

Major Services Contract for Domestic, Cleansing (Putrescible) and Parks Waste Receipt, Processing and Disposal Services

The Council of the City of Sydney
ABN 22 636 550 790

Cleanaway Pty Ltd
ABN 79 000 164 938

Version 3, 2019
Ref 2022/186601

KEY DETAILS

1 **Date** See Execution page

2 **Parties**

City

Name

The Council of the City of Sydney

ABN 22 636 550 790

Service Provider

Name

Cleanaway Pty Ltd

ABN 79 000 164 938

BACKGROUND

- A The City wishes to engage the Service Provider, and the Service Provider has agreed to perform the Services, on the terms set out in the Contract.

TERMS

1. In this Formal Instrument of Agreement, terms which are defined in the General Conditions of Contract have the same meanings when used in this Formal Instrument of Agreement.
2. The parties agree that the Contract comprises the following documents:
 - (a) this Formal Instrument of Agreement;
 - (b) the General Conditions of Contract;
 - (c) Schedule 1 (Contract information);
 - (d) Schedule 2 (Fee);
 - (e) Schedule 3 (Specifications);
 - (f) Schedule 4 (Contract Area);
 - (g) Schedule 5 (Statutory Declaration and Subcontractor's Statement);
 - (h) Schedule 6 (Bank Guarantee); and
 - (i) Schedule 7 (Expert Determination Agreement).
3. The parties agree that they must perform their respective obligations under the Contract.

4. The parties acknowledge and agree that:
 - (a) the Contract applies to all Services, whether they are performed before, on or after the Date of the Contract; and
 - (b) if any payments have been made to the Service Provider by the City prior to the Date of the Contract with respect to any Services, those payments are deemed to have been made pursuant to the Contract.
5. Each party represents and warrants to the other party that:
 - (a) it has full power to enter into and to comply with its obligations under the Contract;
 - (b) it has taken all necessary action to authorise its entry into and to comply with its obligations under the Contract;
 - (c) it has in full force and effect the authorisations necessary to enter into the Contract and to comply with its obligations under it and to allow it to be enforced; and
 - (d) its obligations under the Contract constitute its binding obligations and are completely and lawfully enforceable against it in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity.
6. If the Contract is signed in counterparts, then each counterpart is deemed an original and together they constitute one document.

EXECUTION

Executed as a deed

**Signed for and on behalf of the Council
of the City of Sydney** ABN 22 636 550
790 by its duly authorised officer in the
presence of:

Signature of witness

Signature of authorised officer

Print name

Print name

Date signed by authorised officer

Signed by Cleanaway Pty Ltd
ABN 79 000 164 938
in accordance with section 127(1) of the
Corporations Act 2001 (Cth):

Signature of director/company secretary

Signature of director

Print name

Print name

EXECUTION

Executed as a deed

**Signed for and on behalf of the Council
of the City of Sydney** ABN 22 636 550
790 by its duly authorised officer in the
presence of:

[Redacted signature]

Signature of witness

[Redacted name]

Print name

[Redacted signature]

Signature of authorised officer

[Redacted name]

Print name

21/12/2022

Date signed by authorised officer

Signed by Cleanaway Pty Ltd
ABN 79 000 164 938
in accordance with section 127(1) of the
Corporations Act 2001 (Cth):

Signature of director/company secretary

Print name

Signature of director

Print name

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GENERAL CONDITIONS OF CONTRACT

1 Definitions and interpretation

1.1 Definitions

In the Contract, except where the context otherwise requires:

Approved means approved, an approval or selection by the Contract Manager at their sole discretion.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Background Intellectual Property Rights means Intellectual Property Rights in documents or materials (including the Deliverables) provided by a party in connection with the Contract or the Services that is in existence prior to the Date of the Contract or developed or conceived by a party independently of the Contract.

Business Day means a day other than:

- (a) a Saturday, Sunday or a public holiday in New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

Chain of Responsibility Provisions refers to any section of the Heavy Vehicle Law under which the Service Provide. is 'a party in the chain of responsibility' (within the meaning given to that term under the Heavy Vehicle Law).

City's Material means all Material provided by or on behalf of the City to the Service Provider for the purposes of the Contract, and all adaptations, enhancements and derivative works of such Material.

City's Policies means all policies and procedures relevant to the provision of the Services, as notified in writing to the Service Provider.

City's Property means any property used or operated by or on behalf of the City and includes any systems, equipment or premises, whether owned, leased, licensed or rented by or on behalf of the City.

Claim includes any claim for an increase in the Fee, or for payment of money (including damages) or for an extension of time:

- (a) under, arising out of or in any way connected with the Contract, including any direction of the Contract Manager;
- (b) arising out of or in any way connected with the Services or either party's conduct before the Date of the Contract; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Commencement Date means the date specified in Item 1, being the date on which the Service Provider must commence carrying out the Services.

Contract means the agreement between the City and the Service Provider comprising the documents identified in clause 2 of the Formal Instrument of Agreement.

Contamination means hazardous material including:

- (a) batteries;
- (b) medicines;
- (c) medical equipment;
- (d) clinical waste;
- (e) pet care chemicals;
- (f) mercury containing items;
- (g) cleaners, acids, polishes;
- (h) paints, dyes, inks and solvents;
- (i) treated and painted timber;
- (j) smoke detectors;
- (k) pesticides, herbicides and used containers;
- (l) pool chemicals;
- (m) motor oils, sump oil, oil filters;
- (n) grease and used containers;
- (o) asbestos products;

- (p) gas cylinders; and
- (q) explosives and ammunition.

Contract Area means the area within which the Services will be provided as illustrated in Schedule 4 and further described in the Specifications.

Contract Manager means the person named in Item 2 who is appointed by the City to manage and supervise the performance of the Services.

CPI means the Consumer Price Index (All Groups) for Sydney compiled by the Australian Government Statistician, or if such index ceases to exist, such other index nominated by the City in substitution of the same.

Date of the Contract means the date on which the City executes the Formal Instrument of Agreement.

Defect means one or both of the following:

- (a) any defect, shrinkage, fault or omission in any part of the Services;
- (b) any aspect of the Services which is not in accordance with the requirements of the Contract.

Deliverables means any tangible property, including the establishment of any tree or plant life (as detailed or described in the Specifications), goods, products, documents, Materials or information (including notes, drawings, specifications, tools, methodologies, processes, sketches, templates, tables, reports and software programs) in any format, electronic or otherwise which the Service Provider is required to provide or supply to the City under the Contract or otherwise produces in connection with the Contract.

Developed Material means all systems and Material brought or required to be brought into existence by or on behalf of the Service Provider (excluding Material provided to the Service Provider by the City), product or results produced, concepts developed or work done by the Service Provider in the provision of Services to the City, including the Deliverables.

Disengagement Period means the period commencing on the date specified in clause 22 and ending on the intended date of termination of the Contract, which will either be:

- (a) the end of the Term; or
- (b) the date specified by the City in a termination notice given pursuant to a right to terminate under the Contract.

Disengagement Services means the services to be provided by the Service Provider in anticipation of the termination of the Contract, which will include:

- (a) selling, transferring, assigning or relocating the Developed Material (whether finalised or works in progress), and any associated equipment, parts, documents, files, plans and related items;

- (b) to the extent agreed by the relevant third parties, novating or assigning or securing the novation or assignment of such third party agreements (including software licences) as are specified by the City; and
- (c) transferring the Services,

to another services provider or to the City itself.

Dispose or Disposal means disposal of material to an appropriately licensed landfill.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with the Contract, including any dispute or difference as to the formation, validity, existence or termination of the Contract.

Environmental Laws means all laws and legislation relating to environmental protection, building and planning matters and includes the following:

- (a) the *Protection of the Environmental Operations Act 1997* (NSW);
- (b) the *Biosecurity Act 2015* (NSW); and
- (c) the *Contaminated Land Management Act 1997* (NSW).

Expiry Date means the date referred to in Item 3.

Fee means the fee for the Services calculated in accordance with the Schedule of Rates as may be adjusted in accordance with the Contract.

Force Majeure Event means in relation to a party an act, omission, event or circumstance which:

- (a) is beyond the reasonable control of that party; and
- (b) includes a fire, flood, earthquake, terrorism, riot, explosion or war, communicable disease for which the World Health Organisation or Department of Foreign Affairs and Trade have issued affected area or travel warnings, state-wide or national strike or other state-wide wide or national industrial action (except where such act, omission or circumstances is caused by the Service Provider).

Formal Instrument of Agreement means the "Formal Instrument of Agreement" to which the General Conditions of Contract are attached.

Further Term means an extension of the Term under clause 20.2.

General Conditions of Contract means the part of the Contract headed "General Conditions of Contract".

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or

- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means the same as in the GST Law.

GST Law means the same as "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Heavy Vehicle Law means the:

- (a) Heavy Vehicle National Law (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); and
- (b) regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) as amended, reproduced or updated from time to time.

Independent Expert has the meaning given in clause 3.11(e).

Information Documents means:

- (a) the documents and other information described in Item 4; and
- (b) any other information identified by the City, whether before, on or after the Date of the Contract, as being for information only.

Insolvency Event means, in relation to the Service Provider, where:

- (a) it informs the City in writing or its creditors that it is insolvent or is financially unable to proceed with the Contract;
- (b) it is unable to pay its debts as and when they fall due;
- (c) notice is given of a meeting of its creditors with a view to the corporation entering a deed of company arrangement;
- (d) it enters a deed of company arrangement with its creditors;
- (e) a controller or administrator is appointed;
- (f) a winding-up order is made against it;
- (g) it resolves by special resolution that it should be wound up voluntarily; or
- (h) it suffers an event or circumstance analogous to an event or circumstance set out in paragraphs (a) to (g) above.

Intellectual Property Right means:

- (a) all intellectual property rights, including copyright, trade marks, designs, circuit layouts, patents, inventions, discoveries and rights of confidence; and

- (b) all other rights or forms of protection of a similar nature or having similar or equivalent effect to any of them, whether under international convention or otherwise,

that may subsist anywhere in the world, whether current or future or registered (including applications for any of the above) or unregistered (but excluding Moral Rights).

Item means an Item in Schedule 1.

Key Personnel means the persons nominated in Item 5, as may be varied in accordance with clause 4.2(c).

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws, the GST Law, Privacy Laws and WHS Law.

Material means material in any form (whether visible or not), including documents, advertisements (in print, electronic or recorded format), recordings on disc or any other form of storage, reports, products, equipment, information, data, software, software tools and software development methodologies, and includes all releases, updates and amendments to the original material.

Material Obligation means the obligations set out clauses 3, 4.2, 4.3, 5, 0, 11, 16, 18 and 19.

Moral Rights means moral rights as described under Part IX of the *Copyright Act 1968* (Cth), and any analogous rights that exist anywhere in the world.

Nominated Alternative Facility means the Service Provider's facilities nominated in Section 7.1.2 of the Specifications including for the purpose of receiving, transferring, processing and disposing of Waste in the event of scheduled or unscheduled downtime of any Nominated Primary Facility.

Nominated Primary Facility means the Service Provider's primary facilities nominated in Section 7.1.1 of the Specifications including for the purpose of receiving, transferring, processing and disposing of Waste.

Operations Manager means the person named in Item 6 of Schedule 1 who is appointed by the Service Provider to manage and supervise the performance of the Services.

Personal Information means all personal information as defined under section 6 of the *Privacy Act 1988* (Cth) and section 4 of the *Privacy and Personal Information Protection Act 1998* (NSW) that is provided or obtained by the Service Provider or its Personnel in connection with the performance of its obligations under the Contract.

Personnel means a party's officers, employees, agents or contractors, and in relation to the Service Provider, includes its Key Personnel and Subcontractors.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

Residual Material means material remaining after treatment of Waste at the Service Provider's facilities which requires Disposal.

Quality and Operational Management Plan means the Quality and Operational Management Plan referenced in the Specifications.

Rate means a rate in the Schedule of Rates.

Rise and Fall means the adjustment of the rates in the Schedule of Rates calculated in accordance with the Rise and Fall Formula.

Rise and Fall Formula means the formula set out in Part C of Schedule 2.

Schedule of Prices means the schedule of prices set out in Part A of Schedule 2.

Schedule of Rates means the schedule of rates set out in Part B of Schedule 2.

Security means:

- (a) an approved unconditional undertaking (the form in Schedule 6 is approved);
- (b) an approved performance undertaking given by an approved financial or insurance institution authorised by APRA to conduct new or renewal insurance business in Australia; or
- (c) such other form of security approved by the City.

Service Levels means the service levels set out in Section B of the Specifications.

Services means the services described in the Specifications, as may be varied in accordance with clause 12.1.

Service Provider's Material means any Material owned by or licensed to the Service Provider associated or connected with the performance of the Services or provision of the Deliverables but does not include the Developed Material.

Specifications means the document referred to in Schedule 3.

Subcontractor means a person engaged by the Service Provider in accordance with clause 4.3 to assist in the provision of the Services.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Term has the meaning given to that term in clause 20.1.

Waste means putrescible waste listed in Section B of the Specifications sourced from within the City's local government area.

Waste Diversion from Landfill Rate means Waste quantities diverted from landfill.

WHS Law means the *Work Health and Safety Act 2011* (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.

WHS Returnable Documents means the work health and safety documentation described in Item 11, including risk assessments and safe work method statements in relation to the Services.

Work Site means the site referred to in Item 7.

1.2 Interpretation

In the Contract, except where the context otherwise requires:

- (a) clause and subclause headings shall not be used in the interpretation of the Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (c) words importing a gender include every gender;
- (d) a reference to \$ or dollars is to Australian dollars;
- (e) the words "including", "include" and "included" are deemed to be followed by the words "without limitation";
- (f) a reference to legislation or a provision of legislation is to that provision or legislation as amended, re-enacted or replaced from time to time;
- (g) a reference to a document that comprises the Contract includes a reference to a part, clause, schedule, exhibit, annexure and appendix to, of and in that document;
- (h) a reference to a body which ceases to exist is a reference to a body that the parties agree to substitute for the named body or, failing agreement, to a body having substantially the same objects as the named body; and
- (i) where the Service Provider comprises of more than one person, each of the persons comprising the Service Provider will be jointly and severally liable under the Contract.

1.3 Contra proferentem

This Contract is not to be interpreted against the interests of a party merely because that party proposed the Contract or some provision in it.

1.4 Ambiguity or discrepancy

- (a) If the Service Provider becomes aware of any ambiguity or discrepancy in any document forming, or a provision of, the Contract, the Service Provider must, within 10 Business Days of becoming aware, give written notice to the City detailing the ambiguity or discrepancy.

- (b) The City must direct (acting reasonably) the Service Provider as to the interpretation to be followed as soon as reasonably practicable after receipt of a notice under clause 1.4(a).

1.5 Miscellaneous

- (a) Where a party is comprised of two or more persons, each person will be jointly and severally bound by that party's obligations under the Contract.
- (b) Any provision of the Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
- (c) Any consent or approval required under the Contract will only be effective if given in writing and may be given conditionally or unconditionally or withheld in the absolute discretion of the person whose consent or approval is required unless otherwise expressly provided.
- (d) Any amendment or modification to the Contract will only be effective if given in writing and signed by or on behalf of both parties.
- (e) Unless a contrary intention is specifically expressed, no provision of the Contract limits any right of the City or the Service Provider, whether under the Contract or under any law.
- (f) Unless a contrary intention is specifically expressed, none of the following items limit or otherwise reduce the Service Provider's warranties or obligations under the Contract:
 - (i) an approval or consent given by or on behalf of the City; or
 - (ii) any review, consultation, monitoring or audit undertaken by or on behalf of the City.

2 Engagement of the Service Provider

2.1 Key obligations

- (a) The Service Provider must perform its obligations under the Contract, including the Services, in accordance with the terms of the Contract.
- (b) The City must pay the Service Provider the Fee in accordance with the Contract.
- (c) The Service Provider's entitlement to payment under the Contract in respect of the performance of the Services is strictly limited to:
 - (i) the Fee; and
 - (ii) any other payment to be made under an express provision of the Contract,

and no other circumstances. Without limiting the foregoing, the Service Provider acknowledges and agrees that there may be periods of inactivity on the part of the Service Provider between stages of the Services and the Service Provider must not make any claim against the City as a result of any such inactivity.

- (d) Except where the Service Provider is entitled to payment in accordance with an express provision of the Contract, the Service Provider must bear all costs and expenses (including travel, accommodation and other disbursements) in relation to the performance or non-performance of the Services and its other obligations under the Contract.

2.2 Independent contractor

- (a) The Service Provider is engaged as an independent contractor.
- (b) Nothing in the Contract makes the Service Provider an employee, agent, partner or joint venturer of the City.

2.3 No authority

Except with the prior written consent of the City, the Service Provider acknowledges and agrees that it has no authority to, and must not:

- (a) act on behalf of the City;
- (b) incur any obligation on behalf of the City; or
- (c) enter into any verbal or written agreement on behalf of the City.

2.4 Conflict of interest

- (a) As at the Date of the Contract, the Service Provider is not aware of any matter which may give rise to an actual or perceived conflict of interest relating to the performance of the Services by the Service Provider.
- (b) If, at any time prior to the expiry or earlier termination of the Contract, the Service Provider becomes aware of any matter which may give rise to an actual or perceived conflict of interest relating to the performance of the Services by the Service Provider, the Service Provider must:
 - (i) promptly notify the City of such matters, including making full disclosure of all relevant information relating to the conflict; and
 - (ii) take such steps to resolve or manage such conflict as reasonably required by the City.

3 Provision of the Services

3.1 General

The Service Provider must:

- (a) perform the Services (including providing the Deliverables) in accordance with the terms of the Contract;
- (b) comply strictly with the Specifications; and
- (c) ensure that all Services are provided in accordance with:
 - (i) the Service Levels; and
 - (ii) the minimum Waste from Landfill Diversion Rate set out in Section B of the Specifications; and
- (d) ensure that all Services and Developed Materials:
 - (i) meet the functional and technical specifications set out in Section A of the Specifications; and
 - (ii) comply with all applicable Laws and Australian Standards.

3.2 Acknowledgements by Service Provider

- (a) The Service Provider represents and confirms that it has the requisite technology, Personnel, resources and ability to enable it to perform the Services and all of its other obligations under the Contract.
- (b) The Service Provider acknowledges and agrees that the City has entered into the Contract relying on the representations and confirmations set out in clause 3.2(a).

3.3 Standard of Services

The Service Provider must:

- (a) at all times be suitably qualified and experienced for the performance of the Services;
- (b) perform the Services competently and professionally and with the due skill, care and diligence reasonably expected of a qualified and competent service provider experienced in providing services of a similar size, scope and complexity to the Services;
- (c) supply everything necessary for the performance of its obligations under the Contract;
- (d) use any equipment in performance of the Services in the proper manner and for the purposes for which it is provided and in accordance with the manufacturer's and supplier's directions;
- (e) cooperate with any of the City's Personnel in the performance of the Services or as otherwise reasonably directed by the Contract Manager from time to time, provided that it is not required to incur any additional costs in doing so unless the incurring of the additional costs have been previously approved by the Contract Manager or the City;

- (f) take all necessary and reasonable steps to ensure the security of the Work Site is maintained where applicable;
- (g) attend inspections of the Work Site with the City at the City's request;
- (h) ensure that:
 - (i) the Deliverables are fit for the purposes expressly stated in the Specifications; and
 - (ii) the Deliverables and Services comply strictly with the Specifications;
- (i) to the extent agreed by the manufacturer, ensure that the City has the benefit of all manufacturer's warranties for all products or goods supplied or used in relation to the Services and will enter into all documents and do all things required to do so; and
- (j) upon request by the City, give to the City free of cost one copy of the manufacturer's specifications (if any) for any products or goods used in performance of the Services.

3.4 Timely provision of the Services

The Service Provider must:

- (a) commence, progress and provide the Services expeditiously, without delay and in accordance with any reasonable directions of the Contract Manager (provided that it is not required to incur any additional costs in doing so unless the additional costs have been previously approved by the Contractor or the City); and
- (b) complete the Services by the Expiry Date unless the Term is extended pursuant to clause 20.2.

3.5 Safety and the environment

Without limiting its other obligations under the Contract or otherwise at law, when carrying out the Services, the Service Provider must:

- (a) immediately inform the Contract Manager if it becomes aware of the existence or possibility of any major work health, safety and environmental risks that cannot be managed to as low as reasonably practicable by the Service Provider (including any potential breach of any WHS Law);
- (b) notwithstanding the obligations in clause 3.5(a), advise the Contract Manager of the cause of the risk and to the extent it is possible to remove the risk, remove the risk as soon as practicable after becoming aware of the risk identified pursuant to clause 3.5(a);
- (c) have a work health and safety management system in place and apply that system at all times whilst carrying out the Services;
- (d) if applicable, prior to commencing any Services on the Work Site, ensure that all Personnel have undertaken any required induction; and

- (e) as necessary, consult, cooperate and coordinate activities with the City and any other persons who have a common duty under the WHS Law.

3.6 Review of Deliverables

- (a) The Contract Manager may:
 - (i) review any Deliverable, or any resubmitted Deliverable, prepared and submitted by the Service Provider; and
 - (ii) within the number of days set out in Item 8 (or other mutually agreed period) of the submission by the Service Provider of such Deliverable or resubmitted Deliverable, reject the Deliverable if the Contract Manager, acting reasonably, determines the Deliverable is Defective.
- (b) If any Deliverable is rejected, the Service Provider must promptly (and in any event within the period specified in Item 9) resubmit the amended Deliverable to the Contract Manager.
- (c) The Service Provider acknowledges and agrees that:
 - (i) the City shall not be required to check any Deliverable for Defects; and
 - (ii) any review of, or comment by, the Contract Manager or the City in relation to a Deliverable provided by the Service Provider under the Contract, shall not relieve the Service Provider from its liabilities and responsibilities under the Contract or otherwise at law.

3.7 Risk of loss of documents

Until the Service Provider stores all documents created in connection with the Services on the City's relevant asset or document management system, the Service Provider is responsible for the preservation from loss or damage of all documents (including documents stored electronically) created by or provided to the Service Provider in connection with the Services, including the Deliverables.

3.8 Authorisations

The Service Provider must:

- (a) ensure that it has all Authorisations which are necessary for it to lawfully provide the Services;
- (b) ensure that any such Authorisations are held throughout the Term; and
- (c) provide the City with a copy of any Authorisation and give proof of its currency at the City's request.

3.9 Quality assurance

- (a) The Service Provider must establish and maintain a documented quality assurance system about the Services in accordance with any standard referred to in Item 10.
- (b) The Service Provider must allow the City, or any person nominated by the City, reasonable access to all premises, Personnel, systems, equipment and documents necessary to permit the auditing of the Service Provider's quality control system.

3.10 WHS and environmental obligations

- (a) The Service Provider must accurately complete and provide to the City the WHS Returnable Documents by the due dates set out in Item 11.
- (b) Without limiting clause 3.1(c), the Service Provider must in the performance of the Services:
 - (i) comply with the City's environmental and work health and safety policies as notified by the City to the Service Provider in writing; and
 - (ii) without limiting clause 3.10(b)(i):
 - (A) act in such a manner as to avoid nuisance, unreasonable interference, or damage to the environment and in accordance with any environmental management plan provided by the City to the Service Provider;
 - (B) dispose of all solid, liquid and gaseous contaminants in accordance with applicable Laws and/or the City's requirements and/or the requirements of any relevant Government Agency;
 - (C) remove all refuse resulting from the performance of the Services; and
 - (D) not use or permit the use of any toxic chemicals or materials in connection with the performance of the Services without the City's prior consent and the prior consent of any relevant Government Agency or land owner.
- (c) The Service Provider must notify the City if the Service Provider becomes aware that any of its Personnel is not complying with the City's Policies notified by the City to the Service Provider in accordance with clause 3.10(b)(i) or with any work health and safety requirements applicable to the Services.
- (d) Where the legislation requires, the City appoints the Service Provider as the principal contractor under the *Work Health & Safety Act 2011* (NSW). The Service Provider must bear all costs associated with being the principal contractor.

3.11 Property damage

- (a) The Service Provider must as soon as practicable remedy any damage done by its employees, agents or subcontractors to any property of the City or any other person. If the Service Provider fails to remedy any such damage within 10 Business Days of the occurrence of the damage, the City may:
 - (i) issue a notice to the Service Provider requiring the Service Provider to remedy the damage as soon as practicable; and
 - (ii) if the Service Provider has not remedied the damage within 5 Business Days of the date of the notice under clause 3.11(a)(i), elect to either:
 - (A) effect the repairs either itself or by its contractors; or
 - (B) pay reasonable compensation to the owner of the damaged property.
- (b) Subject to clause 3.11(c), the cost of effecting any repairs under clause 3.11(a)(ii)(A) or the amount of any reasonable compensation under clause 3.11(a)(ii)(B):
 - (i) must be paid by the Service Provider on demand by the City; or
 - (ii) will be deducted from any moneys due or becoming due to the Service Provider under this Contract,at the election of the City.
- (c) Where the cost of repairs under clause 3.11(a)(ii)(A) or reasonable compensation under clause 3.11(a)(ii)(B) (as the case may be), exceeds ten thousand dollars (\$10,000) the Service Provider may request an Independent Expert review the costs. The cost of any such review will be added to the amount of the claim for the costs of damage.
- (d) If, after obtaining the Independent Expert's review of the costs, the parties cannot agree on an amount to satisfy clause 3.11(a)(ii), either party may issue to the other party a notice of dispute clause 21.
- (e) For the purposes of clause 3.11, an Independent Expert is a person agreed by the parties as having the skills and experience necessary to carry out the review. If no such agreement is reached within 21 days of the Service Provider's request in accordance with clause 3.11(c), either party may request the President for the time being of the Law Society of New South Wales to nominate the Independent Expert and the expert so nominated shall be appointed to carry out the review.

4 Contract Manager and Service Provider's Personnel

4.1 Contract Manager

- (a) The Contract Manager has authority to act on behalf of the City as its agent and for all purposes in connection with the Contract, except as notified to the Service Provider by the City.
- (b) The Contract Manager may, from time to time, appoint individuals to exercise delegated functions of the Contract Manager, provided that:
 - (i) the Contract Manager gives the Service Provider written notice of respectively:
 - (A) the appointment, including the name and delegated functions of the appointed person; and
 - (B) the termination of each appointment.

4.2 Service Provider's Personnel

- (a) The Service Provider must only engage Personnel in the performance of the Services who:
 - (i) are appropriately qualified, competent and experienced in the provision of the type of services required under the Contract; and
 - (ii) hold and maintain all necessary professional, technical, trade or other licences, authorisations and registrations relevant to the Services and the Contract.
- (b) The Service Provider must replace any Personnel involved in the performance of the Services who, in the reasonable opinion of the Contract Manager:
 - (i) do not fulfil any of the criteria set out in clause 4.2(a); or
 - (ii) fails to comply with the obligations set out in clause 4.2(c).
- (c) The Service Provider must:
 - (i) ensure that each Key Personnel undertakes the role specified in Item 5, and must not replace any Key Personnel without the prior written approval of the Contract Manager, acting reasonably;
 - (ii) not permit any Key Personnel to undertake any other role or assignment which would conflict with the Service Provider's obligations under the Contract;
 - (iii) ensure the Personnel comply with any specific dress code and other requirements notified in writing by the City from time to time, including any requirement to display identification (such as name tags or badges) and accreditation issued by the City;

- (iv) ensure the Personnel render the Services in a polite and helpful manner; and
- (v) promptly, but in any event no later than 5 Business Days:
 - (A) advise the Contract Manager in writing if it becomes aware or if a Key Personnel in fact ceases to be employed by the Service Provider; and
 - (B) advise the Contract Manager with whom the Service Provider proposes to replace the affected Key Personnel, with the Contract Manager able to reject any person proposed under this clause 4.2(c)(v)(B) at the Contract Manager's discretion, acting reasonably.
- (d) The Service Provider is solely responsible for maintaining the employer/employee relationship with all Personnel, including but not limited to payment to Personnel of all wages, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits or allowances under any legislation, industrial award, agreement or contract of employment that are the employer's responsibility to pay for work performed by Personnel in the execution of an assignment.
- (e) The Service Provider's responsibility for the performance of the Services and for the work and performance of its Personnel is not lessened or otherwise affected in any way by this clause 4.2 or by anything done in accordance with this clause 4.2.

4.3 Subcontracting

- (a) Without limiting clause 4.2, the Service Provider may only engage Subcontractors in connection with the provision of the Services if, before the engagement of any proposed Subcontractor, the City has approved in writing the engagement of that Subcontractor for the relevant part of the Services (each an Approved Subcontractor).
- (b) Other than in emergency situations, the City's consent to approve the engagement of any Subcontractor may be withheld at the City's absolute discretion.
- (c) If the Service Provider engages a Subcontractor, the Service Provider must:
 - (i) ensure the services performed by the Subcontractor meet the applicable requirements of the Contract;
 - (ii) be entitled to immediately terminate the engagement of the Subcontractor if the Contract is terminated;
 - (iii) ensure that the proposed Subcontractor and its officers, employees, agents or contractors involved in the performance of the subcontracted services:

- (A) are appropriately qualified, competent and experienced in the provision of the type of services required under the Contract; and
- (B) hold and maintain all necessary professional, technical, trade or other licences, authorisations, registrations and insurances relevant to the subcontracted services; and
- (iv) on request from the Contract Manager, provide the City with a copy of any subcontract entered into with the Subcontractor (without prices if the Service Provider requires).
- (d) The obligations of the Service Provider under the Contract are not lessened or otherwise affected by any subcontracting.
- (e) The Service Provider is responsible for the acts and omissions of its Subcontractors as if they were acts and omissions of the Service Provider.
- (f) The parties agree to meet at least once every 6 months to consider, and if necessary amend, the list of Approved Subcontractors.

5 Security

5.1 Provision

Security must be provided by the Service Provider in accordance with Item 12.

5.2 Recourse

Security will be subject to recourse by the City where the City:

- (a) considers that the Service Provider is in breach of any of its Material Obligations, or otherwise has a Claim against the Service Provider:
 - (i) the breach gives rise to a right of the City to terminate the Contract; or
 - (ii) there is money due and payable to the City under the Contract that is unpaid; or
- (b) has any other entitlement under the Contract to have recourse to the Security,

notwithstanding the existence of any Dispute between the City and the Service Provider.

5.3 Reduction and release

- (a) Subject to clause 14.3, the City's entitlement to the Security will cease upon the expiry of the relevant Security.

- (b) Upon the City's entitlement to Security ceasing under clause 5.3(a), the City will release and return the Security promptly (and in any event within 20 Business Days) to the Service Provider.

5.4 No injunction

The Service Provider acknowledges and agrees that it will not at any time take steps to injunct or restrain or attempt to injunct or restrain any issuer of Security contemplated in this clause 5 from paying the City pursuant to that Security or the City from taking any steps to obtain payment under any such Security or using the proceeds of any such Security.

6 Behaviour and conduct

The Service Provider must ensure that it and its Personnel do not engage in any conduct that:

- (a) will, or is likely to, harm the City or its name, reputation or services; or
- (b) may bring the Service Provider or the City into disrepute, scandal or ridicule.

7 Administration of the Contract

7.1 Directions by Contract Manager

- (a) Subject to clause 12.1, the Service Provider must comply with all reasonable directions given by the Contract Manager.
- (b) If a direction by the Contract Manager is given orally, the Contract Manager must confirm the oral direction in writing within 5 Business Days.
- (c) If a direction by the Contract Manager is given orally and is to be relied upon by the Service Provider in seeking additional payment, the Service Provider must confirm the oral direction in writing with the Contract Manager within 1 Business Days of the direction in clause 7.1(b) being given.

7.2 Operations Manager

- (a) The Service Provider agrees that the Operations Manager has authority to receive and sign notices and written communications for the Service Provider under the Contract and accept any request or direction in relation to the Services.
- (b) The Service Provider may replace the Operations Manager from time to time by nominating a senior officer to take the place of the Operations Manager in writing to the City. The City may reject such person if it sees fit, acting reasonably.

- (c) The City may, on reasonable grounds, give notice to the Service Provider requiring it to replace the Operations Manager. The Service Provider must promptly nominate a senior officer acceptable to the City, acting reasonably, to take the place of the Operations Manager.
- (d) The Operations Manager must, from time to time, give sufficient information to the Contract Manager to enable the Contract Manager and the City to properly assess the performance of the Service Provider under the Contract.

8 Non-complying Services

8.1 Direction by Contract Manager

If the Contract Manager discovers a Defect or reasonably believes that any of the Services have not been performed in accordance with the Contract (including in strict accordance with the Specifications), and without limiting the City's rights elsewhere under the Contract or otherwise at law, the Contract Manager may at any time give the Service Provider a direction specifying the non-complying Services and may do one or more of the following:

- (a) require the Service Provider to:
 - (i) remedy the Defect to the Contract Manager's reasonable satisfaction, or re-perform the Services which are defective or otherwise non-complying and specify the time within which this must occur; and
 - (ii) take all such steps as are reasonably necessary to:
 - (A) mitigate the effect on the City of the failure to carry out the Services in accordance with the Contract; and
 - (B) put the City as closely as possible in the position in which it would have been if the Service Provider had carried out the Services in accordance with the Contract; or
- (b) advise the Service Provider that the City will accept the Defect or non-complying Services and make an appropriate adjustment to the Fee to take account of such Defect or non-compliance as reasonably determined by the Contract Manager.

8.2 Service Provider to re-perform

If a direction is given under clause 8.1, the Service Provider must re-perform the non-complying Services or rectify the Defect within the time specified in the Contract Manager's direction. The Contract Manager must act reasonably in giving such directions, including in relation to timeframes for re-performance or rectification of Defects.

9 Access to a Work Site

9.1 Non-exclusive access

- (a) Without limiting the Service Provider's other obligations under the Contract and subject to any limitation in Item 13, the City must give the Service Provider non-exclusive access to that part of a Work Site sufficient to enable the Service Provider to carry out the Services.
- (b) Delay by the City in giving access to a Work Site will not constitute a breach of the Contract.
- (c) The Service Provider will not be penalised for any delay in providing Services caused by insufficient access to, or an inability to access a Work Site.

9.2 Requirement for access to a Work Site

- (a) The Service Provider must:
 - (i) act co-operatively with the City and its Personnel and any occupiers and users of a Work Site; and
 - (ii) perform the Services so as to cause as little inconvenience as possible to those persons as well as occupiers and users of land adjacent to a Work Site.
- (b) Without limiting the Service Provider's other obligations under the Contract, the Service Provider must at all times while it is on a Work Site:
 - (i) comply with all procedures and policies of the City relating to a Work Site and directions of the Contract Manager; and
 - (ii) confine its activities within the minimum area necessary for the performance of the Services.

10 City's Property

10.1 Access to the City's Property

Unless otherwise agreed between the parties, where the Service Provider requires access or connection to the City's Property:

- (a) the City will grant the Service Provider access to the City's Property for the sole purpose of and only to the extent necessary as determined by the City to enable the Service Provider to provide the Services to the City, and by such means as the City determines in its absolute discretion;
- (b) the Service Provider must comply with any systems, health, safety, technical, security and other requirements, regulations, policies, directions and safety standards notified to it by or on behalf of the City from time to

time or as might reasonably be inferred from the use to which the City's Property are put;

- (c) the Service Provider must not use its access or connection to the City's Property to:
 - (i) interfere with or disrupt the City's Property or any equipment or service of any person (including the City customers and service providers);
 - (ii) circulate any unsolicited or unauthorised marketing, publicity or advertising material;
 - (iii) transmit computer worms or viruses;
 - (iv) send harassing, obscene, indecent or threatening electronic mail or messages; or
 - (v) forge electronic mail or messages or their source; and
- (d) the City may, without notice, suspend or terminate the Service Provider's access or the connection to the City's Property if:
 - (i) the Service Provider fails to comply with its obligations under this clause 10; or
 - (ii) the City reasonably believes that the Service Provider's access or connection to the City's Property is impairing, interfering with or damaging any part of the City's Property or their operation or any other equipment or service of any person (including any customers or service providers of the City).

10.2 Service Provider acknowledgment

The Service Provider acknowledges and agrees that access to the City's Property under clause 10 is at its own risk, except for any act or omission by the City.

10.3 Public information

The Service Provider must not:

- (a) take or permit to be taken any photograph, drawing or sketch of the Services being performed on a Work Site except for the purpose of performing the Services; or
- (b) in any advertising or promotional material, use or permit to be used the City's name,

except with the prior written consent of the City.

10.4 Keys

The Service Provider:

- (a) must comply with any directions of the City concerning the use of keys (including electronic cards or other devices necessary for obtaining access) supplied by the City to the Service Provider;
- (b) will be responsible for all keys issued;
- (c) must not lend the keys or remove the keys from a Work Site;
- (d) must maintain a key register which sets out, at a minimum:
 - (i) what keys have been provided to the Service Provider from the City;
 - (ii) the current location of those keys; and
 - (iii) the movement of those keys, including which Personnel have had access to or used those keys;
- (e) must not use the keys other than for access for provision of the Services; and
- (f) must meet the costs of the City supplying additional or replacement keys and any repinning, re-programming or re-keying of locks or security devices that the City requires due to keys being lost, stolen, damaged or unaccounted for by the Service Provider.

11 Reports, meetings and audits

11.1 Reports

The Service Provider must provide to the City:

- (a) all reports set out in the Specifications in accordance with the Specifications as applicable, and which are accurate and not misleading in any respect;
- (b) such other reports in relation to the Contract or the Services as may be reasonably requested by the Contract Manager from time to time and the Service Provider acting reasonably agrees to provide; and
- (c) without limiting the foregoing, if requested, a schedule demonstrating the Service Provider's resources available to meet the requirements of the Contract.

11.2 Meetings

The Service Provider must:

- (a) attend all meetings set out in the Specifications;
- (b) attend such other meetings in relation to the Services as may be reasonably requested by the Contract Manager; and

- (c) if requested by the Contract Manager, ensure that any relevant Subcontractors attend the meetings contemplated in this clause 11.2.

11.3 Availability, audit and access

- (a) Without limiting any of its other obligations under the Contract, the Service Provider must:
 - (i) keep complete, accurate and up to date records, including books of account, labour time sheets, final accounts and any other documents or papers which:
 - (A) show all details in relation to the Services (including evidence of compliance with clause 3.9 and matters relating to work health and safety such as any applicable safe work method statements); and
 - (B) are maintained in a form and manner that facilitates access and inspection under this clause 11;
 - (ii) at the request of the Contract Manager at any time during the performance of the Services, and the additional period of time (if any) stated in Item 14 following the completion of the Services or the earlier termination of the Contract, make available one complete set of the records referred to in clause 11.3(a)(i) for inspection and copying by:
 - (A) the City or the Contract Manager; or
 - (B) any other person nominated by the Contract Manager;
 - (iii) provide the Contract Manager with copies of documents affecting the Services as may be required by the Contract Manager;
 - (iv) participate in audits under the Contract at the frequency and in relation to the matters specified by the City (including on an ad hoc basis if requested by the City), for the purpose of ensuring that the Contract is being properly performed and administered. The City may, but is not obliged to, appoint an independent person to assist in the audits. Audits may consider all aspects of the Service Provider's performance; and
 - (v) participate promptly and cooperatively in any audits conducted by the City or its nominee.
- (b) The Service Provider must promptly take corrective action to rectify any error, non-compliance or inaccuracy identified during an audit in relation to the discharge of its obligations under the Contract.

12 Variation or suspension of Services

12.1 Directions to vary

- (a) The Contract Manager may before the Completion Date, by a written document titled "Variation Order", request the Service Provider to provide a written estimate of the time, cost and programming effects for a variation to the Services, provided the variation is within the general scope of the Contract.
- (b) If the Contract Manager requests the Service Provider to provide an estimate under clause 12.1(a), the Service Provider must provide the written estimate in accordance with clause 12.2 within the time nominated by the Contract Manager, acting reasonably.
- (c) Once agreed, the variation to the Services must be performed in accordance with and subject to the terms and conditions of the Contract and is deemed to be incorporated into the Contract.
- (d) If the Service Provider receives a direction from the Contract Manager which, the Service Provider considers to be a direction to carry out a variation, the Service Provider must:
 - (i) within 5 Business Days of receipt of such direction, advise the Contract Manager that it considers the direction to be a variation direction; and
 - (ii) not commence the services the subject of the direction until the Contract Manager advises:
 - (A) whether it considers the direction to be a variation; and
 - (B) if the direction is a variation, the parties have agreed the time, cost and programming effects for such variation subject to clause 12.2.
- (e) If the Contract Manager advises under clause 12.1(d)(ii)(A) that it does not consider the direction to be a variation and the Service Provider notifies the Contract Manager that it does not agree, either party may refer the matter to dispute resolution under clause 21.
- (f) If the Contract Manager directs a variation which omits any part of the Services:
 - (i) the City may thereafter carry out this omitted service either itself or by engaging another Service Provider; and
 - (ii) clause **Error! Reference source not found.** applies.

12.2 Valuation of variations

- (a) Unless otherwise agreed in writing between the Contract Manager and the Service Provider, the value of a variation must be determined using the rates and prices that in the opinion of the Contract Manager are reasonable,

having regard to the market for services similar to the Services. If requested by the Service Provider, the Contract Manager must provide evidence to support the valuation.

- (b) Following valuation of a variation in accordance with this clause 12.2, the Contract Manager will adjust the Fee accordingly.

12.3 Change in law

If a new law or a change in a law after the Date of the Contract:

- (a) necessitates a change to the Services;
- (b) has effect after the Date of the Contract; and
- (c) could not reasonably have been anticipated at the Date of the Contract,

then, to the extent the Services cost more for the Service Provider to perform due to the new or changed law, any such additional cost shall be valued pursuant to clause 12.2.

12.4 Suspension of Services

- (a) Other than where:
 - (i) permitted or required by law;
 - (ii) there is a potential or immediate threat to public interest, health or safety, damage to property, or harm to the environment; or
 - (iii) directed by the Contract Manager,the Service Provider must not suspend the performance of any or all of the Services.
- (b) The Service Provider must act reasonably in deciding whether to suspend under clause 12.4(a).
- (c) The Contract Manager may immediately suspend the performance of any or all of the Services at any time by giving a direction to that effect to the Service Provider where:
 - (i) required by law; or
 - (ii) there is a potential or immediate threat to public interest, health or safety, damage to property, or harm to the environment,
- (d) Except to the extent permitted or required by law, the Service Provider must resume the performance of the suspended Services as soon as practicable after being directed by the Contract Manager and, in any event, not later than 5 Business Days after receiving a written direction to do so from the Contract Manager.

- (e) The Service Provider is entitled to claim reasonable costs and expenses to the extent that:
 - (i) the Service Provider notifies the City of the nature of the costs and expenses and provides an estimate as soon as it becomes aware of the relevant costs and expenses; and
 - (ii) they:
 - (A) are necessarily incurred as a result of any suspension directed under clause 12.4(c); and
 - (B) are substantiated to the reasonable satisfaction of the City through the provision of all relevant documentation and records to the City, including but not limited to invoices, receipts, quotation of costs or expenses, purchase orders and any payment records,

provided the Service Provider will have no entitlement under this clause 12.4(e) to the extent the suspension is a result of a negligent act or omission or breach of Contract by the Service Provider or its Personnel.
- (f) To the extent permitted by law, the Service Provider is not entitled in contract, tort or otherwise to any payment or compensation for any costs or losses suffered by the Service Provider as a result of a suspension of the Services, except as provided for in this clause 12.4.

12.5 Changes in composition of material

- (a) During the term of this Contract, the following circumstance may occur which may impact on the operation of the Contract by the Service Provider

the introduction of an organics collection service by the City that is subscribed to by at least thirty percent (30%) of the dwellings from which waste is delivered under this Contract.
- (b) Without limiting other provisions of this Contract, if the circumstance set out in clause 12.5(a) occur, either party may, in writing, request the other to agree to an adjustment in the Fees. If the parties are unable to agree on the amount of the adjustment to be made, the dispute shall be dealt with in accordance with clause 21.

13 Force Majeure Notice and suspension of obligations

If a party to this Contract is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must as soon as practicable notify the other party of the Force Majeure Event;
- (b) within 2 Business Days of the Force Majeure Event taking place, give the other party prompt notice of the following details:

- (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (c) the obligations under this Contract of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

13.2 Effort to overcome

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

13.3 Alternative supply

During any period in which the Service Provider is not performing obligations because of a claimed Force Majeure Event, the City may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the Service Provider is not performing without incurring any liability to the Service Provider.

13.4 Termination

If a Force Majeure Event continues for more than 60 days, either party may terminate this Contract by giving at least 20 Business Day's written notice to the other party.

14 Payment

14.1 Payment claims

The Service Provider may only serve a payment claim on the City for the performance of Services in accordance with this Contract for amounts then payable:

- (a) on the date, or completion of the applicable event, stated in Item 15, provided however that not more than one payment claim may be served on the City in any month; and
- (b) in the form, and containing all details, set out below:
 - (i) the total amount claimed (including the amount of any applicable GST);
 - (ii) an itemised breakdown of how the payment claim is calculated;
 - (iii) documentary evidence supporting the Service Provider's claim for the Services performed during the relevant period, including the

statutory declaration and statements in the form and on the terms set out in Schedule 5 (or such other form and terms as may be required by the Contract Manager) signed by the Service Provider; and

- (iv) any other details reasonably required by the City.

14.2 Payment

- (a) The City must pay correctly rendered invoices, less any amount due from the Service Provider to the City as a result of clause 14.3, within 30 days of the date the City receives an invoice.
- (b) Unless otherwise agreed by the City, payment to the Service Provider will be made by electronic funds transfer to the Service Provider's nominated bank account as notified in writing to the City from time to time.
- (c) Payment of the Fee:
 - (i) is on account only; and
 - (ii) does not constitute any admission that performance by the Service Provider is in any respect in accordance with this Contract.

14.3 Set off

The City may set off or deduct at any time from any money payable to the Service Provider under this Contract:

- (a) any debt or other moneys due and payable from the Service Provider to the City under this Contract; or
- (b) any other money which has been either agreed in advance by the parties to be payable by the Service Provider or finally determined following the completion of a dispute resolution process between the parties.

14.4 GST

- (a) Terms used in this clause 14.4 which are not defined in the Contract, but which are defined in the GST Law, have the meanings given to them in the GST Law.
- (b) Amounts payable, and consideration to be provided, under any other provision of the Contract exclude GST unless otherwise stated in the Contract.
- (c) If GST is payable on a supply made under or in connection with the Contract (not being a supply the consideration for which is specifically described in the Contract as being inclusive of GST), the recipient of the supply ('**recipient**') must pay to the party making the supply ('**supplier**') an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply.
- (d) The supplier must give a tax invoice to the recipient before the time when the recipient is required to pay or provide any part of the consideration for the supply. Without limiting the foregoing, but subject to clause 14.5, where the supplier is the Service Provider, the Service Provider must, as soon as possible and in any event within 5 Business Days of the date specified in Item 15, provide the City with a tax invoice.

- (e) If an adjustment event arises in connection with a supply made under or in connection with the Contract, the supplier must recalculate the GST payable to reflect the adjustment event and give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event. The adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient, as the case requires.
- (f) If any part of a supply is treated as a separate supply for the purposes of the GST Law (including attributing GST payable to tax periods), that part of the supply will be treated as a separate supply for the purposes of this clause 14.4.
- (g) Where a party ('**payer**') must pay to another party ('**payee**') an amount in respect of a cost, expense or loss ('**outgoing**') of the payee, the amount payable is the sum of:
 - (i) the amount of the outgoing less any input tax credit in respect of it to which the payee, or its GST group representative member, is entitled; and
 - (ii) if the amount payable is subject to GST, an amount equal to that GST.

14.5 Recipient created tax invoices

The parties acknowledge that:

- (a) the City may, in its sole discretion, issue tax invoices in respect of all supplies under, or in connection with, the Contract and the Service Provider will not issue tax invoices when the City exercises this discretion;
- (b) the Service Provider is registered for GST and will notify the City if it ceases to be registered;
- (c) the City is registered for GST and will notify the Service Provider if it ceases to be registered, or if it ceases to satisfy any of the requirements of any tax ruling relating to the issue of recipient created tax invoices; and
- (d) if one, or more, of the criteria, which must be satisfied to allow the City to issue recipient created tax invoices, is not satisfied, such that the City cannot issue a tax invoice in respect of supplies made under, or in connection with, the Contract, the Service Provider must issue a tax invoice (being an invoice that complies with GST Law and contains both the ABN details of the City and the Service Provider) to the City for the amount specified by the City, when requested.

14.6 Price adjustment – rise and fall of the schedule of rates

An adjustment to the Schedule of Rates may be claimed by either party annually in accordance with Part C (Rise and Fall) of Schedule 2 (Fee).

15 Step in rights

15.1 Failure to perform a Material Obligation

- (a) If the Service Provider:
 - (i) fails to perform a Material Obligation strictly in accordance with the Contract; and
 - (ii) fails to rectify that failure within 5 Business Days of being required by written notice from the City to do so,then the City may, either by itself or through a third party, perform that obligation.
- (b) If the City:
 - (i) has not yet paid the Service Provider in relation to the Material Obligation that the Service Provider has failed to perform, then the costs, expenses, losses and damages incurred by the City in performing that obligation will be a reduction of the Fee; and
 - (ii) has already paid the Service Provider in relation to the obligation that the Service Provider has failed to perform, then any costs, expenses, losses and damages in excess of the proportion of the payment applicable to the obligation, incurred by the City in performing that obligation will be a debt due from the Service Provider to the City.
- (c) This clause 15.1 does not limit any other remedy which the City may have against the Service Provider for any breach of the Contract.

16 Intellectual Property and Information Documents

16.1 Background Intellectual Property Rights

- (a) Each party will retain all of its Background Intellectual Property Rights.
- (b) The City grants the Service Provider a non-exclusive, royalty-free and non-transferable licence for the term of the Contract, to use the City's Background Intellectual Property Rights for the sole purpose of enabling the Service Provider to perform its obligations under the Contract.
- (c) If the existence of the Service Provider's Background Intellectual Property affects or limits the benefit which the City derives from the performance of the Service Provider's obligations arising out of the Contract, the Service Provider must grant to the City an irrevocable, royalty-free, non-exclusive licence to use the Service Provider's Background Intellectual Property Rights for the purpose of this Contract and only to the extent the City considers necessary to enable it to derive the full benefit the City reasonably expected from the Services.

16.2 Intellectual Property Rights in the Deliverables

- (a) The Service Provider assigns to the City, all Intellectual Property Rights in the Developed Material (including all draft and interim versions):
 - (i) in existence at the Date of the Contract, with effect on and from the Date of the Contract; and
 - (ii) created after the Date of the Contract, with effect on and from the date of creation of such Developed Material.
- (b) The Service Provider undertakes to do all acts and execute all documents necessary or desirable for perfecting the City's title to the Developed Material.
- (c) The Service Provider acknowledges that its only rights in respect of the Developed Material are those rights of use pursuant to the Contract and the Service Provider does not have any right, title or interest to the Developed Material or any goodwill in any Materials.
- (d) The City grants to the Service Provider a non-exclusive, royalty-free and non-transferable licence for the term of the Contract, to use the Developed Material for the sole purpose of the Service Provider performing its obligations under the Contract.
- (e) The Service Provider must not sublicense the licence granted to it under clause 16.2(d) to any person without the prior written consent of the City.

16.3 Moral Rights

- (a) The Service Provider agrees, and must procure that it obtains all necessary consents from its Personnel, to any act or omission that might otherwise infringe an author's Moral Rights, including acts or omissions that occurred before, on or after the Date of the Contract.
- (b) Where requested by the City, the Service Provider must promptly and, in any event within 10 Business Days of such request, provide the City with evidence of the written consents required to be obtained under clause 16.3(a).

16.4 Intellectual Property representations

The Service Provider represents to the City that in providing the Services:

- (a) it owns or is licenced to use all Intellectual Property Rights (including Background Intellectual Property Rights) provided under or in connection with the Contract; and
- (b) the use of the Deliverables as permitted or contemplated under the Contract will not cause the City to incur any liability for infringement of any third party's Intellectual Property Rights or Moral Rights.

16.5 Information Documents

- (a) Information Documents are provided to the Service Provider for information only and the Service Provider acknowledges that it has:
 - (i) not relied on the contents of any Information Documents; and
 - (ii) made its own enquiries and formed its own view on the issues covered in the Information Documents.
- (b) Neither the City nor the Contract Manager is responsible for the accuracy or the contents of, or makes any representation or assumes any duty of care in respect of, the Information Documents.

17 Indemnity

17.1 Indemnity

- (a) Without limiting the City's other rights under the Contract or otherwise at law and subject to clause 17.1(b), the Service Provider must indemnify the City on demand against any claim, damage, expense, loss, cost (including reasonable legal costs) or liability (including liabilities of the City to third parties) arising out of or in connection with:
 - (i) loss of, loss of use of, destruction or damage to real or personal property of the City or any third party, including existing property;
 - (ii) breach of confidentiality or privacy;
 - (iii) infringement of Intellectual Property Rights or Moral Rights; or
 - (iv) injury to, or disease or illness (including mental illness) or death of, persons,to the extent that, and in proportion to which, such claim, damage, expense, loss, cost or liability arises from a breach by the Service Provider of the Contract or any negligent act or omission of the Service Provider or its Personnel.
- (b) The Service Provider's liability to indemnify the City will be reduced proportionally to the extent that:
 - (i) the City's breach of Contract, or any negligent act or omission of the City or its Personnel has contributed to the claim, liability, loss, damage, expense or other liability;
 - (ii) the City's does not mitigate the relevant claim, liability, loss, damage, expense or other liability;
 - (iii) loss or damage suffered by the City was caused by someone other than the Service Provider and its sub-contractors.

- (c) Neither the City or the Service Provider is liable for any indirect or consequential loss, loss of profit, loss of opportunity, loss of use or goodwill or other indirect, remote, abnormal or unforeseeable loss whether arising in contract, tort, equity, under statute or otherwise.
- (d) Despite any other clause in this Contract, the Contractor's aggregate liability for all loss, costs, expenses and damages (including consequential, indirect, economic and financial loss) arising out of or in connection with this Contract (whether by way of indemnity, for breach of contract, in tort (including negligence, under statute, in equity or otherwise) is limited to in any year, an amount equal to 100% of the Fee payable to the Service Provider in that year unless that loss, cost, expense or damage is recoverable under an insurance policy required to be effected and maintained by the Service Provider under clause 18.

18 Insurance

18.1 Service Provider's insurances

The Service Provider must:

- (a) from the date the Service Provider commences the Services, effect and maintain the following insurances:
 - (i) public and products liability insurance that:
 - (A) is for not less than the amount specified in Item 16 for each and every occurrence giving rise to a public liability claim and with a limit of indemnity of not less than the amount specified in Item 16 for each occurrence and in the aggregate for all occurrences in any 12 month policy period giving rise to a products claim;
 - (B) covers the liability of the Service Provider and its Personnel to third parties (including to each other) for property loss or damage or loss of use (including to property of the City in the care, custody or control of the Service Provider) and injury to, disease or illness (including mental illness) of or death of persons arising out of, or in connection with, the performance of the Services;
 - (C) covers the City for its liability for the negligent acts and omissions of the Service Provider and its Personnel; and
 - (D) notes the Service Provider as an interested party;
 - (ii) workers compensation insurance as required by law;
 - (iii) compulsory third party and comprehensive motor vehicle insurance that:

- (A) covers the repair and/or replacement for any damaged or stolen motor vehicle used by the Service Provider under the Contract;
 - (B) covers liability to third parties for loss, damage, injury or death arising from the use and operation of any vehicle by the Service Provider under the Contract; and
- (iv) Property or Industrial Special Risk insurance that covers against any loss or damage to buildings, contents, fittings, machinery, equipment or other tools not otherwise insured which the Service Provider owns or has care and control over that is used in carrying out Services under the Contract.
- (b) effect the insurances set out in clause 18.1(a) with a reputable insurer;
- (c) ensure that its Subcontractors maintain the insurances stated in Item 17;
- (d) on request, provide the City with a certificate of currency for each policy of insurance evidencing compliance with this clause 18.1;
- (e) ensure that:
 - (i) if the insurer gives the Service Provider notice of cancellation of, rescission of or intention not to renew any required insurance policy, the Service Provider as soon as possible informs the City in writing that the notice has been given and effects the appropriate replacement insurance in accordance with the requirements of this clause 18;
 - (ii) the Service Provider does not cancel, rescind or fail to renew any required insurance policy without effecting replacement insurance as required by the Contract so as to ensure no gap in cover and inform the City in writing as soon as possible of the identity of the replacement insurer and the certificate of currency; and
 - (iii) if the available limit under its professional indemnity insurance is materially depleted by claims unrelated to the Contract, it informs the City as soon as possible and reinstates or replaces the available limit unless the City has otherwise agreed in writing; and
- (f) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) if necessary, takes all reasonable steps to rectify any situation which might prejudice any insurance;
 - (iii) renews or replaces any required insurance policy if it expires during the relevant period;

- (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the City;
- (v) as soon as practicable notifies the City in writing of any event which may result in a required insurance policy being cancelled or rescinded; and
- (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies.

The obtaining of insurance as required under this clause 18.1 will not in any way limit, reduce or otherwise affect or be affected by any of the obligations, responsibilities and liabilities of the Service Provider under any other provision of the Contract or otherwise at law or in equity.

18.2 Period of insurance

The insurance which the Service Provider is required to obtain under clause 18.1 must be maintained until the completion of the Services or the earlier termination of the Contract.

18.3 Notice of potential claim

Subject to any obligation of the Service Provider under any Laws, any common law or under equity, any duty of confidence, under any contracts or where legal professional privilege applies, the Service Provider must:

- (a) as soon as possible inform the City in writing of any claim under an insurance policy maintained in compliance with clause 18.1 which arises in connection with the Contract and may involve a claim against the City; and
- (b) keep the City informed of all significant developments concerning the claim, except in circumstances where the City is making a claim against the Service Provider.

19 Confidentiality, privacy and related matters

19.1 Confidential information

- (a) Subject to clause 19.1(b):
 - (i) each party must:
 - (A) keep confidential the terms of the Contract, any documents produced under the Contract and any information leading to the creation of the Contract; and
 - (B) ensure that each of its Personnel comply with the terms of clause 19.1(a)(i)(A); and

- (ii) each party (and all their respective managers, representatives or nominees) must keep confidential all information of the other that:
 - (A) is by its nature confidential;
 - (B) is marked or designated as confidential at the time of its disclosure by or on behalf of the disclosing party; or
 - (C) the receiving party knows or ought to know is confidential.
- (b) Neither party is obliged to keep confidential any information disclosed to it by or on behalf of the other party:
 - (i) which is otherwise in the public domain other than by a breach of the Contract by the receiving party;
 - (ii) the disclosure of which is:
 - (A) required by law;
 - (B) made with the prior written consent of the disclosing party;
 - (C) made to a court in the course of proceedings to which the disclosing party is a party; or
 - (D) required by the listing rules of a recognised stock exchange; or
 - (iii) which is disclosed by the receiving party to its legal or other advisers, or to its Personnel in order to comply with its obligations or to exercise its rights under or in connection with the Contract provided that such persons are under an obligation to keep the information confidential.
- (c) Each party must promptly return to the other party or destroy such Confidential Information on the written request by the other party provided that (except in the case of any termination of the Contract), the Service Provider may retain for bone fide record keeping purposes only one copy of any Deliverable. The copy of the Deliverable retained by the Service Provider must be kept in a secure area and access restricted to the Deliverable in accordance with this clause 19.1.

19.2 Privacy

Without limiting its obligations at law with respect to privacy and the protection of Personal Information, each party must (and must procure that its Personnel):

- (a) comply with the Privacy Laws;
- (b) only use Personal Information for the sole purpose of fulfilling its obligations under the Contract;
- (c) protect all Personal Information from unauthorised access, modification, disclosure or use; and

- (d) promptly notify the City on becoming aware of any unauthorised access, modification, disclosure or use of Personal Information or privacy breach in relation to any Personal Information.

19.3 No publicity

- (a) The Service Provider must not use the City's name, trade mark or logo in any advertisement, media release, public statement, promotional materials or announcement relating to the Contract or the Services without the City's prior written approval.
- (b) If the Service Provider receives any enquires from the media in relation to the Contract or the Services, the Service Provider must promptly refer such enquires to the City.

19.4 Public Access to Government Information

- (a) The Service Provider acknowledges and agrees that the City may disclose information in the Contract (including the entire Contract) on its nominated website established for disclosures under the *Government Information (Public Access) Act 2009* (NSW) ('GIPA Act').
- (b) The Service Provider must, upon receipt of a written request by the City, provide the City with immediate access to the following information contained in records (as defined in the GIPA Act) held by the Service Provider:
 - (i) information that relates directly to the Services; and
 - (ii) information received by the Service Provider from the City to enable it to provide the Services.
- (c) For the purposes of clause 19.4(b), information does not include:
 - (i) information that discloses or would tend to disclose the Service Provider's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Service Provider is prohibited from disclosing to the City by provision made by or under any law; or
 - (iii) information that, if disclosed to the City, could reasonably be expected to place the Service Provider at a substantial commercial disadvantage in relation to the City, whether at present or in the future.
- (d) The Service Provider must provide copies of any of the information in clause 19.4(b), as requested by the City, at the Service Provider's own expense.

20 Term and termination

20.1 Term

The Contract commences on the Date of the Contract and, unless otherwise extended under clause 20.2 or terminated on its terms, expires on the Expiry Date ('Term').

20.2 Further Terms

Subject to clause 20.5, the City may extend the Contract for the Further Term (if any) specified in Item 18, commencing on the Expiry Date or the expiry of a previous Further Term (as applicable), by giving written notice to the Service Provider no later than 2 months prior to the Expiry Date or the expiry of a previous Further Term (as applicable). The maximum number of Further Terms is specified in Item 18.

20.3 City may terminate for convenience

- (a) The City may terminate the Contract at any time and for any reason, and in its sole discretion, by giving to the Service Provider not less than the period of prior written notice specified in Item 19.
- (b) If the Contract is terminated pursuant to clause 20.3(a), the City must pay the Service Provider:
 - (i) any accrued portion of the Fee for Services carried out up to and including the date of termination; and
 - (ii) the Service Provider's direct costs and expenses (excluding profit) reasonably and necessarily incurred by reason of the termination except to the extent that such costs and expenses are already payable pursuant to clause 20.3(b)(i)
- (c) Except as set out in clause 20.3(b), the Service Provider is not entitled to any other payment in connection with the termination of the Contract under this clause 20.1, including for any costs, losses (including loss of profit) or damage.

20.4 Termination for cause

- (a) In addition to any other rights that it has under the Contract or at law, the City may terminate the Contract by giving notice in writing to the Service Provider if:
 - (i) the Service Provider breaches any provision of the Contract and that failure or breach:
 - (A) is incapable of remedy; or
 - (B) if it is capable of remedy, continues for 10 Business Days after the date the City gives the Service Provider a notice requiring the breach to be remedied;

- (ii) the Service Provider notifies the City of an actual or perceived conflict of interest under clause 2.4 that is unable to be rectified or managed by the Service Provider to the reasonable satisfaction of the City within a reasonable time;
 - (iii) an Insolvency Event occurs; or
 - (iv) the Service Provider breaches a Material Obligation.
- (b) In addition to any other rights that it has under the Contract or at law, the Service Provider may terminate the Contract by giving notice in writing to the City if the City breaches any provision of the Contract and that failure or breach continues for 10 Business Days after the date the Service Provider gives the City a notice requiring the breach to be remedied.
- (c) The parties agree that any termination in accordance with clause 20.4(a) or clause 20.4(b) will be treated as if it were termination for repudiation of the Contract by the Service Provider or the City (as the case may be).

20.5 Change in technology or processing facility

- (a) If the Service Provider decides to:
- (i) convert or implement a technology not used for the Services provided under this Contract; or
 - (ii) change the use of either of the Service Provider's processing facilities (or both), including for use as a food organics processing facility or garden organics processing facility, or both,
- (each, a **Change**),
- with the Change to be implemented on or after the Expiry Date, and the Service Provider, as a result of the Change, cannot provide the Services, the Service Provider may notify the City in writing of a proposal to incorporate the Change as part of the Services provided under this Contract (**Proposal**):
- (iii) if the relevant time at which the Change is decided by the Service Provider is between the Commencement Date and the Expiry Date, not less than 18 months' before the Expiry Date; or
 - (iv) if the relevant time at which the Change is decided by the Service Provider is between the Expiry Date and the expiry of a Further Term, not less than 12 months' notice before the expiry of that Further Term.
- (b) The parties will negotiate in good faith the terms of the Proposal and if agreed, amend the Contract to incorporate the terms of any such Proposal.
- (c) If the Service Provider is unable to provide the Proposal, or the parties are unable to agree on the terms of any Proposal within 3 months of the notification of the Proposal under clause 20.5(b), the Contract will expire:

- (i) if notice is provided under clause 20.5(a)(iii), on the Expiry Date and the City will not be entitled to exercise any rights to extend under clause 20.2; or
- (ii) if notice is provided under clause 20.5(a)(iv), on the date of expiry of the relevant Further Term and the City will not be entitled to exercise any further rights (if any) to extend under clause 20.2.

20.6 Service Provider's obligations on termination or completion of the Services

Without limiting the Service Provider's obligations elsewhere in the Contract, within 5 Business Days of the completion of the Services or earlier termination of the Contract, the Service Provider must:

- (a) deliver to the City, or if directed by the Contract Manager destroy, all material and information made available by the City to the Service Provider; and
- (b) deliver to the City copies of all documents produced by the Service Provider in relation to the Services,

including all confidential information and Information Documents, except that the Service Provider is entitled to retain a copy of such materials, information and documents to the extent that it is required to do so by law or for a legitimate quality assurance purpose.

21 Dispute resolution

21.1 Notice of dispute

- (a) If a Dispute between the parties arises out of, or in any way in connection with, the subject matter of the Contract, then either party may, by hand or by registered post, give the other and the Contract Manager a written notice of dispute adequately identifying and providing details of the Dispute.
- (b) Notwithstanding the existence of a Dispute, the parties must, subject to clause 20 and clause 21.3, continue to perform the Contract.

21.2 Negotiation

- (a) Within 10 Business Days after receiving a notice of dispute, representatives from the senior management of the parties set out in Item 20 must undertake genuine negotiations with a view to resolving the Dispute.
- (b) If the Dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may commence legal proceedings as they see fit.

21.3 Expert determination

- (a) If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may refer the dispute to expert determination in accordance with clauses 21.4 to 21.11.
- (b) Clauses 21.2(b) and 21.4 to 21.11 will only apply if both parties agree in writing, within 20 Business Days of services of the notice of dispute, to have the matter resolved by way of expert determination.

21.4 The expert

The expert determination is to be conducted by an independent industry expert:

- (a) agreed by the parties; or
- (b) failing agreement within 10 Business Days of the referral, as nominated by the City (acting reasonably, which expert must be suitably qualified and experienced in light of the nature of the dispute in question).

21.5 Not arbitration

An expert determination conducted under this clause 21 is not arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

21.6 Procedure for determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit but must observe the rules of natural justice;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the expert determination as he or she considers necessary.

21.7 Disclosure of interest

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the expert determination; and
- (b) not communicate with one party to the expert determination without the knowledge of the other.

21.8 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) unless determined otherwise by the expert, pay one-half of the expert's costs.

21.9 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 21 within 20 Business Days from the acceptance by the expert of his or her appointment.

21.10 Liability of expert

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud. The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 7 or such other terms as the parties and the expert may agree.

21.11 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be:
 - (i) substituted for the relevant direction of the Contract Manager (where applicable); and
 - (ii) final and binding,unless:
 - (iii) the amount determined by the expert exceeds the amount in Item 21; and
 - (iv) a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following subclauses.

21.12 Litigation

If a notice of appeal is given under clause 21.11(b)(iv), or if the parties are unable to resolve the dispute within the timeframe set out in clause 21.2(b), then either party may commence proceedings in relation to the dispute.

21.13 Summary relief

Nothing herein will prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.

22 Disengagement

22.1 Application

- (a) Subject to clause 22.1(b), this clause 22 applies whenever Services are to be terminated. This includes:
 - (i) 2 months before the Expiry Date or the expiry of a previous Further Term (as applicable); or
 - (ii) if Services are terminated before that date, the date on which the City issues a termination notice in respect of the Contract.
- (b) This clause will not apply where the Service Provider terminates the Contract under clause 20.4(b).

22.2 Objectives

The purpose of the Disengagement Services is to:

- (a) enable the City or its nominee to perform the Services from the end of the Disengagement Period; and
- (b) eliminate or minimise any disruption to the Services (including the Disengagement Services) as a result of the transition of the Services from the Service Provider to the City or its nominee.

22.3 Requirements for Disengagement

- (a) The Service Provider must ensure that as part of the Disengagement Services:
 - (i) the City's right to use the Materials provided by the Service Provider to the City under the Contract continues following the Disengagement Period at no cost to the City (other than agreed maintenance and support fees);
 - (ii) it makes available to the City all of its Personnel and provides all resources necessary to maintain the provision of the Services while the Disengagement Services are being performed;
 - (iii) there is no degradation of Service Levels or quality of service during the Disengagement Period; and
 - (iv) there is no interruption to the Services during the Disengagement Period.

- (b) The Service Provider must use best endeavours to ensure that the Disengagement Services are completed by the end of the Disengagement Period.

22.4 Implementation of Disengagement

- (a) The Service Provider must ensure that, at all times during the Term, on 30 days' notice it is able to deploy all necessary resources to complete the Disengagement Services.
- (b) If clause 22 applies, the Service Provider must, unless directed otherwise by the Contract Manager:
 - (i) do all things necessary to effect the Disengagement Services;
 - (ii) at the Service Provider's expense, promptly deliver to the City or a third party nominated by the City all Developed Material and completed Deliverables;
 - (iii) do all things reasonably necessary to deliver all partially completed Developed Material and Deliverables to the City; and
 - (iv) ensure that all permitted subcontractors comply with this clause 22.
- (c) The Service Provider acknowledges all Service Levels and Service Level Rights apply during the Disengagement Period.
- (d) The fees payable for the Disengagement Services will be the same as, or calculated in the same manner as, the fees in effect immediately prior to the termination or expiry of the Contract.

22.5 Third party services

- (a) The Service Provider will make available to the City or its nominee the contact details of any party providing third party services utilised by the Service Provider in the performance of the Services during the Disengagement Period.
- (b) For the avoidance of doubt, if the City elects to use any third party services made available to the City by the Service Provider pursuant to this clause, the City shall be solely liable for any costs, fees or other liabilities arising in respect of the use of those services by the City.

22.6 Assistance to third parties

If the City appoints a third party to assume its role in relation to any or all of the Services, the Service Provider must provide all reasonable assistance to that third party during the Disengagement Period and in performing the Disengagement Services.

23 General

23.1 Governing law

- (a) This Contract is governed by the law in force in New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts in New South Wales, and any court that may hear appeals from those courts, for any proceedings in connection with the Contract.

23.2 Entire agreement

This Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or promise relating to that subject matter is replaced by the Contract and has no further effect.

23.3 Council acting as an Authority

- (a) Nothing in the Contract will fetter, limit or restrict in any way the discharge by the City of its obligations or rights under any legislative requirements or as an authority.
- (b) The Service Provider will deal with the City as it would with any other authority with respect to obtaining any permits, approvals or licences.

23.4 Notices

- (a) A notice, consent or other communication under the Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered, when it has been received by a representative of the addressee at the addressee's address;
 - (ii) if it is sent by mail, 5 Business Days after it is posted; or
 - (iii) if it is sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- (c) For the purpose of this clause 23.4, the address and email address of the City and the address and email address of the Service Provider are as set out at Item 22 and Item 23 respectively, or, in either case, another address or email address of which that party has given notice to the other party as its address for notices.
- (d) Notices referred to in the Contract must be given within the time provided for in the Contract. If the Service Provider fails to give a notice in that time, then:

- (i) the City will not be liable upon any Claim by the Service Provider;
and
- (ii) the Service Provider will be absolutely barred from making any
claim against the City,

arising out of, or in any way in connection with, the relevant act, default, omission, direction, fact, matter or thing (as the case may be) in respect of that Claim or Dispute.

23.5 Liability for expenses

Each party must pay its own expenses incurred in negotiating and executing the Contract.

23.6 Survival of clauses

Clauses 1.2 (Interpretation), 3 (Provision of Services), 17.1 (Indemnity), 18 (Insurance), 19 (Confidentiality, privacy and related matters), 21 (Dispute Resolution), 22 (Disengagement) and 23 (General) survive the expiry or earlier termination of the Contract, together with any other term which by its nature is intended to do so.

23.7 Counterparts

This Contract may be executed in counterparts and together they constitute one document.

23.8 Attorneys

Each person who executes the Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

24 Heavy Vehicle Law – Chain of Responsibility Provisions

Without limiting any other provision of the Contract, the Service Provider must comply with the Chain of Responsibility Provisions.

Schedule 1 - Contract information

Item	Description	Contract reference	Details	
1.	Commencement Date	Clause 1.1	1 January 2023	
2.	Contract Manager	Clause 1.1	Name: [REDACTED] Address: Town Hall House, 456 Kent Street, Sydney NSW 2000 Email: [REDACTED]	
3.	Expiry Date	Clause 1.1	31 December 2025	
4.	Information Documents	Clause 1.1	Not applicable	
5.	Key Personnel	Clause 1.1	<u>Role / Qualification</u> Contract Manager	<u>Details</u> Name: [REDACTED] Address: 456 Kent St, Sydney NSW 2000 Email: [REDACTED]
6.	Operations Manager	Clause 1.1	Name: [REDACTED] Address: [REDACTED] Email: [REDACTED]	
7.	Work Site	Clause 1.1	Any location where the Services are required to be performed within the Contract Area, as more particularly described in the Specifications.	
8.	Timeframe for review of Deliverables	Clause 3.6(a)(ii)	As reasonably determined by the Contract Manager	
9.	Period of time for resubmission of an amended Deliverable	Clause 3.6(b)	<i>If nothing stated, 5 Business Days</i>	
10.	Quality assurance system	Clause 3.9	ISO 9001	
11.	WHS Returnable Documents	Clauses 1.1 and 3.10.	Document Description Signed Acknowledgement Form of the City of Sydney Contractor Safety Book (page 19)	Due Date Before the commencement of any Services

Item	Description	Contract reference	Details	
			WHS Management Plan	As per the requirements set out in the Quality and Operational Management Plan
			Safe Work Method Statements	As per the requirements set out in the Quality and Operational Management Plan or 21 days prior to commencement of relevant or applicable part of the Service
			Any other document which the City considers relevant to the safe delivery of the Services	As required
12.	Service Provider's Security	Clause 5		
		(a) Form	1 x unconditional bank guarantee or insurance bond with an expiry date no earlier than 24 months after the Expiry Date having the beneficiary as the Council of the City of Sydney and issued by an institution which is an APRA regulated institution and authorised to provide banking or insurance services in Australia and to conduct new and renewal insurance business in Australia.	
		(b) Amount	\$ [REDACTED]	
		(c) Time for provision	On or before the Date of the Contract	
13.	Limitation on providing Work Site access	Clause 9.1	Site specific limitations as set out in the Specification including events or training requirements	
14.	Additional period of time the City is permitted to access records and documents	Clause 11.3(a)(ii)	7 years	
15.	Frequency of invoices	Clause 14.1(a)	On the 10 th Business Day of each month for the part of the Services carried out up to and including to the last Business Day of the previous month.	

Item	Description	Contract reference	Details
16.	Public and products liability Insurance (including pollution liability)	Clause 18.1(a)(i)(A)	\$20 million
17.	Insurance requirements for Subcontractors	Clause 18.1(c)	Appropriate insurances for that part of the Services undertaken by the relevant Subcontractor.
18.	Further Term	Clause 20.2	Length of any Further Term (if any): 12 months Maximum number of Further Terms (if any): 2
19.	Period of notice for termination for convenience	Clause 20.3(a)	60 Business Days
20.	Senior representative for negotiations	Clause 21.2	City: [REDACTED] Acting Manager Cleansing and Waste Service Provider: [REDACTED] Regional Manager
21.	Threshold value for whether an expert's determination is final and binding	Clause 21.11(b)(iii)	\$ [REDACTED]
22.	Address of the City (including the Contract Manager) for service of notices	Clause 23.4(c)	Attention: [REDACTED] Address: Council of the City of Sydney [REDACTED] Town Hall House 456 Kent Street Sydney NSW 2000 Email: [REDACTED]
23.	Address of the Service Provider for service of notices	Clause 23.4(c)	Attention: [REDACTED] Address: [REDACTED] [REDACTED] Email: [REDACTED]

Schedule 2 - Fee

(Clause 1.1)

The Fee is total sum payable by the City to the Service Provider in respect of all of the Services required to be carried out under the Contract, and is the aggregate of the amounts payable for each year of the Contract Term (plus any Further Term if applicable), including:

- (a) the matters set out or referred to below in Part A; and
- (b) the sum of the items described in the Schedule of Rates set out below in Part B, with the relevant sums in Part B ascertained by multiplying the rates by the corresponding quantities of an applicable item in the Schedule of Rates.

The Service Provider acknowledges and agrees that the Fee applies to all of the Services required to be undertaken under the Contract, whether or not a particular item is referenced in the Schedule of Prices in Part A or in the Schedule of Rates in Part B.

Part A – Schedule of Prices

Not Used

Part B - Schedule of Rates

General

The rates and prices in the Schedule of Rates are the full inclusive value of the work and in accordance with the Specifications. Each Rate includes all necessary inspections and preparation of work schedules, labour, materials, plant and equipment, transport and handling, supervision, management, reporting, licence and application fees and charges and the like., and the Service Provider's overheads and profits. The cost of any temporary works, movement between Contract Areas, liaison with the public and trading community, liaison and obtaining approvals from any Government Authorities and service authorities, temporary traffic arrangements and diversion of pedestrians, including any temporary warning/ directional signs are included in the Rates.

The Rates are inclusive of establishment and disestablishment costs, except where there is a separate Rate for establishment the nature and extent of the Services may change because of directions by the Contract Manager that may be issued from time to time.

Setting up and movement between Contract Areas

The Service Provider has allowed in their Rates for carrying out Services at any location within the City's local government area, for mobilisation and demobilisation, setting up at each Contract Area, and movement between Contract Areas.

Part B.1 Processing Rates

In this section and section C:

1. **s88 Levy** refers to Section 88 of the Protection of the Environment Operations Act 1997 (POEO Act), requires certain licensed waste facilities in NSW to pay a contribution for each tonne of waste received at the facility. The s88 Levy is set by the NSW Environmental Protection Agency and may vary.

Reference:

- <https://www.epa.nsw.gov.au/your-environment/waste/waste-levy>
- <https://www.epa.nsw.gov.au/your-environment/waste/waste-levy/levy-regulated-area-and-levy-rates>.

2. **Mixed Waste Organic Outputs or MWOO** means the end product that separates organic waste in household red-lid bins from other waste. MWOO is not the same as compost, garden potting mix or biosolids. The NSW Environmental Protection Agency provides an exemption to the s88 Levy for all MWOO waste processed.

1.1 Processing rate with MWOO exempt from s88 Levy

The processing rate for MWOO that is exempt from s88 Levy will be applicable from the Date of the Contract until the date that the levy exemption for MWOO expires or is otherwise revoked by the Environmental Protection Authority. As 60% of waste is processed in accordance with MWOO, only 40% of the s88 Levy is payable.

Waste Type	Delivery Site	Service Rate	s88 Levy	Percentage of s88 Levy Payable	Percentage of s88 Levy associated with MWOO Payable	Total Rate inclusive Levy Component, Excluding GST	Total Rate inclusive Levy Component, Including GST
Domestic Cleansing (Putrescible) and Parks Waste	Artarmon or Rockdale Resource Recovery Facility						

1.2 Processing rate with S 88 levy on MWOO payable

The processing rate for MWOO with s88 Levy payable will be applicable from the first date that the s88 Levy is payable in relation to MWOO for the remainder of the Term and any Further Term (if applicable). Section 88 Levy rate will be adjusted quarterly and the amount payable in the current quarter will be the equivalent to percentage of material sent to landfill in the previous quarter.

The Service Provider guarantees a minimum 23% diversion rate of materials under MWOO, and must divert as much material as possible in addition to this. Under this guarantee, the s88 Levy will be payable at a maximum of 77% and will reduce for the next

quarter based on the percentage of materials diverted in the previous quarter, under MWOQ.

For example:

In Q1 the diversion rate was 30%; therefore, the s88 Levy payable in Q2 will be 70%.

In Q2 the diversion rate was 35%; therefore, the s88 Levy payable in Q3 will be 65%.

Waste Type	Delivery Site	Service Rate	s88 Levy	Percentage of s88 Levy payable (excludes guaranteed 23% for MWOQ)	Total Rate including Levy Component, Excluding GST	Total Rate including Levy Component, Including GST
Domestic Cleansing (Putrescible) and Parks Waste	Artarmon or Rockdale Resource Recovery Facility					

Part B.2 Disposal Rates

This part applies only where the City has directed the materials be sent directly to landfill, as set out in clause 16 of the Specifications.

Waste Type	Delivery Site	Service Rate	s88 Levy	Percentage of s88 Levy Payable	Total Rate inclusive Levy Component, Excluding GST	Total Rate inclusive Levy Component, Including GST
Domestic Cleansing (Putrescible) and Parks Waste	Artarmon or Rockdale Resource Recovery Facility					

Part C - Rise and Fall

1. The purpose of this clause is to provide the parties the option to claim adjustment to the Service Rate to manage the rise and fall in costs as a result of increases or decreases to the Consumer Price Index ("**Claim for Adjustment**") in accordance with this Part C ("**Rise and Fall**").
2. A **Rise and Fall Template** is the template Consumer Price Index calculator incorporating the methodology referred to in paragraph 6 below, provided by the City to the Service Provider at the Date of the Contract.
3. The parties acknowledge:

- a. Rise and Fall only applies to the Service Rates and excludes the s88 Levy.
 - b. Rise and Fall is deemed to cover all increases and decreases (as applicable) in costs incurred by the Service Provider in carrying out its obligations under the Contract.
 - c. Rise and Fall adjustments will be based on the methodology detailed in paragraph 6 below, which is agreed to by the City and the Service Provider as being the basis for the Rise and Fall adjustments .
 - d. Rise and Fall adjustments will apply annually throughout the Term, with the next adjustment applicable from 1 July 2023.
4. Either the City or the Service Provider may complete the Rise and Fall Template to request a Claim for Adjustment, which is to apply from 1 July each year and provide the completed Rise and Fall Template to the other party on or before 30th May in the relevant calendar year (**Request**). Time is of the essence in relation to this clause, and there will be no right for either party to make a Claim for Adjustment after 30th May in the relevant calendar year.
5. A party receiving the Request must approve the Request within 14 days of receiving the Request unless the Request does not comply with the requirements of this Part C, in which case it may elect to reject the Request by providing notice in writing to the other party of the rejection no later than 2 weeks prior to 1 July of that calendar year.
6. Calculation methodology for Rise and Fall adjustment:
 - a. Where:
 - i. **Current Calendar Year** means 1 July of the year that the Rise and Fall adjustment will apply to the Base Rate.
 - ii. **Current CPI** is the Consumer Price Index Number (All Groups Sydney) as published by the Australian Bureau of Statistics ("CPI") for the month of March immediately preceding 1 July of the Current Calendar Year.
 - iii. **Base CPI** is the CPI published for the March Quarter of the calendar year immediately preceding the Current Calendar Year.
 - iv. **CPI Percentage** means percentage that the Services Rates will increase by on 1 July of the Current Calendar Year.
 - v. **ServiceBase Rate** means the Service Rate in the Schedule of Rates and any variation to these rates published for 1 July each calendar year.
 - b. **CPI Rise and Fall Formula**

$$\text{Base Rate} \times \text{CPI Percentage} = \text{Current CPI} / \text{Base CPI} - 1$$

Example Rise and Fall 1:

 - a) The Domestic Cleansing (Putrescible) and Parks Waste from 1 July 2020 to 30 June 2021 is [REDACTED].
 - b) The table below shows the new rate depending on the Price Rise or Fall.

CPI Rise and Fall Calculation	Price Raise Example	Price Fall Example
Current CPI for March 2022	123.7	116.7
Base CPI for March 2021	118.5	119.5
CPI Calculation Formula	$123.7 / 118.5 - 1$	$119.5 / 116.7 - 1$
CPI Percentage	Increase of 4.4%	Decrease of 2.3%
New Service Rate for 1 July 2022 to 30 June 2023	██████████	██████████

Values and CPI rates are for illustration purposes and are not an accurate reflection of the rates published by the ABS.

Discontinuance, Modification or Updating of Indices

Should at any time during the Term, an index referred to in this Part C – Rise and Fall be discounted or modified or if publication of that index ceases or substantially changes from the basis used at the date of commencement of this Contract, then the Commonwealth Statistician shall be requested by the parties to advise what index or indices should be adopted by the parties for the purpose of this Part C – Rise and Fall and the index or indices so advised shall be substituted for the first mentioned index.

Keeping of Records

The Service Provider must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice. The Service Provider must create and keep records that fully document the operation and delivery of the Services, including records generated and kept using electronic technology.

Schedule 3 - Specifications

(Clause 1.1)

Section A

Reports & Reviews

DOMESTIC, CLEANSING AND PARKS WASTE (PUTRESCIBLE)

1. Monthly Payment Report

- a. When the Service Provider submits its payment claim the Service Provider, within four (4) BusinessDays of the last day of each month, must submit a report to the City summarising and substantiating all Services covered by the payment claim. The Payment Report format for approval is to be provided to the Contract Manager in electronic format within one (1) week after the Commencement Date.
- b. the Service Provider must immediately report all environmental incidents and unscheduled interruptions to the City. Copies of reports to authorities must be passed to the City within 5 Business Days of issue to the authority.

2. Monthly and Annual Performance Reports

- a. The Service Provider must submit a performance report on all Services to the City no later than four (4) Business Days after the last day of each month. The Service Provider must provide financial year performance reports summarising all information with respect to the Services for the previous twelve months.
- b. The Service Provider must provide the Performance Report's format to the Contract Manager for approval in electronic format within one (1) week after the Contract Commencement Date.
- c. From the Commencement Date, the monthly performance report must include the following monthly data and key deliverables:
 - i. The date, time and vehicle registration number, material stream delivered to the Nominated Primary and/or Alternative Facility.
 - ii. The total of material (measured in tonnes) delivered to the facility by the City for processing in the preceding month.
 - iii. Details on the levels of Contamination.
 - iv. Details on the tonnages of Residual Material.
 - v. Estimates of the quantities and percentage of recovered materials from the material delivered by the City.
 - vi. All material taken off site for sale or reprocessing. The Service Provider is required to keep these records irrespective of whether the item(s) is sold, donated or removed by a subcontractor (of the Service Provider). For each item/good taken off site the Service Provider must record the following:
 1. The type and quantity of material;
 2. The date it was removed from the Contract Area; and
 3. Who the item was sold to, donated to or removed by.
 - vii. The destination of recovered materials.
 - viii. The results of any audits undertaken.

- ix. All complaints and queries received in respect of its performance of the Services.
 - x. The results of the investigations made into all complaints.
 - xi. Any breach of Laws or the requirements of any authority.
 - xii. Any accidents or other incidents where a possibility of injury to persons or property damage arose.
 - xiii. Any breach of this Contract by the Service Provider.
 - xiv. Any other information reasonably required by the City.
- d. The Annual Performance Report will include annual % diverted from landfill (as the total performance for the Processing Facility) in line with the Service Provider's recovery target, being minimum 23%; therefore demonstrating achievement of this nominated performance or not. Where the target is not achieved, the Service Provider must provide details of the proposed and actual methodologies to achieve the nominated target in the following year and collectively over the Term to date and the whole Term.

3. Meetings:

- a. The Service Provider and the Contract Manager will meet on a bi-monthly basis to review prior and current Performance Reports. If applicable, the Monthly Statistics Report may also be reviewed.
- b. Annual Performance Reports shall be reviewed at the bi-monthly meetings held immediately after the end of each financial year.
- c. Meeting location will be by prior mutual agreement

4. Performance Review:

- a. The City will use the following KPI Score Rating Scale, General Key Performance Indicators and Key Performance Indicators (With Repeating Activities) to evaluate performance of the Service Provider throughout the Term.
- b. Performance will be evaluated annually on a financial year basis, and upon expiry of the Term. Each assessment will form the basis of the Performance Review.
- c. The City will use annual performance reviews and a final performance review at the expiry of the Term to provide an overall measure of the Service Provider's performance, using the numerical score rating scale set out below. The annual performance review will consider performance against all KPIs and the Service Levels.
- d. Should one or more of the KPIs be considered irrelevant or unworkable the parties must meet in good faith and agree on an alternative KPI(s) as may be required under the contract.

5. KPI Score Rating Scale:

Score Rating Scale	
1	unacceptable / deficient
2	limited / flawed
3	adequate / satisfactory / appropriate

4	competent / proficient
5	strong

6. General Key Performance Indicators

Key Performance Indicator		Rating					Comments
		1	2	3	4	5	
1	Key Deliverables						
2	Quality of work						
3	Diversion Rates being 23%						
4	Reporting						
5	Communication						
6	WH&S compliance						

7. Descriptions of General Key Performance Indicators:

a. Key Deliverables

Key Deliverables are the items listed as KPIs (With Repeating Activities). At the annual performance review, this overall rating will reflect how often they were or weren't achieved throughout the review period.

b. Quality of Work

Were the Services performed with the professional care, skill and diligence expected of a Service Provider experienced in projects or activities of this kind? Were their work outputs fully satisfactory? Were Services undertaken using innovative methods?

c. Time

- i. Was the Contract performed in accordance with the agreed dates? Reporting
- ii. Were Reports presented in the format and manner required? Were the Reports well-presented and clear and are conclusions logical and convincing? Were all requirements dealt with in the Reports?

d. Communication

Did the Service Provider respond promptly to requests for information and maintain cordial and cooperative communications with the City?

e. Work Health and Safety

Did the Service Provider comply with all requirements in accordance with all relevant WHS Law, standards, codes and practices in the performance of the Contract?

8. Key Performance Indicator (With Repeating Activities)

	KPI (With Repeating Activities)	1	2	3	4	5
1.	The Nominated Primary and Alternative Facility is open during nominated opening hours.					
2.	Nominated turnaround times are achieved.					
3.	The Service Provider has ensured that the nominated weighbridge is available and functions accurately, in accordance with any applicable requirements.					
4.	The Service Provider has provided adequate capacity to receive and process the City's Domestic Cleansing and Parks Waste (Putrescible).					
5.	All Domestic Cleansing and Parks Waste (Putrescible) is processed by the Service Provider at the Approved Facility.					
6.	The Service Provider has followed the procedures for contaminated and rejected loads.					
7.	The Service Provider has provided quarterly reports to the City detailing end of market use for each type of material recovered from the material delivered by the City.					
8.	The Contractor has provided to the City the allowable rebate payable on the eligible containers delivered under the Container Deposit Scheme.					
9.	The Service Provider has provided all monthly activity reports to the City on time.					
10.	The Service Provider's reports, plans and required information is accurate and provided to the City on time.					
11.	The Service Provider has cooperated to allow for audits, when required.					
12.	The Service Provider's representative has been contactable, received directions from the City, made the appropriate decisions allowed; and coordinated all reporting in accordance with the Contract.					

Section B

General Services, Service Levels, Disengagement of Services, Specifications

DOMESTIC, CLEANSING AND PARKS WASTE (PUTRESCIBLE)

1. Services:

The Service Provider must receive, sort and reprocess or market all Domestic, Cleansing and Parks Waste (Putrescible) delivered by the City's collection service provider. The City's priority is to minimise Disposal of Waste to landfill. However, the City reserves the right to divert parts or the entire quantity of Waste from Service A, B and/or C, at its discretion to landfill. All quantities of waste for processing or landfill will be delivered to the transfer stations nominated in 7.1.1 and 7.1.2.

a. Service A. Domestic Waste (Putrescible)

The Domestic **Waste** (Putrescible) is all material from a number of sources including:

- i. domestic Waste (red lid) bins;
- ii. other- other miscellaneous Waste including contaminated and hot loads.

The City estimates annual supply of approximately 45,000 tonnes per year of Domestic Waste (Putrescible). This Waste volume is only indicative. The City makes no warranty regarding the quantity or quality of the material delivered.

b. Service B. Cleansing Waste (Putrescible)

The Cleansing Waste (Putrescible) is all material from a number of sources including:

- i. public place litter bins;
- ii. Other – including other miscellaneous Waste.

The City estimates annual supply of approximately 2,000 tonne per year of Cleansing Waste (Putrescible). This Waste volume is only indicative. The City makes no warranty regarding the quantity or quality of the material delivered.

c. Service C. Parks Waste (Putrescible)

The Parks Waste (Putrescible) is all material from a number of sources including:

- i. Parks litter bins;
- ii. Other – including other miscellaneous Waste.

The City estimates annual supply of approximately 710 tonne per year of Parks Waste (Putrescible) from the south of the city and 500 tonnes per year of Parks Waste (Putrescible) from the north of the city. These Waste volumes are only indicative. The City makes no warranty regarding the quantity or quality of the material delivered.

2. Service Levels:

- a. The Service Provider must perform the Services in accordance with the following Service Levels:

- i. compliance with all terms of the Contract;
 - ii. compliance with the approved Quality and Operational Management Plan;
 - iii. compliance with the Work Health and Safety Management System;
 - iv. compliance with Environmental Management System;
 - v. compliance with Environmental Laws;
 - vi. Domestic, Cleansing and Parks Waste (Putrescible) are received at the Nominated Primary and/or Alternative Facility
 - vii. compliance with the KPIs set out in Section A.
- b. The Nominated Primary and/or Alternative Facility specified in 7.1.1 and 7.1.2 of the Specifications will be available and staffed for receipt of waste between 10.pm (commencing Sunday) and 8.00pm 5 days per week (Monday to Friday, including public holidays), 4.00am and 11.00am weekends (Saturday and Sunday, including public holidays); and outside these ordinary operating hours (unscheduled times, including weekends) following notification from the Manager by 12 noon on the day prior that the City requires extended opening times.
- c. Without limiting any other rights or remedies of the City under this Contract or otherwise, if the Service Provider fails to perform its obligations to the standard required by any Service Level:
- i. the Service Provider must promptly:
 - 1. investigate the underlying cause of the failure;
 - 2. prepare and supply to the City a comprehensive report on the problem;
 - 3. take whatever action is reasonably necessary to minimise the impact of the problem;
 - 4. correct the problem as soon as practicable; and
 - 5. keep the City advised at all times as to progress being made in rectifying the problem; and

3. **Methodologies:**

a. **Supply**

- i. All Domestic, Cleansing and Parks Waste (Putrescible) material collected by the City's collection Service Provider is to be supplied to the Service Provider throughout the Term. The City makes no warranty regarding the quantity or quality of the material delivered.
- ii. The amounts set out in Service A Domestic Waste (Putrescible), Service B Cleansing Waste (Putrescible) and Service C Parks Waste (Putrescible) do not constitute a representation that the Service Provider will receive the relevant tonnages from the City. The Service Provider has conducted its own research in this regard.

b. **Waste from Landfill Diversion Rates**

- i. The City's priority is to minimise Disposal of Waste to landfill. The Service Provider guarantees a minimum diversion rate of 23% from Landfill for all Domestic, Cleansing and Parks Waste (Putrescible), and must use best endeavors to increase the diversion percentage beyond this.
- ii. Service Provider's Nominated Primary and/or Alternative Facility shall be capable of accommodating variations in feedstock characteristics, including short and long-term changes in the quantities of material and deliver the minimum diversion from landfill rate of a 23%.
- iii. The Service Provider must report the landfill diversion rates on a monthly basis. And where the guaranteed minimum diversion rate of 23% has not been met, what actions the Service Provider are taking to rectify and ensure future compliance with this guarantee.
- iv. If the waste diversion rate is below 23% for three consecutive months, the City may issue an improvement notice.
- v. The improvement notice will allow three calendar months to rectify the diversion rates.
- vi. The Service Provider will submit a performance improvement plan that identifies the reason for the decreased diversion rate and an improvement plan that identifies the steps to be undertaken to achieve a minimum of 23% diversion.
- vii. If the Service Provider fails to deliver a minimum of 23% diversion within the improvement notice period of three months, The City reserves the right to extend that period, redirect the waste to a landfill as per Clause 16 of this Specifications, or terminate the contract with a three months notice.
- viii. The City may engage an independent third party to conduct mass balance audits to verify the diversion rates.

4. Processing Fees/Rebates

- a. The Service Provider shall be paid the processing fees in accordance with the Schedule of Rates. The processing fees shall not vary with the level of Contamination in the incoming loads.
- b. The processing fee per tonne as included in the Schedule of Rates includes all costs to the Service Provider in performing the Services. The Service Provider has nominated the percentage of feedstock recovered that will not be subject to the levy imposed under s.88 of the Protection of the Environment Operation Act 1997 (NSW). The City shall not be liable for any changes to this nominated percentage during the Term.
- c. If applicable, Rebates will be paid to the City by the Service Provider in accordance with any agreement with the City during the term of the Contract

5. Contamination

The Service Provider shall accept all loads of Domestic, Cleansing and Parks Waste (Putrescible) delivered regardless of the level of Contamination.

6. Design Flexibility and Processing Capacity General

The characteristics of the Domestic, Cleansing and Parks Waste (Putrescible) material collected by the City are influenced by numerous factors outside the control of the City or the Service Provider. The Service Provider's Nominated Primary and/or Alternative Facility shall be capable of accommodating variations in feedstock characteristics, including short and long-term changes in the quantities of material.

7.1 Facilities

The Service Provider must provide a facilities with adequate capacity to receive and process all material delivered under the Contract, for the Contract Term.

7.1.1 Nominated Primary Facilities

During normal times, outside of any scheduled or unscheduled down time, below facilities will be utilised to continue service delivery under the Contract.

Facility	Activity	Location	Business Hours
Artarmon Resource Recovery Centre	Receipt	12 Lanceley Pl, Artarmon NSW 2064	Sunday 8pm - Monday 5pm Monday 8pm - Tuesday 5pm Tuesday 8pm - Wednesday 5pm Wednesday 8pm - Thursday 5pm Thursday 8pm - Friday 5pm Friday 8pm - Saturday 5pm Sunday 7am - 3pm
Rockdale Resource Recovery Centre	Receipt	5 Lindsay St, Rockdale NSW 2216	Open M-F 6am -5pm, Sat 8am - 5pm, Sun 8am – 1pm
Cleanaway Advanced Waste Treatment	Processing	1725 Elizabeth Drive, Kemps Creek, NSW, 2171	N/A
GREC (GRL)	Processing	Wallgrove Road, Eastern Creek NSW 2171	N/A
Lucas Heights Resource Recovery Park	Disposal	Little Forest Road Lucas Heights, NSW, 2234	Mon-Fr- 6am-4pm Sat-Sun- 8am-4pm

7.1.2 Nominated Alternative Facilities

During any scheduled or unscheduled down time below facilities will be utilised to continue service delivery under the Contract.

Facility	Activity	Location	Business Hours
Auburn Resource Recovery Centre	Receipt	Old Hill Link, Sydney Olympic Park, NSW, 2127	Mon-Fr- 24 hours Sat- 12am-4pm Sun- 7am-4pm, 9pm- 12am

7. Ownership of Technology

Where the Service Provider is not the technology owner, the Service Provider must maintain licence arrangements which includes a clear description of the overall processing system(s) proposed and of each unit of processing technology to be used.

8. Provide Adequate Capacity for Term of Contract

The Service Provider must provide a Nominated Primary and Alternative Facility with adequate capacity to receive and process all material delivered under the Contract, for the Contract Term. The Nominated Primary Facility, as listed in 7.1.1 of the Specifications, is the primary facility for receipt of Domestic, Cleansing and Parks Waste (Putrescible) within this Agreement.

9. Capacity at Commencement Date

The Service Provider has ensured the City that the Nominated Primary and/or Alternative Facility has the total capacity as required at the Commencement Date.

10. Beneficial Products Quantity and Quality

- The Service Provider must ensure that the quantity and composition of each type of beneficial products complies with relevant recognised standards and guidelines.
- In ensuring that the quantity of each type of beneficial product is recovered the Service Provider must provide records of the recovered materials in accordance with the Contract.

11. End Use of Beneficial Products

- The Service Provider must ensure the proposed end use for each type of material recovered through its Nominated Primary and/or Alternative Facility is in accordance with relevant recognised standards and guidelines.
- The Service Provider must provide quarterly reports to the City detailing the end of market use for each type of material recovered from the material delivered by the City. The reports must provide verifiable evidence of the re-use of recovered materials as Beneficial Products. The Service Provider must provide updated reports to the City quarterly.

12. Stockpile

- The Service Provider must ensure that at any one (1) time, the

amount of each type of material stockpiled at the Nominated Primary and/or Alternative Facility does not exceed the maximum quantity specified in the relevant facility licencing requirements with respect to the relevant type of material.

- b. The Service Provider must keep all records and maintain and submit all reports to the City and the NSW Environmental Protection Authority in accordance with this Contract and with all environmental protection licence conditions and the laws of NSW. The Service Provider will conform with all reporting requirements for the Nominated Primary and/or Alternative Facility.

13. Contamination

The Service Provider will identify, separate, store and treat Contamination in accordance with relevant legislative requirements and procedures. Where the definition of Contamination includes materials that are not included in "Residual Material", the Service Provider must manage these materials in accordance with relevant legislative requirements and procedures, at the Service Provider's cost. The City shall not be responsible for the management or costs associated with the Service Provider's procedures for managing Contamination.

14. Residual Material Disposal of Residual Material

- a. All Residual Material must be disposed of in a Nominated Primary Facility or Nominated Alternative Facility.
- b. The Service Provider is responsible for handling, storage (where required) and transporting Residual Material to the Nominated Primary Facility or Nominated Alternative Facility, at its cost. The Service Provider is responsible for the payment of all disposal fees for the Residual Material.
- c. The Service Provider shall be responsible for recording the quantity of Residual Material on a weekly basis and shall provide this information to the City on a regular basis as directed by the Manager. The Service Provider must weigh all Residual Material and provide records of all Residual Material removed from the Nominated Primary and/or Alternative Facility to the City, as directed by the Manager.
- d. If the Service Provider wishes to utilise an alternative Disposal facility at any time during the Contract Term it may do so at its own cost, but only if it obtains the prior written approval of the Manager.

15. Minimisation of Residual Material

- a. The Service Provider must develop and implement a plan to minimise Residual Material that will provide detail on all aspects of the facility design and operation that will minimise the quantity of Residual Material.
- b. The Plan to Minimise Residual Material must be:
 - i. Submitted to the Contract Manager for Approval within four (4) weeks after the Commencement Date; and
 - ii. Evaluated and updated during each year of the Contract Term with the updated Plan to Minimise Residual

Material submitted to the Manager for Approval prior to each anniversary of the Commencement Date.

- c. The Plan must include but not be limited to the following:
 - i. The maximum monthly level of Residual Material;
 - ii. Detail on the situations under which either whole loads, or parts of a load will be rejected from the Nominated Primary and/or Alternative Facility;
 - iii. Procedures for the identification and handling of hazardous wastes;
 - iv. Relevant company policies;
 - v. Staff incentives that may exist to encourage resource recovery;
 - vi. Effectiveness of resource recovery strategies.

16. Waste to Landfill Disposal of Waste

- a. City of Sydney reserves the right to divert parts or the entire quantity of Waste from Service A, B and/or C, from processing to landfill at its discretion.
- b. For Waste less than one week, or under 900 tonne per year, the City will give written direction to the Service Provider at least 24 hours before the change from processing of Waste to Disposal of Waste is to take effect.
- c. For Waste more than one week but less than six months volumes, between 900 and 24,000 tonne per year, the City will give written direction to the Service Provider at least 20 Business Days before the change from processing of Waste to Disposal of Waste is to take effect.
- d. For the total waste volume, the City will give written direction to the Service Provider at least 60 Business Days before the change from processing of Waste to Disposal of Waste is to take effect.
- e. Once The City directs the Provider to delivered directly to landfill Waste volumes that exceed 70% of the annual waste volumes generated in the previous year, changes requested to reinstate processing arrangements will be by a mutual agreement.
- f. All Residual Material must be Disposed of in the Approved Disposal Facility being Cleanaway Lucas Heights Recovery Park.
- g. The Service Provider is responsible for handling, storage (where required) and transporting Waste to the Nominated Primary Facility and Nominated Alternative Facility, at its cost. The Service Provider is responsible for the payment of all Disposal fees for the Waste.
- h. The Service Provider is responsible for recording the quantity of Waste on a weekly basis and shall provide this information to the City on a regular basis as directed by the Contract Manager. The Service Provider must weigh all Waste and provide records of all Waste removed from the Nominated Primary and Alternative Facility to the City, as directed by the Contract Manager.

- i. If the Service Provider wishes to utilise a Nominated Alternative Disposal Facility at any time during the Term, it may do so at its own cost, but only if it obtains the prior written approval of the Contract Manager.

17. Cost of Disposing of Residual Material and Waste– s. 88 LEVY

- a. The Service Provider is responsible for all costs associated with handling, transporting and disposing of Residual Material including payment of the *Protection of the Environment Operations Act 1997* (NSW) Section 88(2) contributions. That is, the Service Provider is responsible for payment of all levies or taxes associated with disposal of Residual Material.
- b. If Interim Services are being provided, the Service Provider is responsible for all costs associated with handling, transporting and disposing of Residual Material, including payment of the *Protection of the Environment Operations Act 1997* (NSW) Section 88 contributions, if applicable.

18. Service Continuity

a. Available for Acceptance of Material

It is the Service Provider's responsibility to ensure the receipt, processing and disposal facility, and any transfer facility nominated in this Contract and referenced in 7.1.1 and 7.1.2 of The Specifications are available for the acceptance of all material delivered under this Contract throughout the Term.

b. Scheduled Down Time

During any scheduled down time, the Service Provider must comply with the arrangements for the acceptance and storage of delivered material during scheduled down time as detailed in 7.1.1 and 7.1.2 of The Specifications.

c. Unscheduled Down Time

- i. The Service Provider must minimise unscheduled down time during the Term.
- ii. If at any time during the Term, except in the instance of a Force Majeure Event, there is unscheduled down-time (i.e. in which the Receipt and Processing Facility is available for the acceptance of delivered material but unable to process that delivered material), it will be the Service Provider's responsibility to organise and coordinate processing of all delivered material at a Nominated Alternative Facility for that purpose in 7.1.2 of The Specifications; or such other facility approved by the City and which is approved by the relevant authority.
- iii. All costs associated with sourcing an alternative Contract Area and delivering the material to that Contract Area, including storage and transport costs, gate fees and levies or taxes, will be the responsibility of the Service Provider.

19. Data Collection and Record Keeping

a. Maintenance of Records

The Service Provider is responsible for obtaining and maintaining up to date records on its activities under this Contract, which must include the following:

- i. Time of entry and departure of the City's (or the City's contracted) collection vehicles.
- ii. Vehicle registration details for each vehicle for each load delivered;
- iii. Weight of material delivered, for processing at the Reveal and Processing Facility or sorting at any Transfer Facility, by each vehicle for each load;
- iv. The weight of each stream of Domestic Cleansing and Parks Waste (Putrescible), prior to being transported off site for reprocessing and the weight of material re Cleansing Waste (Putrescible) rejected from the Nominated Primary and Alternative Facility for disposal to an Approved disposal facility; and
- v. If a Transfer Facility is utilised, the weight of materials and separated Contamination (if relevant), delivered to and from these Contract Areas must be recorded and reported to the City.

b. Weighbridge

- i. The Service Provider must utilise the weighbridge nominated in 7.1.1 and 7.1.2 of The Specifications.
- ii. The Service Provider (at its own expense) must:
 1. provide the weighbridge specified for the receipt of the delivered material;
 2. ensure that the weighbridge is capable of receiving the delivered material;
 3. ensure that the weighbridge is in good working order at all times;
 4. if the weighbridge is inoperable, then the Service Provider must arrange an alternative facility;
 5. arrange for the accuracy of the weighbridge to be independently checked and certified every twelve (12) months;
 6. maintain records of the checks of the weighbridge's accuracy; and
 7. in relation to the weighbridge, comply in all respects with the *Trade Measurement Act 1989* (NSW).
- iii. The Service Provider must keep the database up to date and ensure that all records are accurate, with all necessary additions and amendments being made, to provide a true and correct record.

Where the weighbridge nominated is inoperable and the Service Provider arranges for an alternative change weighbridge to be utilised for the weighing of the City's delivered materials, the Service Provider is responsible for paying to the City the additional costs

associated with the in location that results in additional costs to the City's collection Service Provider.

Schedule 4 – Contract Area

(clause 1.1)

The Domestic, Cleansing (Putrescible) and Parks Waste Receipt, Processing and Disposal Services as defined in the Specifications.

Schedule 5 – Statutory Declaration and Subcontractor's Statement

(Clause 14.1(b)(iii))

_____ of _____, do solemnly and sincerely declare as follows:

1. I am **[Position held in Service Provider's organisation]** of **[Service Provider's name and ABN]** ("Service Provider").
2. The Service Provider has a contract with the Council of the City of Sydney (ABN 22 636 550 790) to **[Description of services]** dated **[Date]** ("Contract").
3. All subcontractors and suppliers engaged by the Service Provider with respect to services under the Contract have been paid all moneys due and payable to them in respect of services carried out for or materials supplied to the Service Provider.
4. Attached to and forming part of this declaration is a subcontractor's statement given by the Service Provider in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW) ("**Acts**") which is a written statement:
 - (a) under section 175B of the *Workers Compensation Act 1987* (NSW), in the form and providing the detail required by that legislation;
 - (b) under Schedule 2 section 18 of the *Payroll Tax Act 2007* (NSW), in the form and providing the detail required by that legislation; and
 - (c) under section 127 of the *Industrial Relations Act 1996* (NSW), in the form and providing the detail required by that legislation.
5. The matters which are contained in this declaration and the attached subcontractor's statement are true.
6. If the Service Provider has subcontractors, the Service Provider has received from each of those subcontractors a statutory declaration and subcontractor's statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).
7. All statutory declarations and subcontractor's statements received by the Service Provider from subcontractors referred to in clause 6 were:
 - (a) given to the Service Provider in its capacity as 'principal contractor' as defined in the Acts; and
 - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
8. The period of the Contract covered by this declaration and the attached subcontractor's statement is from **[insert]** to **[insert]**.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the *Oaths Act 1900* (NSW).

Declared at _____ on _____
(place where declaration made) (date of declaration)
by _____

Signature of person making the declaration

Name of person making the declaration

in the presence of an authorised witness, who states:

I, **[name of authorised witness]**, a **[qualification to be authorised witness]**, certify the following matters concerning the making of this statutory declaration by the person who made it:

- (a) **Alt**[I saw the face of the person. / I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering].
- (b) **Alt**[I have known the person for at least 12 months. / I have confirmed the person's identity using an identification document and the document I relied on was [describe identification document relied on]].

Signature of authorised witness

Date:

**SUBCONTRACTOR'S STATEMENT
REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 – see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s).

The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of

.....
(Address of Subcontractor)

has entered into a contract with ABN:

.....
(Business name of principal contractor) (Note 2)

Contract number/identifier (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive,
subject of the payment claim dated:/...../..... (Note 4)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made,
hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's
Statement and declare the following to the best of my knowledge and belief: (Note 5)

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above
period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that
workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick []
and only complete (f) and (g) below. You must tick one box. (Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the
contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....
(Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.
(Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the
Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as
required at the date of this Subcontractor's Statement. (Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its
capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection
with that work for the period stated above. (Note 10)

(f) Signature Full name

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to
comply with section 175B of the *Workers Compensation Act 1987*.

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s 127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s 127 of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor;
or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s 175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkerCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 6 – Security

Approved form of unconditional undertaking

(clause 1 - Security)

At the request of('the Service Provider') and in consideration of('the City') accepting this undertaking in respect of the Contract for

.....('the *financial institution*') unconditionally undertakes to pay on

demand any sum or sums which may from time to time be demanded by the City to a maximum aggregate sum of..... (\$)

The undertaking is to continue until notification has been received from the City that the sum is no longer required by the City or until this undertaking is returned to the *financial institution* or until payment to the City by the *financial institution* of the whole of the sum or such part as the City may require.

Should the *financial institution* be notified in writing, purporting to be signed by for and on behalf of the City that the City desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *financial institution* will make the payment or payments to the City forthwith without reference to the Service Provider and notwithstanding any notice given by the Service Provider not to pay same.

Provided always that the *financial institution* may at any time without being required so to do pay to the City the sum of (\$)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the City and thereupon the liability of the *financial institution* hereunder shall immediately cease.

This undertaking is governed by the laws of New South Wales.

Dated at this day of 20.....

Schedule 7 – Expert determination agreement

(Clause 21.10)

THIS AGREEMENT is made on 20.....

BETWEEN Council of the City of Sydney (ABN 22 636 550 790) ("**Principal**")

AND ("**Service Provider**")

AND ("**Expert**")

BACKGROUND

- A. The Principal and the Service Provider have entered into the Contract.
- B. The Principal and the Service Provider have agreed to refer the Dispute for determination by the Expert acting as an expert and not as an arbitrator.

TERMS

1. DEFINITIONS

"**Contract**" means the contract entered into between the Principal and the Service Provider described in Item 1 of Annexure 1.

"**Dispute**" means the dispute or difference described in Item 2 of Annexure 1.

2. DECIDE ON DISPUTES

The Expert must:

- (a) determine the Dispute and not any other matter; and
- (b) in discharging his or her obligations under this agreement, abide and be bound by the provisions of the Contract.

3. PROCEDURES

Subject to clause 4, the Expert must determine the Dispute in accordance with the procedures set out in Item 3 of Annexure 1 unless varied, amended or otherwise changed by agreement between the Principal, Service Provider and Expert.

4. EXPERT'S POWERS

The Expert must in discharging his or her obligations under this agreement:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in such manner as the Expert thinks fit without being bound to observe the rules of evidence but subject to the rules of natural justice;
- (c) take into consideration all documents, information and other written and oral material that the Principal and Service Provider place before the Expert

including documents, information and material relating to the facts the subject of the Dispute and to arguments and submissions upon the matters the subject of the Dispute;

- (d) not be expected or required to obtain or refer to any other documents, information or material but may do so if he or she so desires;
- (e) giving reasons, make a decision in writing stating the determination of the Dispute; and
- (f) act with expedition with a view to making a decision within two weeks of the date of this agreement.

5. MEET WITH PARTIES

If as part of the procedures under clause 3, the Expert meets with the Principal and Service Provider, the Principal and Service Provider agree to be bound by such procedural directions as may be given by the Expert both in preparation for, and during the course of, the meeting.

The parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

6. REMUNERATION

In consideration of the Expert performing his obligations under this agreement the parties shall pay to the Expert the amount of set out in Item 4 of Annexure 1 or such other amount as is agreed between the Principal, Service Provider and Expert.

7. CONFIDENTIALITY

The Expert must not at any time, without the consent of both the Principal and Service Provider, disclose or suffer or permit his or her employees, consultants or agents to disclose to any person:

- (a) any details concerning the subject matter of the Dispute;
- (b) any of the contents of the Contract, this agreement or any other collateral or supplemental agreements or any of the commercial bases or any information relating to the negotiations concerning the same; or
- (c) any other information which may have come to the Expert's knowledge in the course of this agreement including information concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Principal or Service Provider.

8. NATURE OF EXPERT'S ROLE

The Expert:

- (a) is to be independent from the Principal and Service Provider; and

- (b) without limitation, warrants that he or she has no conflict of interest in acting under this agreement.

9. TERMINATION

This agreement may be terminated by either the Principal or the Service Provider in any of the following events:

- (a) the Expert being declared of unsound mind or mentally ill;
- (b) the Expert being declared bankrupt;
- (c) the Expert committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the Principal or the Service Provider;
- (d) the Expert failing to observe and fulfil any of the substantive terms of this agreement; or
- (e) the Expert being prevented by illness or incapacity from performing his or her obligations under this agreement.

10. NOTICES

All notices to be given to the Expert under this agreement will be deemed to be properly given if:

- (a) hand delivered to the Expert;
- (b) sent by certified or registered mail to the Expert's address set out in Item 5 of Annexure 1 or to such other address as the Expert may from time to time advise by notice in writing; or
- (c) forwarded by email transmission to the Expert's email number as set out in Item 6 of Annexure 1 or to such other email number as the Expert may from time to time advise by notice in writing.

11. GOVERNING LAW

Unless specified otherwise in Item 7 of Annexure 1, this agreement is to be construed for all purposes in accordance with the laws applying to the Contract.

12. INCONSISTENCY BETWEEN AGREEMENT AND CONTRACT

If there is any inconsistency between the terms of this agreement and the Contract, then unless otherwise specified in Item 8 of Annexure 1 the terms of the Contract will prevail.

SIGNED by the **PRINCIPAL**
in the presence of:

)
)

(Signature of Witness)

(Name Of Witness in Full)

SIGNED by the **SERVICE PROVIDER**
in the presence of:

)
)

(Signature of Witness)

(Name Of Witness in Full)

SIGNED by the **EXPERT**
in the presence of:

)
)

(Signature of Witness)

(Name Of Witness in Full)

ANNEXURE 1

Item 1: (Contract):

Item 2: (Dispute):

Item 3: (Procedures):

Item 4: (Expert's Hourly Remuneration):

Item 5: (Expert's Address):

Item 6: (Expert's Email):

Item 7: (Governing law):

Item 8: (Inconsistency):