

# PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

United Trolley Collections Pty Ltd (ABN 69 115 542 946)

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## Schedule 1

### Details:

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<b>Parties</b>	<b>Office of the Fair Work Ombudsman (FWO) and United Trolley Collections Pty Ltd</b>	
<b>FWO</b>	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43 884 188 232
	Address	The Fair Work Ombudsman GPO Box 9887 MELBOURNE VIC 3001
	Telephone	02 8293 4940
	Email	<a href="mailto:romit.tappoo@fwo.gov.au">romit.tappoo@fwo.gov.au</a>
	Contact Person	Romit Tappoo Assistant Director – Strategic Partnerships
<b>Employer</b>	Name	United Trolley Collections Pty Ltd
	ABN	69 115 542 946
	Address	12 Ryans Court Warragul VIC 3820
	Telephone	03 5624 0900
	Email	<a href="mailto:jasonwoodbridge@unitedtrolleys.com.au">jasonwoodbridge@unitedtrolleys.com.au</a>
	Contact Person	Jason Woodbridge Director

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## 1. ***Preamble***

- 1.1 The FWO is an independent statutory agency established under the FW Act. The FWO's chief functions are to promote harmonious, productive and cooperative workplace relations and compliance with Commonwealth workplace laws.
- 1.2 United Trolley Collections Pty Ltd (UTC) was established in 2005 and is now the largest trolley collection company in Australia, providing Trolley Collection Services to many of the large supermarket and retail brands in Australia such as Coles, Woolworths, Kmart, Target, Big W and others. In 2012, Coles entered into a contract with UTC to be its sole provider of its outsourced Trolley Collection Services nationally.
- 1.3 UTC engages more than 40 Subcontractors in its provision of Trolley Collection Services to supermarkets throughout Australia.

## 2. ***Background to this Deed***

- 2.1 UTC operates in a sector which has a long history of non-compliance with Commonwealth Workplace Laws. Trolley collectors are amongst the most vulnerable cohorts in the Australian workforce and are potentially more open to exploitation. Underpayment of trolley collectors across sites operated by different supermarkets across Australia has been a serious issue for the FWO for many years.
- 2.2 Compliance partnerships, underpinned by proactive compliance deeds, are offered by the FWO to leading brands and businesses who value their reputation and want to publicly demonstrate their commitment to creating compliant and productive workplaces. In early 2014, the FWO approached UTC with a view to entering into a compliance partnership to improve compliance in supermarket trolley collection networks. UTC was enthusiastic about this opportunity and decided to partner with the FWO in establishing a benchmark for compliance in the trolley collection industry.
- 2.3 On 13 May 2014, UTC entered into a proactive compliance deed (**the First Deed**) with the FWO for a period of 3 years. The First Deed contained a number of commitments designed to promote and ensure compliance with Australian workplace laws.
- 2.4 UTC has implemented a range of processes such as adopting a third-party payroll system and conducting a programme of regular, independently certified self-audits. It also developed a mobile application (app) for trolley collectors to inform them about workplace entitlements and provide them with an avenue to inquire about and report non-compliance.

- 2.5 Due to the results achieved to date as a consequence of the First Deed, UTC wants to continue the formal partnership with FWO, maintain and enhance its systems and processes and publicly demonstrate its ongoing commitment to ensuring compliance with Commonwealth workplace laws in its trolley collection networks.
- 2.6 UTC is committed to complying with all legal obligations towards its employees and doing everything it can to ensure that its Subcontractors comply with all legal obligations towards their employees.
- 2.7 Both parties are committed to the success of this partnership as a means to eradicate exploitation and underpayment in the trolley collection industry, and look forward to using it as an example of the benefits of proactive compliance.
- 2.8 In accordance with this Deed, the FWO will provide assistance to UTC where appropriate and UTC will maintain, and enhance where appropriate, a number of proactive measures to promote and ensure compliance.
- 2.9 The parties agree as follows:

## Part I – Communication about our Compliance Partnership

### 3. *Internal communication*

- 3.1 As a sign of the commitment of both the FWO and UTC to the Compliance Partnership, both parties will communicate its existence and its purpose to their employees, and also in the case of UTC, to its Subcontractors.
- 3.2 Within 14 days of the commencement of this Deed, UTC will provide to the FWO Contact Person a list of all Subcontractors within the UTC trolley collection network. This list will identify the UTC Sites, at which each Subcontractor performs Trolley Collection Services, and include the relevant employing entity names, ABNs and contact details. UTC will notify the FWO Contact where there are changes to these persons or entities on an ongoing basis.

### 4. *Communication by UTC to Employees*

- 4.1 UTC will communicate the existence of the Deed (which formalises the terms of the Compliance Partnership) and make a copy of the Deed available to employees as follows:

**Table 4.1**

Item	Who	How	When
1	all current employees of UTC	via an internal communication method such as email, internal memo or intranet	within 14 days of the commencement of this Deed
2	all future employees of UTC	via an internal communication method such as email, internal memo or intranet	within 14 days of the commencement of each new employee's employment

- 4.2 The communication referred to in clause 4.1 is to be in the following form, or words as agreed to by the FWO:

“UTC is committed to ongoing compliance with Commonwealth workplace laws throughout our trolley collection network, and so we have entered into a further Compliance Partnership with the Office of the Fair Work Ombudsman (**FWO**).

This is the second Compliance Partnership UTC has entered into with the FWO (the workplace relations regulator) as we want to demonstrate to our people and the broader community that we are committed to promoting harmonious, productive and cooperative workplaces. We believe, based on the success of our previous partnership that working with the FWO in this way has had a positive impact on our employees and our business.

To formalise this partnership, we have signed a new Proactive Compliance Deed (**Deed**) with the FWO. As with the previous Deed, this second Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.

United Trolley Collections Pty Ltd requires all independent contractors to commit to ensuring compliance with workplace laws and engage with UTC and with the FWO on matters arising as a result of workplace enquiries or complaints.

United Trolley Collections Pty Ltd has made the Deed available to all employees and independent contractors through <http://www.unitedtrolleys.com.au/> and through the UTC App. You are also able to access information about entitlements and rights at work by contacting Sam Woodbridge, who has been appointed by United Trolley Collections Pty Ltd as UTC Liaison Officer, on 0403 663 610 or [samwoodbridge@utc.com.au](mailto:samwoodbridge@utc.com.au) . You may also visit the Fair Work Ombudsman website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or make an online enquiry by registering with the FWO My Account portal at [www.fairwork.gov.au/register](http://www.fairwork.gov.au/register)”

**5. Communication by UTC to Subcontractors**

5.1 UTC will communicate the existence of the Deed and make a copy of the Deed available to Subcontractors as follows:

**Table 5.1**

Item	Who	How	When
1	(a) all current Subcontractors  (b) all current employees of	via an internal communication method such as email, internal memo or intranet	within 14 days of the commencement of this Deed

Item	Who	How	When
	the Subcontractors		
2	(a) all future Subcontractors  (b) all future employees of the Subcontractors	via formal correspondence such as letter, email or fax	prior to either parties' execution of the relevant trolley collection agreement

5.2 The communication referred to in clause 5.1 is to be in the following form, or words as agreed to by the FWO:

“UTC is committed to ongoing compliance with Commonwealth workplace laws throughout our trolley collection network, and so we have entered into a further Compliance Partnership with the Office of the Fair Work Ombudsman (**FWO**).

This is the second Compliance Partnership UTC has entered into with the FWO (the workplace relations regulator) as we want to demonstrate to our people and the broader community that we are committed to promoting harmonious, productive and cooperative workplaces. We believe, based on the success of our previous partnership that working with the FWO in this way has had a positive impact on our employees and our business.

To formalise this partnership, we have signed a new Proactive Compliance Deed (**Deed**) with the FWO. As with the previous Deed, this second Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.

United Trolley Collections Pty Ltd requires all independent contractors to commit to ensuring compliance with workplace laws and engage with UTC and with the FWO on matters arising as a result of workplace enquiries or complaints.

United Trolley Collections Pty Ltd has made the Deed available to all employees and independent contractors through <http://www.unitedtrolleys.com.au/> and through the UTC App . You are also able to access information about entitlements and rights at work by contacting Sam Woodbridge, who has been appointed by United Trolley Collections Pty Ltd as UTC Liaison Officer, on 0403 663 610 or [samwoodbridge@utc.com.au](mailto:samwoodbridge@utc.com.au) . You may also visit the Fair Work Ombudsman website

at [www.fairwork.gov.au](http://www.fairwork.gov.au) or make an online enquiry by registering with the FWO My Account portal at [www.fairwork.gov.au/register](http://www.fairwork.gov.au/register)"

**6. *Communication by the FWO***

- 6.1 The FWO will publish an article on its intranet alerting its staff to the continuation of the Compliance Partnership between UTC and the FWO. This article will include reference to the nominated FWO Contact Person and instruct that the FWO Contact Person be made aware of all FWO interactions with the UTC network and/or their current, former and future employees.
- 6.2 The FWO will make a copy of the Deed available to its employees throughout the life of the Deed.
- 6.3 Nothing in this clause 6 is intended to limit the use that the FWO may make of the Deed, having regard to the acknowledgements in clause 31 below.

## Part II – Systems and processes to promote compliance

### 7. **UTC employees**

- 7.1 UTC will ensure that it complies at all times and in all respects with relevant Commonwealth workplace laws and will review and update its systems and processes to ensure ongoing compliance.

### 8. **UTC Subcontractors**

- 8.1 UTC will take all reasonable steps to ensure compliance with relevant Commonwealth workplace laws by its Subcontractors, including by reviewing and updating its systems and processes to help Subcontractors comply with relevant Commonwealth workplace laws.

### 9. **FWO support**

- 9.1 Within six (6) weeks of the date of commencement of this Deed, UTC will provide to the FWO details of:
- (a) its review of the systems and processes in place to ensure ongoing compliance with relevant Commonwealth workplace laws by UTC and its Subcontractors; and
  - (b) any updates required to its systems and processes as a result of the review, including the timing of implementing such updates.
- 9.2 The FWO will provide feedback to UTC on the details provided by UTC in accordance with clause 9.1. UTC will seek to implement any feedback the FWO provides.
- 9.3 Upon request by UTC, or on its own initiative, the FWO will provide guidance on issues that may arise from time to time in relation to compliance with Commonwealth workplace laws by UTC or its Subcontractors.

## Part III – Workplace Relations training

### 10. *Annual Workplace Relations training*

- 10.1 From the date of commencement of this Deed, UTC will provide training concerning compliance with Commonwealth workplace laws on an annual basis (**Annual Training**) to its employees, and employees of its Subcontractors, who perform human resources, payroll, managerial and supervisory duties (**Managerial Employees**).
- 10.2 The Annual Training will include material on:
- (a) compliance with Commonwealth workplace laws and Fair Work Instruments and cover at least the following topics;
    - i. the National Employment Standards
    - ii. applicable awards and enterprise agreements
    - iii. rates of pay including penalty rates
    - iv. record keeping and pay slip obligations
    - v. FWO's online learning centre and
  - (b) the options available to persons to make complaints, for example, references to the UTC Liaison Officer and the FWO's procedures to lodge an Enquiry or Request for Assistance.
- 10.3 Within 90 days of the commencement of this Deed, UTC will provide the FWO with details of the Annual Training it provides, or proposes to provide, to Managerial Employees, including an outline of the content and copies of any written materials provided or to be provided to participants.
- 10.4 Within 14 days of each Annual Training session provided by UTC during the life of this Deed, UTC will provide the FWO with:
- (a) a list of the participants in the Annual Training; and
  - (b) to the extent the content of the Annual Training materially differed from that advised to the FWO pursuant to clause 10.3, an outline of the course content and copies of any written materials provided.
- 10.5 The FWO may provide feedback to UTC on the details provided by UTC pursuant to this clause. UTC will seek to implement any feedback the FWO provides.

**11. *My Account***

- 11.1 UTC will encourage its Subcontractors and their Managerial Employees to establish a 'My Account' on the [FWO](#) website.

**12. *FWO support***

- 12.1 The FWO may, upon request by UTC or on its own initiative, provide appropriate workplace relations training materials that UTC can use as a resource. The FWO will not be responsible for any errors that occur as a result of UTC altering the materials.
- 12.2 The FWO will, upon request by UTC, provide assistance to UTC staff and subcontractors to access the FWO online learning modules.

## **Part IV – Workplace enquiries and self-resolution of Requests for Assistance**

### **13. Enquiries**

- 13.1 If the FWO receives an enquiry regarding an employee of UTC, a Subcontractor, or an employee of a Subcontractor (Enquiry), and the person making the Enquiry has not previously raised the issue directly with UTC, the FWO will refer the person to the UTC Liaison Officer or the UTC Contact Person.
- 13.2 If the person making the Enquiry has previously contacted UTC with the same Enquiry and believes the issue was not resolved, then the FWO will assist the relevant parties to resolve the issue in accordance with the FWO's ordinary processes.

### **14. Self-resolution of Requests for Assistance not alleging a Significant Contravention**

- 14.1 The FWO regularly and frequently receives requests for assistance from workers who may either not have received their full entitlements or may believe they have not received their full entitlements.
- 14.2 This Compliance Partnership seeks to handle those requests for assistance which don't involve Significant Contraventions in an efficient and effective manner as follows:
- (a) upon receiving a request for assistance, the FWO will review the request and assess as to whether it involves or alleges any Significant Contravention
  - (b) if an assessment is made that no Significant Contravention is involved, then the FWO will notify the UTC Contact Person within 7 days (in accordance with clause 15 below)
  - (c) The FWO and UTC expect that in the majority of cases these matters will be dealt with at the workplace level (see referral process below at clause 15).
- 14.3 In line with the FWO's Compliance and Enforcement Policy, the FWO reserves its right to investigate according to its ordinary processes any Request for Assistance that it considers alleges, or discloses conduct that may constitute, a Significant Contravention, or that is in the public interest to investigate. The FWO will notify UTC of such an investigation when appropriate in accordance with its ordinary processes.
- 14.4 UTC will abide by any confidentiality restrictions imposed by the FWO in relation to any information supplied under this Part, including any restriction which might be imposed by

the FWO on notifying any Subcontractor involved in the Request for Assistance (or the details of that request). The FWO retains the discretion not to provide information to UTC under this Part where it would cause the FWO to breach any law, including the Privacy Act 1988 (Cth).

14.5 The FWO Compliance and Enforcement Policy is available on the [FWO website](#).

**15. FWO referrals**

15.1 The FWO will refer Requests for Assistance to UTC in accordance with the processes set out in Table 15.1 below:

**Table 15.1**

Item	Trigger	FWO actions	Timeframe
1	Where FWO receives a Request for Assistance that does not allege or disclose a Significant Contravention by UTC or a Subcontractor	FWO will: <ul style="list-style-type: none"> <li>(a) notify UTC of the Request for Assistance;</li> <li>(b) provide details of the alleged non-compliance supplied by the person making the request;</li> <li>(c) notify UTC of the name of a nominated contact person for dealing with each Request for Assistance; and</li> <li>(d) provide a template to UTC to be used in reporting back to the FWO on the outcome of each Request for</li> </ul>	Within 7 days of the Trigger specified in Item 1 of this Table occurring

Item	Trigger	FWO actions	Timeframe
		Assistance referred by the FWO	

**16. Self-resolution by UTC**

16.1 UTC will attempt to resolve Requests for Assistance referred by the FWO in accordance with the processes set out in Table 16.1 below:

**Table 16.1**

Item	Trigger	UTC actions	Timeframe
1	UTC receives from FWO the details relating to a request for assistance from an employee or former employee of UTC	UTC will attempt to: <ul style="list-style-type: none"> <li>(a) resolve the Request for Assistance;</li> <li>(b) rectify any identified underpayments; and</li> <li>(c) resolve any other non-compliance issues identified by the FWO or UTC (including for any similarly affected employees identified)</li> </ul>	Within 8 weeks of the date of the Referral  UTC will inform the FWO of the progress of its investigation within 4 weeks from the date of Referral.
2	UTC resolves the Request for Assistance	UTC will provide the FWO with evidence that: <ul style="list-style-type: none"> <li>(a) the Request for Assistance has been resolved and any identified underpayments have been rectified; and</li> </ul>	Within 7 days of UTC resolving the Request for Assistance

Item	Trigger	UTC actions	Timeframe
		(b) any other issues identified by the FWO or UTC, including for any similarly affected employees, have been resolved.	
3	The Request for Assistance cannot be resolved by agreement between UTC and the employee or former employee within 8 weeks of notification by the FWO	UTC will provide the FWO with a written report addressing the steps taken to try and resolve the matter and the reasons why the Request for Assistance could not be resolved between the parties	Within 8 weeks of the date of Referral

16.2 Where UTC provides the report to the FWO as prescribed in Item 3 of Table 16.1 above, the FWO will consider the report and assess whether any compliance activity is warranted by the FWO.

**17. Self-resolution of referrals concerning a Subcontractor**

17.1 UTC will attempt to resolve Requests for Assistance referred by the FWO in accordance with the processes set out in Table 17.1 below:

**Table 17.1**

Item	Trigger	UTC actions	Timeframe
1	UTC receives from FWO details relating to a request for assistance from an employee or former employee of a Subcontractor	UTC will assist the Subcontractor to:  (a) resolve the Request for Assistance;	Within 8 weeks of the date of the Referral  UTC will inform the FWO of the

Item	Trigger	UTC actions	Timeframe
		(b) rectify any identified underpayments; and  (c) resolve any other non-compliance issues identified by the FWO, UTC or the Subcontractor (including for any similarly affected employees identified)	progress of its investigation within 4 weeks from the date of Referral.
2	UTC and the Subcontractor resolve the Request for Assistance	UTC will provide the FWO with evidence that:  (a) the Request for Assistance has been resolved and any identified underpayments have been rectified; and  (b) any other issues identified by the FWO UTC, or the Subcontractor, including for any similarly affected employees, have been resolved.	Within 7 days of UTC resolving the Request for Assistance
3	The Request for Assistance cannot be resolved by agreement between the Subcontractor and the employee or former	UTC will provide the FWO with a written report addressing the steps taken to try and resolve the matter and the reasons why the Request for	Within 8 weeks of the date of Referral

Item	Trigger	UTC actions	Timeframe
	employee within 8 weeks of notification by the FWO	Assistance could not be resolved between the parties	

17.2 Where UTC provides the report to the FWO as prescribed in Item 3 of Table 17.1 above, the FWO will consider the report and assess whether any compliance activity is warranted by the FWO.

## Part V – Self-auditing of the UTC network

### 18. *Self-Audits*

18.1 During the term of this Deed, UTC will, at its own expense, undertake three self-audits of Trolley Collection Services operated by UTC and its Subcontractors at UTC Sites to assess compliance with relevant Commonwealth workplace laws.

18.2 The self-audits will be conducted in accordance with the methodology set out in clauses 19 to 24 below.

18.3 If a Subcontractor declines to participate in a self-audit, UTC will notify the FWO in writing within 14 days of the refusal and provide the Subcontractor’s identity and reasons given for not participating. The FWO will consider if any form of compliance activity is warranted by the FWO.

### 19. *Self-Audit Period*

19.1 The self-audit period will be a two week period that:

(a) occurs within:

- i. in the case of the first self-audit, 1 to 3 months after the commencement of this Deed (**First Audit Quarter**); and
- ii. in the case of the second self-audit, 12 to 15 months after the commencement of this Deed (**Second Audit Quarter**); and
- iii. in the case of the third self-audit, 27 to 30 months after the commencement of this Deed (**Third Audit Quarter**); and

(b) includes a public holiday (if one occurs during the Audit Quarter).

19.2 Each self-audit is to be completed within 3 months after the applicable Audit Quarter (**Audit Completion Date**).

**20. Subcontractors to be Self-Audited**

20.1 Each self-audit will be conducted by UTC and will include 10% of trolley collectors employed across all current sites operated by Subcontractors in all States and Territories.

20.2 The same Subcontractor cannot be selected to participate in all the self-audits, unless otherwise agreed between the FWO and UTC.

**21. Scope of the Self-Audits**

21.1 Each self-audit will assess, at a minimum, compliance by UTC and its Subcontractors with relevant Commonwealth workplace laws during the self-audit period, including:

- (a) classification and employment status of employees;
- (b) accuracy and consistency of employee records, including hours worked;
- (c) leave and termination payments; and
- (d) minimum ordinary hourly rates, loadings, allowances and penalty rates (where relevant).

**22. Contraventions identified during Self-Audits**

*Contraventions by UTC*

22.1 Within 14 days of each Audit Completion Date, UTC will rectify any contraventions of relevant Commonwealth workplace laws identified in the self-audit, including any identified underpayments, relating to its employees.

*Contraventions by Subcontractors*

22.2 UTC will take all reasonable steps to ensure that a Subcontractor rectifies any contraventions of Commonwealth workplace laws, including any identified underpayments, relating to employees of the Subcontractor, within 14 days of each Audit Completion Date.

22.3 UTC will notify the FWO of any Subcontractor that does not rectify identified contraventions of Commonwealth workplace laws within 14 days of the relevant Audit Completion Date and provide:

- (a) reasons why the Subcontractor did not make rectification; and

- (b) details of any steps taken by UTC against the Subcontractor in respect of the failure to rectify.

The FWO will consider whether any form of compliance activity is warranted by the FWO.

### **23. *Audit Proposal and FWO support***

23.1 Not less than 14 days before the commencement of each Audit Quarter, UTC will submit an audit proposal to the FWO that states:

- (a) the proposed self-audit period; and
- (b) the Subcontractors to be audited.

23.2 The proposed self-audit period and the Subcontractors to be audited must be agreed between UTC and the FWO prior to the commencement of each self-audit.

23.3 Before each self-audit the FWO will, upon request by UTC, or on its own initiative, assist UTC by providing guidance on the workplace obligations or entitlements subject to the self-audit.

23.4 If requested by UTC, or on its own initiative, the FWO will provide a template to be used to report to the FWO on the outcome of each self-audit.

### **24. *Self-Audit Reporting***

#### *Audit Report certified by Independent Third Party*

24.1 Within 28 days of each Audit Completion Date, UTC will provide the FWO with a signed audit report prepared by an Independent Third Party engaged by UTC to validate and certify each self-audit process and outcomes.

24.2 The self-audit report will include:

- (a) details of the methodology used in the self-audit, Subcontractors audited, the categories of employees included in the sample;
- (b) details of any contraventions identified in the self-audit, including any Significant Contraventions; and
- (c) evidence of rectification of contraventions and/or underpayments identified in the self-audit
- (d) information relating to any significant contraventions for the FWO's consideration.

#### *Report outlining corrective actions*

24.3 Within 28 days of each Audit Completion Date, UTC will provide the FWO with a separate report that:

- (a) identifies the causes of any contraventions of relevant Commonwealth workplace laws;
- (b) details the steps taken by UTC to:
  - i. redress the contraventions, including any underpayments identified outside the audit period and any contraventions additionally identified by the Independent Third Party;
  - ii. prevent future contraventions; and
- (c) includes an executive summary of observations and findings.

#### *Use of Reports*

24.4 The reports provided by UTC may be published by the FWO provided that any personal details or information which may identify individuals or individual Subcontractors or information that is confidential or commercially sensitive relating to UTC or its Subcontractors is redacted. The FWO will provide UTC with an opportunity to comment on the same prior to the publication of any report.

24.5 The FWO reserves the right to conduct its own audit or investigation of any Subcontractor, including if:

- (a) for any reason, the FWO is not satisfied with the conduct of the self-audit or with the accuracy of the audit reports;
- (b) any Subcontractor does not rectify identified contraventions within 14 days of the relevant Audit Completion Date; or
- (c) the self-audit report discloses a Significant Contravention.

## **Part VI – Reporting**

### **25. Reporting**

#### *First Year Report*

25.1 UTC will prepare a first year report regarding the operation of the Deed during the first twelve months of its operation (**First Year Reporting Period**) addressing the following matters:

- (a) the actions taken by UTC to address the requirements of the Deed;
- (b) details as to the number of Enquiries and Requests for Assistance referred by the FWO to UTC;
- (c) details of the outcomes of any Enquiries and Requests for Assistance referred by the FWO to UTC;
- (d) a summary of issues raised by UTC employees, Subcontractors or employees of Subcontractors directly with the UTC Liaison Officer and how they were addressed
- (e) a summary of any changes to systems and processes in place for promoting compliance with Commonwealth workplace laws;
- (f) a summary of any relevant workplace relations issues that arose, including the responses to them by UTC and/or the affected Subcontractors;
- (g) a summary of any workplace relations compliance training conducted for appropriate personnel;
- (h) a summary of the self-audit outcomes;
- (i) any identified benefits from being involved in the Compliance Partnership; and
- (j) any learnings from the Compliance Partnership

25.2 UTC will provide the first year report to the FWO no later than 28 days after the completion of the First Year Reporting Period.

*Second Year Report*

25.3 UTC will prepare a report regarding the operation of the Deed during the second twelve months of its operation (**Second Year Reporting Period**) addressing the following matters:

- (a) the actions taken by UTC to address the requirements of the Deed;
- (b) details as to the number of Enquiries and Requests for Assistance referred by the FWO to UTC;
- (c) details of the outcomes of any Enquiries and Requests for Assistance referred by the FWO to UTC;
- (d) a summary of issues raised by UTC employees, Subcontractors or employees of Subcontractors directly with the UTC Liaison Officer and how they were addressed
- (e) a summary of any changes to systems and processes in place for promoting compliance with Commonwealth workplace laws;

- (f) a summary of any relevant workplace relations issues that arose, including the responses to them by UTC and/or the affected Subcontractors;
- (g) a summary of any workplace relations compliance training conducted for appropriate personnel;
- (h) a summary of the self-audit outcomes;
- (i) any identified benefits from being involved in the Compliance Partnership; and
- (j) any learnings from the Compliance Partnership

25.4 UTC will provide the report to the FWO no later than 28 days after the completion of the Second Year Reporting Period.

25.5 At the expiry of the Deed, UTC will prepare a final report regarding the operation of the Deed during the final twelve months of its operation (**Final Reporting Period**) addressing the following matters:

- (a) the actions taken by UTC to address the requirements of the Deed
- (b) details as to the number of Enquiries and Requests for Assistance referred by the FWO to UTC;
- (c) details of the outcomes of any Enquiries and Requests for Assistance referred by the FWO to UTC;
- (d) a summary of issues raised by UTC employees, Subcontractors or employees of Subcontractors directly with the UTC Liaison Officer and how they were addressed
- (e) a review of the systems and processes in place with an evaluation of their effectiveness in promoting compliance of workplace laws;
- (f) an analysis of the various workplace relations issues that presented including the responses to them undertaken by UTC and/or the affected Subcontractors;
- (g) the workplace relations training conducted for appropriate personnel including how training could be improved;
- (h) a summary of the self-audit outcomes;
- (i) any identified benefits from being involved in the Compliance Partnership; and
- (j) any learnings from the Compliance Partnership
- (k) observations on the overall operation of the Deed.

- 25.6 The final report will be provided to the FWO no later than 28 days after the completion of the Final Reporting Period.
- 25.7 The FWO may publish both the first, second and final year reports, but will redact any part of the report that contains information that is confidential or commercially sensitive relating to UTC or its Subcontractors and will provide UTC with an opportunity to comment on the same prior to the publication of any report.
- 25.8 The FWO may publish its own report or other material regarding the Deed and will provide UTC with an opportunity to comment on the same. The FWO is not under any obligation to amend such material in response to any comments received but commits to reporting accurately upon the Compliance Partnership.

## **Part VII – Supply Chain governance**

### **26. Commitments**

- 26.1 UTC will take all reasonable steps to ensure that the Independent Contractors it procures, directly or indirectly, are compliant in all respects with Commonwealth workplace laws.
- 26.2 The FWO acknowledges that UTC accepts that UTC and its officers have an obligation to ensure that they are not directly concerned in, or a party to, any non-compliance with Commonwealth workplace laws, including in relation to any non-compliance by Subcontractors.
- 26.3 UTC is committed to ensuring compliance with Commonwealth workplace laws. In particular, UTC is dedicated to ensuring that any person who performs work for its Subcontractors receives their lawful industrial entitlements from their employer.
- 26.4 UTC endeavours to proactively work with the FWO, Subcontractors and employees of Subcontractors in order to rectify complaints made by any person who performs trolley collection work for Subcontractors on a UTC Site.

### **27. Engagement Protocols**

- 27.1 UTC agrees that processes for the procurement of any future contract for the provision of Trolley Collection Services by UTC from Subcontractors will include, but not be limited to, the following:

- (a) obtaining the contact details of all Directors of companies or individuals who contract to UTC for trolley collection, including name, street address and telephone number. The details of the successful contractor will be provided to the FWO (such information is confidential information for the purpose of clause 25 above);
- (b) a requirement that all employees of UTC Contractors are provided with a Fair Work Information statement, current applicable minimum rates of pay, and are advised that the *Cleaning Services Award 2010* applies to employees performing trolley collection work for Subcontractors in the absence of any approved workplace agreement;
- (c) each contract between UTC and an Independent Contractor with 3 or more employees will include a requirement that the payment of wages or other monetary entitlements to its employees is made via a third party payroll provider.

**28. *Withholding monies for contraventions by Subcontractors***

28.1 UTC will require Subcontractors to rectify identified contraventions of Commonwealth workplace laws as set out in Part IV and Part V of this Deed.

28.2 Where there is reasonable evidence that a Subcontractor has underpaid minimum wages to their employees, UTC will withhold an amount equivalent to the underpayment from any monies owed to that Subcontractor until the matter is appropriately resolved. In withholding monies, UTC will act to the extent it is able to do so in accordance with its contractual obligations with Subcontractors.

**28.3** If the FWO has made a determination at the conclusion of an investigation that a Subcontractor or any Officer of the Subcontractor has contravened Commonwealth workplace laws, UTC will consider its ongoing relationship with the Subcontractor. That consideration may include the termination of any contract between UTC and the Subcontractor.

## Part VIII – Meetings

### 29. *Meetings between FWO and UTC*

- 29.1 To support a collaborative and productive Compliance Partnership both the FWO and UTC agree to meet formally at least once each year during the operation of the Deed or more frequently as required. These meetings will, as far as reasonably practicable be:
- (a) in person; and
  - (b) attended by the UTC Contact Person, the FWO Contact Person and other appropriate senior personnel.
- 29.2 Discussions at these meetings will include, but not be limited to, the following issues:
- (a) progress and feedback on the requirements of and activities associated with implementing the terms of the Deed;
  - (c) the ongoing compliance relationship between the FWO and UTC;
  - (b) the number, nature and outcomes of workplace Enquiries and Requests for Assistance received by both parties during the period;
  - (d) workplace compliance issues and steps taken by UTC to resolve any enquiries or Requests for Assistance from its service network and the maintenance and improvement of its systems and processes to ensure compliance within its service network;
  - (c) review of required reports and discussion of next steps and key learnings; and
  - (d) the self-audit process, Third Party Validation and outcomes.

## Part IX – Resources

### 30. *Resources*

- 30.1 UTC will commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of this Deed.
- 30.2 UTC has identified a UTC Contact Person to whom all queries from the FWO about the implementation of the Deed or any requests for assistance referred by the FWO should be directed. UTC will notify the FWO in writing within 7 days of any change to the UTC Contact Person.

- 30.3 UTC will make available a specified person or people to act as UTC Liaison Officers to whom all queries from UTC employees, Subcontractors or employees of Subcontractors, about the self-audit process, workplace entitlements or any Requests for Assistance referred by the FWO, should be directed. UTC will notify the FWO in writing within 7 days of any change to the UTC Liaison Officers.
- 30.4 The FWO has identified a FWO Contact Person to whom all queries from UTC should be directed. The FWO will notify UTC in writing within 7 days of any change to the FWO Contact Person.

## Part X – Other terms

### 31. **Acknowledgements**

#### 31.1 UTC acknowledges that:

- (a) there are opportunities for continuous improvement in relation to its workplace practices to ensure ongoing compliance with Commonwealth workplace laws;
- (b) the promises it has given in this Deed are reasonable in the circumstances;
- (c) the FWO may:
  - i. make this Deed available for public inspection, including by posting it on the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au);
  - ii. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
  - iii. issue a media release(s) in relation to this Deed;
  - iv. promote the UTC corporate logo on [www.fairwork.gov.au](http://www.fairwork.gov.au); and
  - v. from time to time, publicly refer to this Deed and its terms;
- (d) the FWO may use, and nothing in this Deed prevents the FWO from using information or documents provided by UTC under this Deed to pursue compliance or enforcement action in accordance with its ordinary processes, including relying on such information or documents as evidence in Court;
- (e) if UTC contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

**32. Commencement of Proactive Compliance Deed**

- 32.1 This Deed comes into effect when both UTC and the FWO have executed this Deed.
- 32.2 This Deed will expire at the end of four years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

**33. Publicity**

- 33.1 Subject to clause 31.1(d) above, the FWO will not publicise or release information provided by UTC pursuant to this Deed to third parties, except where provided for in this Deed or required or authorised by law.
- 33.2 The FWO agrees to provide UTC with at least one business day to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO.
- 33.3 Notwithstanding 33.2, UTC agrees and acknowledges that, if UTC makes any suggested edits or amendments to the Releases, the FWO is under no obligation to accept any of them.
- 33.4 FWO agrees and acknowledges that UTC may, subject to clause 33.5 below, issue its own media releases in relation to this Deed.
- 33.5 UTC agrees to provide the FWO with at least one business day to view all UTC media releases arising under this Deed prior to publication by UTC.

**34. No inconsistent statements**

- 34.1 UTC:
  - (a) will not; and
  - (b) will ensure that each of its officers, employees or agents do not; and
  - (c) will use its reasonable endeavours to ensure that each of its Subcontractors, and each of its Subcontractors' officers, employees or agents, do not;make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the Acknowledgements made in this Deed.

**35. Termination by the FWO**

35.1 At any time, without prejudice to any right or remedy it may have, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if UTC commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

**36. *Independent legal advice***

36.1 UTC acknowledges that:

- (a) before executing this Deed, UTC was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, UTC considered its position; and
- (c) UTC fully understands the effect of this Deed.

**37. *Continuing obligations***

37.1 The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):

- (a) clause 25 (Reporting)
- (b) clause 31 (Acknowledgements); and
- (c) clause 34 (No inconsistent statements).

**38. *Legally binding***

38.1 The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

**39. *Entire agreement***

39.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and UTC.

**40. Construction**

40.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

40.2 Unless expressed to the contrary in this document:

(a) words in the singular include the plural and vice versa; and

(b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

**41. Severance**

41.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

**42. Governing law**

42.1 This Deed shall be construed in accordance with the laws for the time being of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

**43. Counterparts**

43.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

**44. Costs in respect of this Deed**

44.1 The parties will pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

**45. Notices**

- 45.1 Any notice, request or other communication to be given or served pursuant to this Deed will be in writing and dealt with as follows:
- (a) if given by UTC to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
  - (b) if given by the FWO to UTC, marked for the attention of the UTC Contact Person with the address indicated in Schedule 1 or as otherwise notified by UTC.
- 45.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.
- 45.3 Any notice, request or other communication will be deemed to be received:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent; and
  - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

**46. *Date of this Deed***

- 46.1 The date of this Deed is the date the parties execute the Deed, or, if it is executed on different dates, the date of last execution.

## Part XI – Definitions

In this Deed:

**Commonwealth** means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman.

**Commonwealth workplace laws** means:

- (a) the Fair Work Act 2009;
- (b) the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009;
- (c) the Fair Work Regulations 2009;
- (d) the Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009; and
- (e) Fair Work Instruments

**Deed** means this Proactive Compliance Deed, including any Schedules.

**Enquiry** means an enquiry regarding workplace conditions relating to UTC or a Subcontractor. An Enquiry does not include a Request for Assistance.

**Fair Work Instruments** means:

- (a) a modern award;
- (b) an enterprise agreement;
- (c) a workplace determination; and
- (d) a Fair Work Commission order.

**FW Act** means the *Fair Work Act 2009* (Cth).

**FWO** means the Fair Work Ombudsman.

**FW Regulations** means the *Fair Work Regulations 2009* (Cth).

**FWO Contact Person** means the person nominated by the Fair Work Ombudsman in Schedule 1 to this Deed, or any other person specified by the Fair Work Ombudsman in writing and notified to UTC.

**Independent Third Party** may include a certified practicing accountant (**CPA**) and/or a specialist in workplace relations, including a registered organisation such as an employer association.

**Request for Assistance** means a request made to the Fair Work Ombudsman using a Request for Assistance – Workplace dispute form or its current equivalent.

**Significant Contravention** means:

- (e) a contravention of any of the general protections provisions contained in Part 3-1 of the FW Act;
- (f) multiple or deliberate contraventions of an employer's record keeping obligations in relation to employee records contained in Part 3-6 Division 3 of the FW Act and FW Regulations;
- (g) one or more contraventions of the FW Act giving rise to underpayments of more than \$5,000 in total (not per employee);
- (h) a failure to comply with a Notice to Produce issued by a Fair Work Inspector under section 712 or a Compliance Notice issued under section 716 of the FW Act;
- (i) a Serious Contravention as defined in the FW Act;
- (j) any other contravention that the FWO considers serious.

**Subcontractor** means a person or entity to whom UTC has subcontracted the provision of Trolley Collection Services at a UTC Site.

**Third Party Validation** means the reports received by the FWO from an Independent Third Party that validate and certify the outcomes of the self-audit, in accordance with clause 24.

**Trolley Collection Services** means the collection and distribution of shopping trolleys, including street runs.

**UTC** means United Trolley Collections Pty Ltd (ABN 69 115 542 946).

**UTC Contact Person** means the person nominated by UTC in Schedule 1 to this Deed, or any other person specified by UTC in writing and notified to the FWO.

**UTC Liaison Officer/s** means any person nominated by UTC to answer workplace relations and other enquiries from employees and from Subcontractors and their employees

**UTC Site** means a site in Australia at which UTC is contracted to provide Trolley Collection Services.



Signing Page

**EXECUTED BY** United Trolley Collections Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth)

_____	_____
(Signature of Director/Secretary)	(Signature of Director)
_____	_____
(Name of Director/Secretary)	(Name of Director)
_____	_____
(Date)	(Date)

**SIGNED FOR** and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Office of the Fair Work Ombudsman

_____	_____
(Printed Name)	(Signature)
_____	_____
(Title)	(Date)

**In the presence of:**

_____	_____
(Name of witness in full)	(Signature)