide the Goods on the terms of the Contract and the Specifications which form part of the Tender Documents subject only to the variations set out in Schedule ;
3. confirms that this Tender has been prepared without any consultation, communication, agreement or other arrangement with any competitor regarding:
 - 3.1 prices or methods, factors or formulae used to calculate prices;
 - 3.2 the intention or decision to submit a Tender, or the terms of the Tender;
 - 3.3 the submission of a Non Conforming Tender; and
 - 3.4 the quality, quantity, specifications or particulars of the Goods; and
4. holds this offer open and capable of acceptance by the Council for a period of 90 days from the closing date.

The undersigned undertakes that if selected as the successful Tenderer, I/we/it will execute and be bound by the Contract in accordance with the Conditions of Tendering.

If the Tenderer is a company, it must execute this Tender as follows:

Executed by section 127 of the <i>Corporations Act 2001</i>	(if company) pursuant to
_____ Signature of Director	_____ Signature of Director/Company Secretary <i>(Please delete as applicable)</i>
_____ Name of Director (print)	_____ Name of Director/Company Secretary (print)
OR	
_____ Signature of Sole Director and Sole Company Secretary	
_____ Name of Sole Director and Sole Company Secretary (print)	
OR Signed for _____ (name of representative) by an authorised representative in the presence of:	
_____ Signature of witness	_____ Signature of authorised representative
_____ Name of witness (print)	_____ Name of authorised representative (print)
	_____ Position of authorised representative (print)

If the Tenderer is an individual, the document must be executed as follows:

Signed by (name) in the presence of:	
_____ Signature of witness	_____ Tenderer
_____ Name of witness (print)	

If the Tenderer is a partnership, the Tender must be executed as follows:

Partner 1:

Signed sealed and delivered by (name) in the presence of:	
_____ Signature of witness	_____ Signature of partner
_____ Name of witness (print)	
_____ Address of witness (print)	

Partner 2:

Signed sealed and delivered by (name) in the presence of:	
_____ Signature of witness	_____ Signature of partner
_____ Name of witness (print)	
_____ Address of witness (print)	

Schedule 2 Tenderer's Details

<p>1. Name of Tenderer</p> <p>State in full the name(s) of the person(s) or the registered name(s) of the company(s) and trading names.</p> <p>ABN number</p>	
<p>2. Contact person</p> <p>Nominate a contact person for this tender to deal with any questions or queries that may arise.</p>	
<p>3. Registered address</p>	
<p>4. Postal address</p>	
<p>5. Telephone</p>	
<p>6. Fax</p>	
<p>7. Email</p>	
<p>8. Tender conditions</p> <p>Tenderer to sign that it has read and understood this RFT and the Conditions of Tender.</p>	
<p>9. Amendments to Tender Documents</p> <p>Tenderer to indicate the amendments it requests.</p>	

Schedule 3 Licences and Accreditation

List details of any licences or accreditations required or relevant to this Tender.

Schedule 4 Insurance

Provide details of insurance currently held by you and any proposed subcontractor that would be extended to provide cover for work under the Contract.

Insurance type	Policy no	Extent of cover		Expiry date	Name of insurer
		Per incident \$A	In aggregate \$A		
Public and products liability					
Property and facilities					
Contents					
Vehicles plant & equipment					
Workers compensation					
Directors and officers (if applicable)					
Other					

Schedule 5 Work Health & Safety & Risk Management

1. Tenderer Work Health and Safety Management System Questionnaire

1.1 Work Health and Safety policy and management **Yes** **No**

(a) Does the Tenderer have a written Work Health and Safety Policy?

If yes provide a copy of policy

Comments:

.....

(b) Does the Tenderer have a Work Health and Safety Management System recognised by an independent authority (eg Workcover Corporation)?

If yes provide details:

.....

.....

(c) Does the Tenderer have a Work Health and Safety Management System manual or plan?

If yes provide a copy of contents page(s)

Comments:

.....

(d) Are work health and safety responsibilities clearly identified for all levels of staff?

If yes provide a copy of contents page(s)

Comments:

.....

1.2 Safe work practices and procedures

(a) Has the Tenderer prepared safe operating procedures or specific safety instructions relevant to its operations?

If yes provide a summary listing of procedures or instructions

Comments:

.....

(b) Does the Tenderer have any permit to work systems?

If yes provide a summary listing or permits:

.....

.....

(c) Is there a documented incident investigation procedure?

If yes provide a copy of a standard incident report form

(d) Are there procedures for maintaining, inspecting and assessing the hazards of plant operated/owned by the company?

If yes provide details:

.....

.....

(e) Are there procedures for storing and handling hazardous substances?

If yes provide details:

.....

.....

(f) Are there procedures for identifying, assessing and controlling risks associated with manual handling?

If yes provide details:

.....

.....

.....

Schedule 6 Quality Systems

Describe the level of quality assurance in place in the Tenderer's organisation and plans to move to quality accreditation if not presently accredited.

Provide details of contracts performed by the Tenderer under its Quality Assurance System

Schedule 7 Conflict of Interest

Provide details of any interest, relationship or clients which may or do give rise to a conflict of interest and the issue about which that conflict or potential conflict does or may arise.

Schedule 8 Referees

Details of at least two references for similar work and information on the approximate date when work was completed and the approximate value of work undertaken.

Reuse this page if more than three references are provided.

Client Name:

Address:

Contact Name:

Telephone:

Date of Work:

Value of Work:

Client Name:

Address:

Contact Name:

Telephone:

Date of Work:

Value of Work:

Schedule 10 Experience

1. Past performance

For how many years has the Tenderer engaged in the type of work required by the Contract?

Has the Tenderer had an appointment terminated on a project in the last five years. If yes please provide brief details.

Has the Tenderer terminated a project in the last five years. If yes please provide brief details.

Has the Tenderer refused to continue providing goods under a contract in the last five years unless the terms or payments were changed from those which were originally agreed. If yes please provide brief details.

2. Current contracts

Provide details of current contracts in a local government environment including the range of goods provided and the numbers and types of properties serviced.

Other commitments

Provide details of other work commitments expected to continue during the term of the Contract.

Schedule 11 Pricing

All prices must be listed exclusive of GST

Provide price per litre and methodology for future prices.

Agreement for the Purchase of

Bulk Fuel

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Schedule

Item 1 Council	District Council of Robe ABN 26 597 040 498 Email: council@robe.sa.gov.au Phone: 08-8768 2003
Item 2 Supplier	ABN Email: Phone:
Item 3 Delivery Date	
Item 4 Location	District Council of Robe works depot, Robe Street, Robe
Item 5 PL Insurance Period	_____, commencing on the date on which the Goods are accepted by the Council
Item 6 Warranty Period	_____, commencing on the date on which the Goods are accepted by the Council
Item 7 Confidential Sections	Nil
Item 8 Council's Representative	Trevor Hondow and any other person as may be advised by the Council in writing
Item 9 Supplier's Representative	_____ and any other person as may be advised by the Supplier in writing

Date

/ /

Parties

District Council of Robe ABN 26 597 040 498 of Royal Circus, Robe SA 5276 (**Council**)

The person specified in Item 2 of the Schedule (**Supplier**)

Background

- A. Pursuant to a request for tender process, the Council sought submissions from suitably qualified parties for the supply of the Goods.
- B. The Supplier submitted a tender for the supply of the Goods, and the Council accepted it.
- C. The Supplier agrees to supply the Goods on the terms in this agreement.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

agreement means this agreement and includes the Schedule and the Annexures.

Annexure refers to an annexure of this agreement.

Commencement Date means the date specified in Item 3 of the Schedule.

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.

Confidential Sections are those specified in Item 7 of the Schedule.

Council's Representative refers to the person specified in Item 8 of the Schedule.

Delivery Date means the date(s) specified in Item 3 of the Schedule.

Delivery Docket means a document issued by the Supplier in the form of the document at Annexure C.

FOI Act means the *Freedom of Information Act 1991* (SA).

Force Majeure Event means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

Goods means the goods and/or materials specified in Annexure A of the Schedule.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Location means the location(s) specified in Item 4 of the Schedule.

Notice means a notice, demand, consent, approval or communication under this agreement.

PL Insurance Period means the period specified in Item 5 of the Schedule commencing on the date on which the Goods are accepted by the Council.

Price means the price for the supply of the Goods, specified in Annexure B.

Schedule means the schedule to this agreement.

Supplier's Representative refers to the person specified in Item 9 of the Schedule.

Warranty Period means the period specified in Item 6 of the Schedule, commencing on the date on which the Goods are accepted by Council.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.5 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.6 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.7 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.8 a provision is not construed against a party only because that party drafted it;
- 1.2.9 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.10 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.11 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;
- 1.2.12 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement.

2. Engagement of Supplier

- 2.1 The Council engages the Supplier who accepts the engagement to supply the Goods in accordance with this agreement.
- 2.2 The Goods must be provided as and when required by the Council in accordance with this agreement and Annexure A.
- 2.3 The Supplier must:

- 2.3.1 supply the Goods to the Council in the sizes, quantities and types specified by the Council in this agreement and Annexure A;
 - 2.3.2 deliver the Goods to the Location;
 - 2.3.3 supply the Goods to the Council for the Price; and
 - 2.3.4 comply with the reasonable requirements of the Council for the sale, supply and delivery of the Goods.
- 2.4 This agreement is not, and the arrangements contemplated by this agreement are not, an exclusive arrangement and the Council may, at its discretion, engage other suppliers to supply the Goods.

3. **Delivery**

- 3.1 The Supplier must deliver the Goods to the Location on the Delivery Date.
- 3.2 Upon delivery of the Goods to the Location, the Supplier must provide the Delivery Docket to the Council.
- 3.3 The Supplier bears all risk for the Goods until the Goods are delivered to the Location on the Delivery Date and accepted by the Council's Representative counter signing the Delivery Docket.
- 3.4 No liability to pay for any Goods arises until the Goods are approved by the Council and delivery is accepted by the Council's Representative counter signing the Delivery Docket.
- 3.5 If the Council determines, acting reasonably, that the Goods do not meet the description of the Goods in this agreement and/or Annexure A, the Council may return such Goods to the Supplier and the Supplier must reimburse the Council for:
 - 3.5.1 all transport and other costs incurred by the Council in returning any such Goods to the Supplier for replacement;
 - 3.5.2 all transport and other costs in the Supplier delivering any replacement Goods to the Council;
 - 3.5.3 any damage or loss caused during transport of any Goods under this clause; and
 - 3.5.4 all losses suffered and all costs incurred by the Council as a result (direct and indirect) of the replacement of the relevant Goods under this clause.
- 3.6 Times for the fulfilment of the Supplier's obligations are essential terms of this agreement.
- 3.7 Title passes to the Council when the Goods are approved by the Council and delivery is accepted by the Council's Representative counter signing the Delivery Docket.

4. **Payment Terms**

4.1 **Payment of Price**

4.1.1 Subject to the terms of this agreement, the Council must pay to the Supplier the Price for the supply of the Goods.

4.1.2 The Price includes all freight and other charges connected with the Supplier delivering the Goods to the location nominated by the Council and otherwise complying with the Supplier's obligations under this agreement.

4.2 **Payment terms**

4.2.1 The Supplier must issue invoices within seven days of the Delivery Date.

4.2.2 The Council must pay the Price within 14 days from the end of the month in which the Council receives a correctly rendered tax invoice from the Supplier.

4.2.3 A tax invoice is correctly rendered when it:

4.2.3.1 describes the Goods supplied;

4.2.3.2 displays the terms of payment of the Price set out in the invoice;

4.2.3.3 is addressed to the Council's address specified in Item 1 of the Schedule;
and

4.2.3.4 sets out in reasonable detail the manner and basis of the calculation of the Price, including the component of GST.

4.3 **Effect of payment**

A payment of all or part of the Price is not an acceptance of the Goods or a waiver of a right or action of the Council.

4.4 **Right of set off**

The Council may deduct from amounts otherwise payable to the Supplier any amount due from the Supplier to the Council.

5. **Warranty**

5.1 The Supplier warrants that all Goods supplied to the Council:

5.1.1 will conform to the description and specifications of the Goods in this agreement and Annexure A;

5.1.2 will be of good merchantable quality and fit for the purpose for which they are sold;

- 5.1.3 will be new (unless otherwise specified);
 - 5.1.4 will be free from all liens and encumbrances and the Supplier has good marketable title to the Goods; and
 - 5.1.5 will be delivered to the Location on the Delivery Date;
 - 5.1.6 be free from defects in design, material and workmanship; and
 - 5.1.7 operate in accordance with their intended use and in accordance with any operating instructions or specifications for the Goods.
- 5.2 The Supplier must, throughout the PL Insurance Period and at its cost, effect product liability insurance in respect of the Goods from a reputable insurance carrier, for at least AUD \$10,000,000 combined single limit, for bodily injury and property damage. The policy must note the Council's interest under this agreement.
- 5.3 If any of the Goods is defective or fails to operate in accordance with its intended use and/or in accordance with any operating instructions or specifications for the Goods within the Warranty Period, the Council may return the defective Goods to the Supplier and the Supplier must repair or replace the returned defective Goods at no cost to the Council.
- 5.4 The Supplier is responsible for:
- 5.4.1 all transport and other costs incurred by the Council in returning any defective Goods to the Supplier for repair or replacement;
 - 5.4.2 all transport and other costs in the Supplier delivering any repaired or replacement Goods to the Council;
 - 5.4.3 any damage or loss caused during transport of any Goods under this clause; and
 - 5.4.4 all losses suffered and all costs incurred by the Council as a result (direct and indirect) of the defective Goods.
- 5.5 Any Goods repaired or replaced under this clause are subject to the warranty under this clause for the full Warranty Period.

6. **Statutory Requirements**

- 6.1 The Supplier must ensure that its supply and delivery of the Goods comply with all Laws applicable to the sale, supply and delivery of goods and materials.
- 6.2 Where required, the Supplier must, at its cost in all things, obtain all approvals and pay all fees incurred on the sale, supply and delivery of the Goods to the Council.

7. **Indemnity and Exclusion of Liability**

- 7.1 The Supplier must indemnify the Council and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person caused or contributed to by the Supplier, a breach by the Supplier of any term of this agreement, a wilful, unlawful or negligent act or omission of the Supplier and any claim, action or proceeding by a third party against the Council or its employees, officers, and contractors caused or contributed to by the Supplier.
- 7.2 This indemnity is reduced by the extent to which the Council contributed to the event giving rise to the claim for indemnity.
- 7.3 The Supplier must supply the Goods at its own risk in all things and releases the Council and its employees, officers, members and contractors from all claims, actions, proceedings, costs, expenses, losses, suffering and liabilities incurred by the Supplier or its employees, agents, subcontractors, third parties, and customers which arise from the supply of the Goods.

8. **Non Performance by Supplier**

If the Supplier breaches a provision of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so, the Council may:

- 8.1 suspend any or all payment of the Price until the breach is remedied;
- 8.2 remedy the breach itself whether by the use of the Council's employees or other suppliers and deduct the cost of remediation from sums due to the Supplier;
- 8.3 terminate this agreement in accordance with clause 10.1; and/or
- 8.4 pursue any other legal remedies available to the Council.

9. **Force Majeure**

- 9.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
 - 9.1.1 neither party is liable for such delay or failure; and
 - 9.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 9.2 A party which is, by reason of a Force Majeure Event, unable to perform its obligations under this agreement must:
 - 9.2.1 notify the other party as soon as possible giving:
 - 9.2.1.1 reasonably full particulars of the Force Majeure Event;

- 9.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
 - 9.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - 9.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
 - 9.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 9.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 9.2.5 notify the other party when resumption of performance occurs.
- 9.3 If a delay or failure under this clause exceeds 60 days, the Council may immediately terminate this agreement by written notice to the Supplier. In such circumstances, the Council will be liable to the Supplier only in respect of the Fees properly owing up to the date of termination in respect of the Goods supplied to the Force Majeure Event. Without limiting the effect of this clause 9.3, the Council will not be liable to compensate the Supplier for loss of potential profits or other consequential loss incurred by the Supplier arising from termination by the Council pursuant to this clause.

10. Termination

10.1 Termination by Council

The Council may immediately terminate this agreement by giving notice to the Supplier if the Supplier:

- 10.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;
- 10.1.2 breaches a material term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so;
- 10.1.3 becomes an externally-administered body corporate or an insolvent under administration;
- 10.1.4 becomes insolvent or bankrupt.

10.2 Termination by Supplier

The Supplier may immediately terminate this agreement if the Council breaches a material term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so.

10.3 **Accrued rights and remedies**

Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

11. **Confidential Information and Freedom of Information**

11.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:

11.1.1 keep confidential;

11.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

11.1.3 maintain proper and secure custody of; and

11.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.

11.2 The FOI Act gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts held by the Council but excluding Contracts which should be kept confidential for public interest purposes, contracts which are commercial in confidence or for the preservation of personal privacy.

11.3 The Supplier consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

11.4 Unauthorised disclosure of the Confidential Sections and their subject matter contained therein constitutes a breach of a party's obligations under this agreement.

12. **Dispute Resolution**

12.1 **General**

12.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.

12.1.2 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.

- 12.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 12.1.4 If the parties are unable to resolve the dispute within 10 business days, they must promptly refer the dispute:
 - 12.1.4.1 in the case of the Council to the Chief Executive Officer; and
 - 12.1.4.2 in the case of the Supplier to the Supplier's Representative.
- 12.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

12.2 **Mediation**

- 12.2.1 If those persons are unable to resolve the dispute within 10 business days of referral, a party may refer the dispute for mediation under the mediation rules of the Law Society of South Australia Inc to:
 - 12.2.1.1 a mediator agreed by the parties; or
 - 12.2.1.2 if the parties are unable to agree a mediator within five business days, a mediator nominated by the President of the Law Society or the President's nominee.
- 12.2.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
- 12.2.3 Any information or documents disclosed by a party under this clause:
 - 12.2.3.1 must be kept confidential; and
 - 12.2.3.2 may not be used except to attempt to resolve the dispute.
- 12.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

12.3 **Arbitration**

- 12.3.1 If the dispute is not resolved within 10 business days of appointment of the mediator, a party may refer the dispute to:
 - 12.3.1.1 an arbitrator agreed by the parties; or
 - 12.3.1.2 if the parties are unable to agree an arbitrator within five Business Days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.

- 12.3.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration and Industrial Referral Agreements Act 1986 (SA)*.
- 12.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.
- 12.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

12.4 **Performance**

If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

13. **Relationship**

This agreement does not create a relationship of employment, agency or partnership between the parties.

14. **Subcontracting and Assigning**

- 14.1 The Supplier must not assign or subcontract this agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld by the Council, in its absolute discretion.
- 14.2 With any application for such consent, the Supplier must provide all information required by the Council, including evidence that the proposed assignee or subcontractor is capable of performing the Services to be assigned or subcontracted.
- 14.3 Unless otherwise agreed in writing by the Council, no such assignment or subcontract relieves the Supplier from any liability under this agreement or at Law in respect of the performance or purported performance of this agreement and the Supplier is responsible for the acts and omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Supplier.
- 14.4 For the purpose of this clause, if the Supplier is a company, an assignment of this agreement includes any change in the beneficial ownership of the share capital of the Supplier, or the resignation, death or appointment of any director of the company, which alters the effective control of the Supplier.

15. **Miscellaneous**

15.1 **Special Conditions**

If there is an inconsistency between a Special Condition set out in Annexure D and the rest of this agreement, the Special Condition governs to the extent of the inconsistency.

15.2 **Alteration**

This agreement may be altered only in writing signed by each party.

15.3 **Approvals and consents**

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.

15.4 **Entire agreement**

This agreement:

15.4.1 constitutes the entire agreement between the parties about its subject matter;

15.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

15.5 **Waiver**

A waiver of a provision of or right under this agreement:

15.5.1 must be in writing signed by the party giving the waiver;

15.5.2 is effective only to the extent set out in the written waiver.

15.6 **Exercise of power**

15.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

15.6.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

15.7 **Survival**

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

15.8 **Further action**

Each party must do all things necessary to give full effect to this agreement and the transactions contemplated by this agreement.

15.9 **Governing law**

15.9.1 This agreement is governed by the law in South Australia.

15.9.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

15.10 **Ombudsman**

The Supplier acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Supplier must ensure compliance with all obligations arising under that Act and all applicable Laws.

15.11 **Work Health and Safety**

In complying with its obligations pursuant to this agreement, the Supplier agrees to:

- 15.11.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Supplier;
- 15.11.2 comply with all requirements of the *Work Health and Safety Act 2012 (SA)* and any regulations made under it;
- 15.11.3 comply with any reasonable requests of the Council in relation to the Supplier's performance of its obligations pursuant to this agreement;
- 15.11.4 promptly notify the Council of any accident, injury, property or environmental damage or any potential breach of any law (reportable incident) that occurs during or as a result of this agreement. Within 24 hours of a reportable incident, the Supplier must provide a report to the Council's Representative giving complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future.

15.12 **ICAC**

The Supplier acknowledges and agrees that by entering into this agreement with the Council the Supplier will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012 (SA)* (**ICAC Act**) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

16. **Goods and Services Tax**

16.1 **Consideration does not include GST**

Unless specifically described as 'GST inclusive', any payment or consideration under this agreement does not include GST.

16.2 **Gross up of consideration**

Where a supply by one party (**supplier**) to another party (**recipient**) under this agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

- 16.2.1 the expressed consideration for that supply must be increased by, and the recipient must pay to the supplier, an amount equal to the GST payable by the supplier in respect of that supply; and

16.2.2 the recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

16.3 Reimbursements

If a payment to a party under this agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the previous subclause.

16.4 Tax invoices

Notwithstanding any other provision of this agreement, the recipient need not make any payment for a taxable supply made by the supplier under this agreement until the supplier has given the recipient a tax invoice in respect of that taxable supply.

16.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under this agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the supplier first becomes aware that the adjustment event has occurred.

17. Notices

17.1 A Notice must be:

17.1.1 in writing, in English and signed by a person authorised by the sender; and

17.1.2 hand delivered or sent by pre paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Schedule, as varied by any Notice given by the recipient to the sender.

17.2 A Notice is deemed to be received:

17.2.1 if hand delivered, on delivery;

17.2.2 if sent by prepaid post, two business days after posting (or seven business days after posting if posting to or from a place outside Australia);

17.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;

17.2.4 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a law of the Commonwealth of Australia.

17.3 However if the Notice is deemed to be received on a day that is not a business day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next business day.

18. **Costs**

Each party must pay its own costs of preparing this agreement and any document required by it.

Annexure A Goods

Supply and deliver diesel fuel to the District Council of Robe depot (Robe, South Australia), approximately 90,000 litres per annum with fortnightly delivery of diesel.

Council is seeking a two year contract.

Annexure B Price

All prices must be listed exclusive of GST

Provide price per litre and methodology for future prices.

Annexure C Delivery Docket

1. Order Form number (if relevant)
2. Description of the Goods delivered (including type/specifications and quantity)
3. Delivery Date and the Location
4. Place for signing by the Supplier's Representative
5. Place for counter-signing by the Council's Representative

Annexure D Special Conditions

Nil

EXECUTED as an agreement

By the Council

SIGNED by Chief Executive Officer under delegated authority in the presence of:	
..... Signature Signature of witness
 Name of witness (print)

If supplier is a company:

The common seal of (company name) was affixed in accordance with its Constitution and by the authority of its directors:	
..... Director Director/Secretary

If supplier is a company:

Executed by (company name) in accordance with section 127(1) of the <i>Corporations Act</i> by the authority of its directors:	
..... Signature of Director Signature of Director/Secretary
..... Name of Director (print) Name of Director/Secretary (print)

If supplier is an individual:

Signed by (name) in the presence of:	
..... Signature Signature of witness
 Name of witness (print)

If the Supplier is a Partnership:

Partner 1:

Signed by	(name) in the presence of:
..... Signature of witness Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

Partner 2:

Signed by	(name) in the presence of:
..... Signature of witness Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	