

Major Services Agreement

The Council of the City of Sydney

and

Veolia Environmental Services (Australia) Pty Ltd
ABN 20 051 316 584

CONTENTS

CLAU	SE		PAG	
1.	INTER	PRETATION	1	
	1.1 1.2	Definitions		
2.	RELAT	ONSHIP BETWEEN THE PARTIES	7	
	2.1 2.2 2.3	Independent contractor	3	
3.	SERVIO	CES	3	
	3.1 3.2 3.3	Basis of engagement	3	
4.	PERFO	PERFORMANCE OF THE SERVICES8		
	4.1 4.2 4.3 4.4 4.5 4.6 4.7 4.8 4.9 4.10 4.11 4.12	Provision of the Services	9 9 0 0 1 1 1 1	
5.	MILESTONES AND SERVICE LEVELS			
	5.1 5.2 5.3	Milestones	3	
6.	CITY'S	FACILITIES14	1	
,	6.1 6.2 6.3 6.4	Access to the City's Property	5	
7.	PAYME	NT, INVOICING AND GST15	5	
	7.1 7.2 7.3 7.4 7.5 7.6 7.7 7.8	Fee 15 Invoices 16 Method of payment 16 Effect of payment 16 Disputed invoices 16 Responsibility for Taxes 16 GST 17 Withholding tax 17	5 5 5 5 7	
8.	REPOR	TS, MEETINGS, ACCOUNTS AND AUDITS17	7	
	8.1	Business as Usual Reports and Meetings17	7	

	8.2 8.3 8.4 8.5	Progress reports			
9.	ADMINISTRATION OF THIS DOCUMENT				
	9.1 9.2 9.3	Direction of Contract Manager			
10.	VARIATIONS				
	10.1 10.2 10.3 10.4 10.5 10.6	Notice by the City19Effect of Variation Notice20Urgent additional services20Fee for additional services20Changes to Fee20If no agreement reached20			
11.	EQUIP	EQUIPMENT, DATA AND PRIVACY			
	11.1 11.2 11.3 11.4 11.5 11.6	Ownership Of Equipment			
12.	INTELLECTUAL PROPERTY				
	12.1 12.2 12.3 12.4 12.5	Service Provider's Material 22 City's Material 22 Developed Material 22 Third Party Licences and Moral Rights 23 Infringement Claim 23			
13.	WARRANTIES24				
	13.1 13.2 13.3	Mutual warranties			
14.	BEHAV	TOUR AND CONDUCT26			
15.	INDEM	INDEMNITY			
16.	INSUR	ANCE26			
	16.1 16.2 16.3	Insurance policies27Duration of insurance27Evidence of policies27			
17.	STEP I	N RIGHTS27			
18.	TERM AND TERMINATION				
	18.1 18.2 18.3 18.4 18.5 18.6 18.7	Term			
10	DICEN	CACEMENT			

	19.1 19.2 19.3 19.4 19.5 19.6	Application		
20.	CONFIDENTIALITY AND DISCLOSURES			
	20.1 20.2 20.3 20.4 20.5 20.6	Use and disclosure of Confidential Information		
21.	FORCE MAJEURE			
	21.1 21.2 21.3 21.4	Notice and suspension of obligations		
22.	DISPUTE RESOLUTION			
	22.1 22.2 22.3 22.4	Application34Negotiation34Condition precedent to litigation35Summary or urgent relief35		
23.	NOTICE	ES		
24. AMENDMENT AND ASSIGNMENT		MENT AND ASSIGNMENT		
	24.1 24.2	Amendment 35 Assignment 35		
25.	SECUR	ECURITY35		
	25.1	The Service Provider must, upon execution of this document, give to the City a Guarantee for the Guarantee Amount as security for performance of the Service Provider's obligations under this document		
	25.3	under the Guarantee		
	25.4	in equity in relation to any default of the Service Provider		
	25.5	Following the expiration of the Term or the Further Term (as the case may be), so long as the Service Provider is not then in default under the terms of this document, the City will release the Guarantee or return it to the Service Provider as directed by the Service Provider, upon written request to do		
	25.6	so		
26.	CHANGE IN LAW			
27.	PROPE	RTY38		
	27.1	Damage to Property		

	27.2	Cost of Damage38			
	27.3	Independent Expert38			
28.	GENER	AL39			
	28.1	Governing law39			
	28.2	Access to information			
	28.3	Liability for expenses39			
	28.4	Duty of cooperation39			
	28.5	Giving effect to this document39			
	28.6	Waiver of rights39			
	28.7	Operation of this document40			
	28.8	Operation of indemnities40			
	28.9	Set off40			
	28.10	Exclusion of contrary legislation40			
	28.11	Inconsistency with other documents40			
	28.12	No fetter40			
	28.13	Counterparts41			
Sche	edule				
1	Agreer	nent Details43			
2		rma Work Schedule45			
Anne	exures				
Α	Report	s & Reviews			
В	Service	Services, Service Levels, Disengagement of Services, Specifications545			
C	Sched	Schedule of Rates			

THIS AGREEMENT is made on

1 JANUARY

2017

BETWEEN:

- (1) Council of the City of Sydney whose registered office is at Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the City); and
- (2) **Veolia Environmental Services (Australia) Pty Ltd** ABN 20 051 316 584 of Level 4, Bay Centre, 65 Pirrama Road, Pyrmont NSW 2009 (the **Service Provider**).

RECITALS

- (A) The City wishes to appoint the Service Provider for the provision of the Services on the terms and conditions of this document.
- (B) The Service Provider agrees to supply the Services to the City on the terms and conditions of this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Applicable Law means is an enactment, promulgation, execution or ratification of, or any change in or amendment to any Laws (or in the application or judicial (or official) interpretation of any Laws, including any consent issued under any relevant Laws which:

- (a) occurs after the date of this document;
- (b) occurs in Australia;
- (c) the Service Provider is legally obliged to comply with;
- (d) the Service Provider did not know about and was not reasonably foreseeable to the Service Provider prior to the execution by it of this document and
- (e) impacts upon the Fees (whether by way of increase or decrease of the Service Provider's costs and/or profit margins);

but excludes any law relating to income tax or GST;

any law under which an amount is otherwise recovered by the Service Provider through an escalation or increase in the Fees.

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,

including any renewal or amendment.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch); or
 - (ii) Baa 1 (Moodys); or
 - (iii) bbb (Bests);
- (c) be issued on behalf of the Service Provider;
- (d) have no expiry or end date;
- (e) name the beneficiary as "The Council of the City of Sydney".

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

Camellia MRF means the Camellia Recycling Centre, to be located at 37 Grand Avenue, Camellia.

Change in Law means the coming into effect after the date of this document of any Law or any applicable judgment of a relevant court of law, which changes the interpretation of the Law and is a binding precedent, which directly and adversely affects the Service Provider's performance under the document in a material way but does not include any Change of Law which is expressly dealt with in this document other than in Clause 26 of this document.

City's Data means data of any kind of the City or of any customer or supplier of the City (other than the Service Provider) and includes data that:

- may cause the City reputational or brand damage if it is the subject of unauthorised information disclosure, loss or corruption;
- (b) is the City's Personal Information; or
- (c) is corporate proprietary or financial information such as may be subject to the Corporations Act or would be the subject of Intellectual Property Rights owned by the City.

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

City's Personal Information means Personal Information to which the Service Provider, or any third party engaged by the Service Provider, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Service Provider).

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.

Contract Manager means the person named in Item 1 of Schedule 1 or his/her delegate.

Confidential Information means:

- (a) the terms of this document;
- (b) information of a party (disclosing party) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (receiving party), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Corporations Act means the Corporations Act 2001 (Cth).

Deliverables means any items (including any software or hardware) required to be provided to the City, or a task to be completed for the City, by the Service Provider under any Work Schedule.

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

Disengagement Period means the period commencing on the date specified in clause 19 and ending on the intended date of termination of this document, which will either be:

- (a) the end of the Term; or
- (b) the date specified by the City in a termination notice.

Disengagement Services means the services to be provided by the Service Provider in anticipation of the termination of this document, 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) 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; and
- (d) any other disengagement services set out in a Work Schedule,

to another services provider or to the City itself.

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

Equipment means all items supplied by the Service Provider in accordance with this document.

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

- (a) Work Health and Safety Act 2011 (NSW);
- (b) the Protection of the Environmental Operations Act 1997 (NSW); and
- (c) the Contaminated Land Management Act 1997 (NSW).

Expiry Date means the date in Schedule 1.

Fee means the fee for the Services specified in the relevant Work Schedule.

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

- (a) is beyond the reasonable control of that party; and
- (b) constitutes 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 caused by the Service Provider).

Further Term means an extension of the Term under clause 18.2.

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.

Guarantee means a Bond or one or more unconditional bank guarantees, to not expire earlier than 4 months after the expiry of this document, issued by a bank licensed to carry on business in Australia that is:

- (a) in favour of the City;
- (b) for the Guarantee Amounts; and
- (c) on such other terms and conditions as the City may approve from time to time.

Guarantee Amount means the amount of the Guarantee as set out in **Item 9** of Schedule 1.

GST means the same as in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Infringement Claim means any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting ownership of the Intellectual Property Rights in the Developed Material; or
- (b) that the supply or other use of the Services or the Developed Material infringes or may infringe the Intellectual Property Rights of a third party.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Intellectual Property Rights means all present and future rights conferred in law in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world, but excluding any Moral Rights.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

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.

Milestone means a date, phase or provision of a Deliverable specified in the relevant Work Schedule.

Moral Rights means rights of integrity of authorship or performership, rights of attribution of authorship or performership, rights not to have authorship or performership falsely attributed, and rights of a similar nature conferred by statute anywhere in the world that may now exist or that may come to exist in relation to a work.

Performance Date means a date by which a Milestone must be completed by the Service Provider as set out in a Work Schedule.

Personal Information has the meaning set out in the Privacy Act 1988 (Cth).

Personnel means the Service Provider's officers, employees, agents, contractors or 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.

Schedule of Rates means the schedule of rates submitted by the Service Provider as part of the tender and as accepted by the City as set out in a Work Schedule.

Service Levels means service levels used for measuring the performance of the Service Provider's obligations under this document, as set out in a Work Schedule.

Service Level Rights means the rights that may be exercised by the City in relation to a Service Level specified in the Work Schedule, including the right to claim monetary compensation and other remedies.

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 City's Material or the Developed Material.

Service Provider's Representative means the person named in Schedule 1 or his/her delegate.

Services means the services to be provided to the City set out in the relevant Work Schedule, including the provision of the Developed Material.

Site means the site or sites for the performance of the Services set out in Schedule 1.

Specifications means the functional and technical specifications set out in the Work Schedule.

Start Date means Date of Contract Agreement.

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 18.1.

WHS Returnable Documents means the WHS documentation listed in Schedule 1, including risk assessments and safe work method statements in relation to the Services.

Work Schedule means the document (substantially in the form set out in Schedule 2) that the parties sign for the City to order Services from the Service Provider.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

- a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **dollars** or \$ is to an amount in Australian currency.
- (g) A reference to this document includes the agreement recorded by this document.
- (h) Words defined in the GST Act have the same meaning in clauses about GST.
- (i) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. RELATIONSHIP BETWEEN THE PARTIES

2.1 Independent contractor

The Service Provider is an independent contractor of the City. The Service Provider must not represent itself, and must ensure that its employees, subcontractors and agents do not represent themselves, as being partners, employees or agents of City.

2.2 Subcontractors

- (a) The Service Provider must not appoint any subcontractors to assist with the provision of the Services unless it has obtained the prior written consent of the City. The City's consent may be withheld at the City's absolute discretion or granted subject to conditions.
- (b) If the Service Provider appoints a subcontractor under this document, the Service Provider will remain responsible for all acts and omissions of the sub-contractor as if they were acts or omissions of the Service Provider.

2.3 No authority to make certain representations

The Service Provider must not make any representation, statement or warranty that it has authority to bind the City, whether by entering into contracts or otherwise, except with the prior written consent of the City.

SERVICES

3.1 Basis of engagement

The City engages the Service Provider as a non-exclusive, independent contractor to provide the Services to the City, and the Service Provider accepts the engagement on the terms of this document.



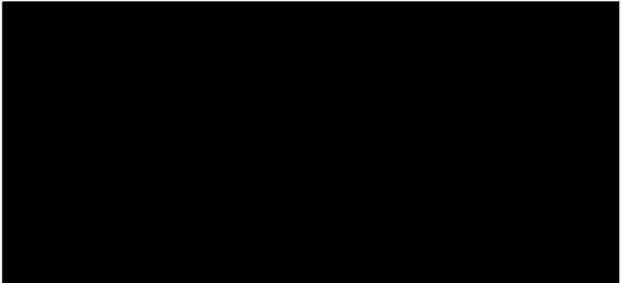
3.3 No volume guarantee

The City is under no obligation, at law or under this document, to obtain any quantity or volume of any Services from the Service Provider.

4. PERFORMANCE OF THE SERVICES







4.3 Additional Service Provider obligations

The Service Provider must:

- (a) supply everything necessary for the performance of its obligations under this document;
- use any equipment in performance of the Services in the proper manner for the purposes for which it is provided and in accordance with the manufacturer's and supplier's directions;
- (c) maintain the City's Property and any Site used in the performance of the Services in good condition;
- (d) cooperate with any of the City's personnel and contractors in the performance of the Services or as otherwise directed by the Contract Manager from time to time;
- (e) take all necessary and reasonable steps to ensure the security of the Site is maintained;
- (f) attend inspections of the Site with the City at the City's request;
- (g) achieve best value for money for the City in the provision of the Services;
- (h) ensure that the City is fully and accurately informed of all matters which are the subject of the Services;

- (i) ensure that the City has the benefit of all manufacturer's warranties for all goods supplied 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 used in performance of the Services.

4.4 Availability

The Service Provider must ensure the sufficient availability at all times of the Personnel, equipment, parts and materials required to provide the Services in accordance with this document.

4.5 Authorisations

The Service Provider must:

- 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.



4.7 Improvements

The Service Provider must also use all reasonable endeavours to identify:

- (a) possible improvements to the Services, the City's processes or any matter related to this document; and
- (b) possible costs savings to the City in relation to the provision of the Services.

4.8 Quality assurance

- (a) Where required by the Work Schedule, the Service Provider must establish and maintain a documented quality assurance system about the Services in accordance with the standard set out in the Work Schedule.
- (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.

4.9 Cooperation with third parties

The Service Provider must work co-operatively with in good faith and provide all reasonable assistance to any third party engaged by the City to provide services to the City relating to or associated with the Services, including any NSW State Government agencies and their representatives.

4.10 WHS and environmental obligations

- (a) The Service Provider must accurately complete and then provide to the City the WHS Returnable Documents by the due dates set out in Schedule 1.
- (b) Without limiting clause 4.2(c), the Service Provider must in the performance of the Services:
 - (i) comply with the City's environmental and WHS policies as notified by the City to the Service Provider in writing; and
 - (ii) without limiting clause 4.10(b)(i):
 - (A) act in such a manner as to avoid nuisance, 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 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 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 4.10(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.

4.11 Conflict of Interest

- (a) The Service Provider must not engage in any activity that may result in a conflict of interest arising or continuing.
- (b) If, during the Term, a conflict or risk of conflict of interest arises, the Service Provider must notify the City immediately in writing of that conflict or risk and take such steps as the City may reasonably require to resolve or otherwise deal with the conflict or risk.

4.12 Industrial Relations

- (a) The Service Provider agrees that all responsibility for industrial relations with regard to its employees rests with the Service Provider.
- (b) The Service provider agrees to keep the City fully and promptly informed of any industrial relations problems or issues which affect or are likely to affect the performance of the Services.

5. MILESTONES AND SERVICE LEVELS

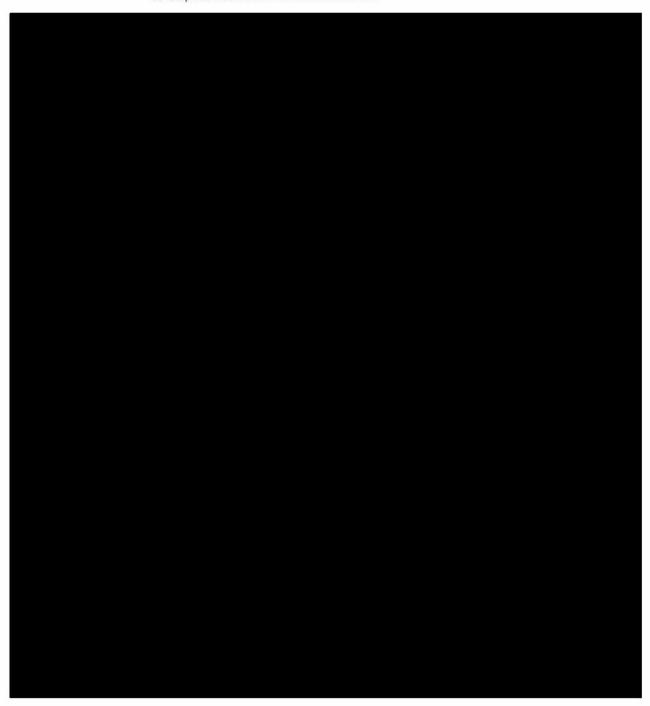
5.1 Milestones

- (a) The Service Provider must complete each Milestone by the Performance Date.
- (b) If the Service Provider reasonably believes that any Milestone will not be performed by the Performance Date, the Service Provider must give the City prompt notice of that belief. The notice must specify the reason for the delay and the expected date of performance of the Milestone.
- (c) If the Service Provider gives a notice under clause 5.1(a), the City:
 - must, to the extent the Service Provider's obligations are suspended under clause 21 or the delay arises from the City's failure to comply with this document; and
 - (ii) otherwise may, in its reasonable discretion,

without limiting the City's rights, extend the time for performance of the Milestone, by notifying the Service Provider of a later Performance Date. The City will not unreasonably reject the Service Provider's request for an extension of time.

- (d) If the Camellia MRF is unavailable to be used as a Site by the Service Provider by the Performance Date for Milestone 3 or Milestone 4 in Schedule 2:
 - (i) the Service Provider must give the City notice in accordance with clause 5.1(b) and, at its discretion, nominate alternative Sites for the Services ("Alternative Sites");
 - the City must provide its written approval, which shall not be unreasonably withheld, for the Service Provider to continue to use existing Sites or the Alternative Sites;
 - (iii) the Service Provider may continue to use existing Sites for the Services until otherwise directed in accordance with subclause 5.1(d)(ii);

- (iv) the unavailability of the Camellia MRF will not be considered to be a default, either of a Work Schedule or this document, by the Service Provider;
- (v) in the event that the City refuses to provide the approval referred to in clause 5.1(d)(ii), or the parties cannot reach agreement within 28 days of the Service Provider providing written notice as above, then the matter must be referred to dispute resolution under clause 22.





6. CITY'S FACILITIES

6.1 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 or will connect the Service Provider's facilities to the City's Property for the sole purpose of and only to the extent necessary 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:
 - the Service Provider fails to comply with its obligations under this clause 6;
 - (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).

6.2 Service Provider acknowledgment

The Service Provider acknowledges and agrees that access to the City's Property under clause 6 is at its own risk, except for any negligent act or omission by the City.

6.3 Public information

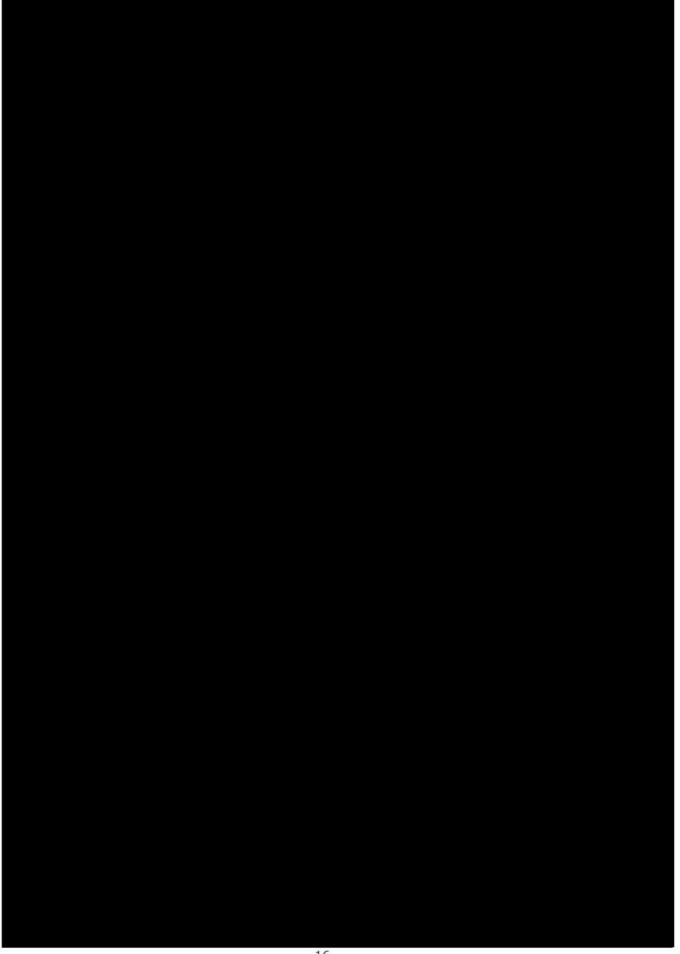
The Service Provider must not:

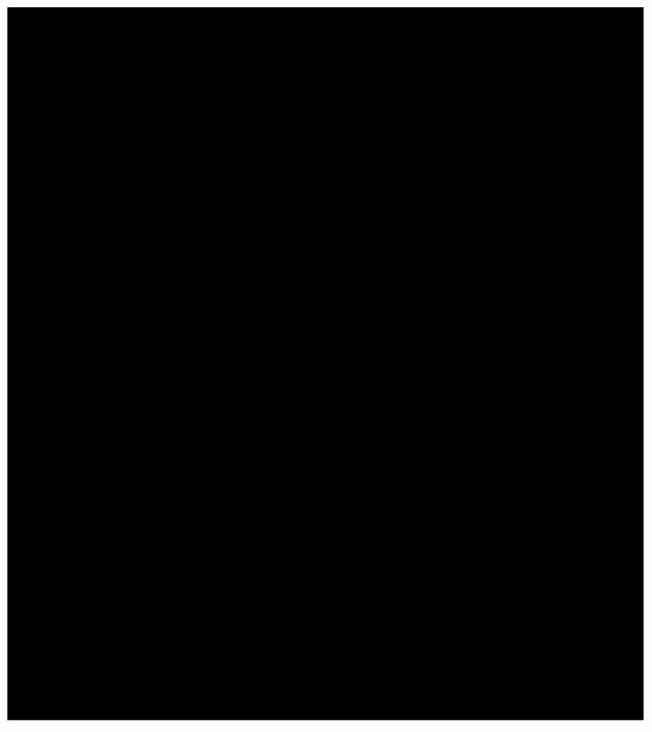
- (a) take or permit to be taken any photograph, drawing or sketch of the Services being performed on the Site except for the purpose of performing the Agreement; or
- (b) in any advertising or promotional material, use or permit to be used the City's name, except with the prior written consent of the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

6.4 Keys

The Service Provider:

- 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 be lend the keys or remove they keys from the Site;
- (d) must not use the keys other than for access for provision of the Services; and
- (e) must meet the costs of the City supplying additional or replacement keys and any repining, 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.





8. REPORTS, MEETINGS, ACCOUNTS AND AUDITS

8.1 Business as Usual Reports and Meetings

- (a) The Contract Manager and the Service Provider's Representative under each Work Schedule will meet when necessary, and at least every three months, to discuss the reports provided under this clause 8.1(a), delivery of the Services, and any other matter related to this document.
- (b) The Service Provider will provide to the City, at least 3 Business Days prior to each meeting under clause 8.1(a), written reports of progress on the Services, the Service Levels, problems and recommendations for development and any other matter

related to this document which requires discussion in the meeting under clause 8.1(a).

8.2 Progress reports

The Service Provider must deliver to the City during the Term, in accordance with and at the frequency set out in the Work Schedule and as otherwise reasonably requested by the City from time to time, a written report providing full details of:

- (a) the Service Provider's progress in supplying the Services and ability to achieve upcoming Milestones or other action items;
- (b) detailed analysis of the Service Provider's compliance with the Service Levels; and
- (c) such other information as the City may from time to time request.

8.3 Content of reports

The Service Provider must ensure that:

- (a) all reports provided under this clause 8 contain all required information and are accurate and not misleading in any respect; and
- (b) all recommendations are clearly explained and substantiated.

8.4 Meetings

In addition to the meetings under clause 8.1(a), the Service Provider and the City must meet with the frequency specified in the relevant Work Schedule to review the progress of the performance of the Services. If no frequency is specified, the Service Provider and the City must meet as requested by the City (but no more frequently than once a month unless agreed otherwise).

8.5 General audit rights

The Service Provider must permit the City, its personnel or approved agents access, on at least 5 Business Days' prior notice in writing and not more than twice in any 12 month period, to:

- (a) the Service Provider's premises;
- the Service Provider's systems, including information technology systems and physical storage systems;
- (c) the Service Provider's accounts and any other records relating to the provision of the Services;
- (d) the Personnel;
- (e) the work being carried out by the Service Provider under this document;
- (f) the Service Provider's data and records relating to this document and any of the City's Data in the Service Provider's power, possession or control; and
- (q) any other material or thing to which the City reasonably requires access,

in order to, at the City's cost:

- (h) assess the Service Provider's compliance with this document, including in relation to the security of the City's Data;
- (i) verify the Fee; or
- (j) satisfy any legal or regulatory requirements imposed on the City or its related bodies corporate.

9. ADMINISTRATION OF THIS DOCUMENT

9.1 Direction of Contract Manager

The Service Provider must comply with all reasonable directions given by the Contract Manager. 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 two Business Days of the direction being given.

9.2 Service Provider's Representative

- (a) The Service Provider agrees that the Service Provider's Representative has authority to receive and sign notices and written communications for the Service Provider under this document and accept any request or direction in relation to the Services.
- (b) The Service Provider may replace its Service Provider's Representative from time to time by nominating a senior officer to take the place of the Service Provider's Representative in writing to the City. The City may reject such person if it sees fit.
- (c) The City may, on reasonable grounds, give notice to the Service Provider requiring it to replace the Service Provider's Representative. The Service Provider must promptly nominate a senior officer acceptable to the City to take the place of the Service Provider's Representative.
- (d) The Service Provider's Representative 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 this document.

9.3 Meetings

The Contract Manager and the Service Provider's Representative must meet at the times set out in the Work Schedule, or at such time reasonably required by the Contract Manager at the City's offices (unless the parties agree otherwise) at a time agreed between the parties.

10. VARIATIONS

10.1 Notice by the City

At any time during the Term, the City by notice in writing to the Service Provider change the requirements for the provision of the Services (a "Variation Notice") including:

- (a) directing additional services be performed by the Service Provider; or
- (b) directing that a particular part of the Service is no longer required to be performed by the Service Provider.

10.2 Effect of Variation Notice

Subject to clause 10.3, if no date is specified in the Variation Notice, the change to the Services will take effect on the date on which agreement is reached between the parties under clause 10.5 or determined in accordance with clause 10.6.

10.3 Urgent additional services

- (a) The City may require the performance of additional services on an urgent basis and may issue an oral direction for urgent additional services.
- (b) The Service Provider must use it best endeavours to comply with each request for additional services and confirm the details of each request and the extent of compliance to the City within seven days after receipt of the request.

10.4 Fee for additional services

If the Variation Notice requires the Service Provider to provide additional services:

- (a) the Service Provider must submit a quotation for the additional services based on the Schedule of Rates (if applicable) or if no rate is applicable, reasonable rates no higher than Service Provider's then standard time and materials rates; and
- (b) until agreement is reached between the parties in relation to the variation, the City will not be liable to pay any fee or expense to the Service Provider for the additional services.

10.5 Changes to Fee

Upon receipt by the Service Provider of a Variation Notice, the parties must meet immediately to negotiate and conclude in good faith an agreement about the value of the variation or the amount by which the Service Fee should be reduced in the case of a direction by the City to omit Services.

10.6 If no agreement reached

If the parties are unable to agree on the value of a variation or the amount by which the Service Fee should be reduced in the case of an omission within ten Business Days after receipt by the Service Provider of the Variation Notice, the City, acting in good faith, will determine the value of a variation having regard to the Schedule of Rates or if no rate is applicable, reasonable rates.

11. EQUIPMENT, DATA AND PRIVACY

11.1 Ownership Of Equipment

If the Service Provider is procuring the Equipment for the City under this document, the City will own that Equipment.

11.2 Privacy

Each party must comply with all Privacy Laws in relation to Personal Information, whether or not it is an organisation bound by the *Privacy Act 1988* (Cth), and must take all reasonable steps to ensure that its employees and agents comply with the Privacy Laws.

11.3 Ownership of and access to the City's Data

(a) The Service Provider acknowledges that the City's Data remains the property of the City.

- (b) The Service Provider will ensure the City's Data:
 - (i) is to the extent practicable designated as the property of the City; and
 - (ii) remains free of any lien, charge or other encumbrance of a third party.
- (c) The Service Provider will use its best endeavours to ensure the City has access at all times to the City's Data while it is in the possession or under the control of the Service Provider, which will be available to the City at no additional charge unless other terms are set out in the Specification.
- (d) The Service Provider must follow the City's reasonable directions when collecting, storing and protecting the City's Data. The Service Provider must:
 - (i) ensure that it takes a backup of the City's Data in accordance with the Specification or otherwise as agreed between the parties; and
 - (ii) in the event that the City's Data is lost or destroyed, do all things reasonably necessary to restore the City's Data.

11.4 Use and disclosure of the City's Data

The Service Provider:

- may use the City's Data, but only as is necessary for the purposes of providing the Services;
- (b) must not directly or indirectly disclose or transfer any of the City's Data to, or allow access to any of the City's Data by, any person:
 - (i) without the City's prior written consent;
 - (ii) except to those of its Personnel who need to know the City's Data for the purposes of providing the Services, on the condition that the Personnel will only use the City's Data for the purposes of providing the Services; or
 - (iii) except as required by law;
- (c) must not transfer any of the City's Data to a person (including itself) outside of Australia without the City's prior written consent, which may be granted or withheld at the City's sole and absolute discretion;
- (d) must not purport to use, sell, let for hire, assign rights in or otherwise dispose of any of the City's Data, commercially exploit the City's Data, or allow any of the Personnel to commercially exploit the City's Data; and
- (e) must not alter the City's Data in any way, other than as required to fulfil its obligations under this document.

11.6 Obligation to cease use

In addition to the Service Provider's obligations under clause 10, on the date any of the City's Data is no longer needed for the purposes of the Service Provider providing the Services, the Service Provider at its cost must:

- (a) immediately stop using the relevant City's Data; and
- (b) within 14 days and subject to any legal requirement in relation to the retention of records deliver to the City, or, at the City's option, erase, destroy (in accordance with the City-approved destruction methods) or permanently de-identify, all records of the City's Data in the power, possession or control of the Service Provider or any person to whom it has given access to these records, whether or not according to this document.

12. INTELLECTUAL PROPERTY

12.1 Service Provider's Material

- (a) The Service Provider's Material remains the property of the Service Provider. The City does not own any Intellectual Property Rights in or to the Service Provider's Material.
- (b) The Service Provider grants to the City and its contractors, or to the extent the Service Provider's Material is licensed to the Service Provider will procure for the City and its contractors, a royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce (to the extent it is necessary to use the Service Provider's Material) and otherwise exercise all Intellectual Property Rights in and to that part of the Service Provider's Material which is required to enable the City to fully enjoy and exploit the Services and all Developed Material.

12.2 City's Material

- (a) The City's Material remains the property of the City. The Service Provider does not own any Intellectual Property Rights in or to the City's Material.
- (b) The City grants to the Service Provider a royalty-free, revocable, licence to use the City's Material during the Term for the sole purpose of providing the Services.
- (c) The Service Provider must:
 - (i) maintain and keep secure and separate all the City's Material in its power, possession or control, and must not do or cause to be done anything which may prejudice the subsistence of the City's right, title and interest in and to the City's Material; and
 - (ii) ensure that the City's Material is only used, copied, supplied and reproduced by Service Provider solely and directly for the purposes of this document.

12.3 Developed Material

- (a) The City will exclusively own all Intellectual Property Rights in and to the Developed Material from the date of its creation.
- (b) By this document, the Service Provider:
 - assigns absolutely, or will procure the assignment absolutely of, the right, title
 and interest, including all Intellectual Property Rights, in or to all Developed
 Material and all modifications made to any of the Developed Material so that
 all such right, title and interest throughout the world rests automatically on
 creation in the City;
 - must ensure that the Developed Material is only used, copied, supplied and reproduced by the Service Provider solely and directly for the purposes of this document;

- (iii) must not do or cause to be done anything which will encumber any interest in or to the Developed Material to any person other than the City; and
- (iv) at the City's request, must execute all documents necessary or desirable to ensure that all Intellectual Property Rights in or to all Developed Material and any modifications made to any of the Developed Material are assigned to the City, and to give full effect to this clause.
- (c) The City grants to the Service Provider a non-exclusive, royalty-free, revocable, non-transferrable licence to use the Developed Material during the Term to the extent needed to perform its obligations under this document, but not to any greater extent or for any other purpose.

12.4 Third Party Licences and Moral Rights

- (a) The Service Provider must obtain, at its own cost, all necessary licences and consents from any person relating to each copyright work or other subject matter comprised in the Developed Material, which are necessary to enable the parties to do all things contemplated by this document without infringing any laws or the rights (including the Intellectual Property Rights) of or duties owed to any person whether arising under statute, common law, contract or otherwise.
- (b) Without limiting clause 12.4(a), the Service Provider must ensure that each person involved in creating all or any part of the Developed Material and each person whose performance is recorded in the Developed Material irrevocably waives any and all Moral Rights they have in each copyright work or such other subject matter comprised in the Developed Material and consents to the City doing or failing to do any act in relation to those works that may, except for this clause, infringe their Moral Rights in the works including:
 - (i) exercising any of the rights in the works without identifying them;
 - exercising any of the rights in the works in a manner which incorrectly attributes any work created by them or their performance to someone else;
 and
 - (iii) editing, deleting from or otherwise altering the works in any manner determined by the City as contemplated by this document.
- (c) The Service Provider must ensure that the Developed Material does not use the image, likeness or name of any person or any property of any person, unless it has ensured that the person or the property owner has given their written consent to such use in the Developed Material and the use of it as contemplated in this document.

12.5 Infringement Claim

- (a) In the event of an Infringement Claim, the Service Provider must:
 - (i) unless otherwise notified by the City, conduct the defence of the Infringement Claim;
 - (ii) as soon as reasonably practicable, consult with the City about the Infringement Claim; and
 - (iii) not agree to any settlement of an Infringement Claim without the City's consent.

- (b) If reasonably requested by the Service Provider, the City must co-operate, at the Service Provider's cost, in the Service Provider's conduct of the defence of an Infringement Claim. The City may, at the Service Provider's cost, conduct the defence of an Infringement Claim if the Service Provider does not use its reasonable endeavours to comply with its obligations under clause 12.5(a).
- (c) Without limiting the City's other rights or remedies under this document or otherwise, if an Infringement Claim occurs, the City may:
 - (i) require the Service Provider promptly and at the Service Provider's cost to:
 - (A) procure for the City and its sub-licensees the right to continue to use the Content or any other material that is the subject of the claim (Infringing Material);
 - (B) modify the Infringing Material in a manner acceptable to the City to circumvent the Infringement Claim; or
 - (C) replace the Infringing Material with other content or material acceptable to the City; or
 - (ii) terminate this document on 10 Business Days' written notice to the Service Provider.

13. WARRANTIES

13.1 Mutual warranties

Each party represents and warrants that:

- (a) (power) it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and to carry out the transactions that it contemplates;
- (b) (corporate authority) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (Authorisations) it holds each Authorisation that is necessary or desirable to:
 - enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence;or
 - (iii) enable it to properly carry on its business as it is now being conducted,

and it is complying with any conditions to which any of these Authorisations is subject;

(d) (documents effective) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;

- (e) (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (no Controller) no Controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

13.2 Service Provider's warranties

The Service Provider warrants to the City that, at the Start Date and at all times during the Term:

- (a) it has the right and power to grant to the City the licences and assignments granted under this document and the grant to and exercise by the City of those licences and assignments will not breach any law or infringe the rights (including Intellectual Property Rights) of or duties owed to any person whether arising under statute, common law, contract or otherwise;
- (b) it has obtained all Authorisations and insurances required under any Law to carry out its obligations under this document;
- (c) all work performed by the Service Provider and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Service Provider's size and experience;
- (d) all Services supplied and all Deliverables provided, including all components thereof, under this document will:
 - (i) be free from defects in design, material and workmanship;
 - (ii) be in conformity with any Specifications and requirements referred to in a Work Schedule; and
 - (iii) be fit for the purpose communicated by the City and fit for any purpose for which they are commonly acquired;
- it will use reasonable endeavours (which must at least comply with accepted information technology industry standards) to ensure that all Deliverables will be free from any computer program virus or other destructive code or device;
- (f) it is not aware of any matter which may materially affect the Service Provider's ability to perform its obligations under this document;
- (g) all information provided by the Service Provider or set out in any tender document is complete, true, accurate and not misleading in any respect;
- (h) except as disclosed in any tender document, all equipment supplied or used by the Service Provider in connection with the provision of the Services is owned by the Service Provider and is not subject to any encumbrance;
- (i) all Personnel will be appropriately trained and experienced;
- (j) neither the Services nor the Developed Material, nor the supply or use of either of them in accordance with this agreement and applicable Laws, will:
 - (a) breach any Laws or infringe the rights (including Intellectual Property Rights) of or duties owed to any person, whether under contract, statute, common law or otherwise; or

- (b) prejudice or compromise the reputation of the City; and
- (k) it is not aware of any claim, actual or threatened, in relation to the Service Provider's Material or Developed Material (including a claim that the Services Providers' Material or the Developed Material infringes a person's Intellectual Property Rights) and has no grounds to suspect that such a claim will or might be made.

13.3 Breach of warranties

If the Service Provider is in breach of clause 13.2, the City may, by written notice to the Service Provider:

- (a) require the Service Provider, promptly to correct or replace (at the Service Provider's expense) the defective elements of the Services and Deliverables until the Services and Deliverables comply with the representations and warranties in that clause; or
- (b) if the Service Provider is unable or unwilling to comply with clause 13.3(a), by written notice to the Service Provider, terminate this document with effect from the date that is specified in the notice.

14. 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.

15. INDEMNITY

- 15.1 The Service Provider must indemnify the City and each of its employees against, and pay on demand the amount of losses including liabilities, costs, expenses and Taxes arising or incurred in connection with:
 - (a) any injury to or death of any person or any damage to or loss of property connected with the conduct, operations or performance of the Service Provider;
 - (b) any breach of this document by the Service Provider (including a breach of any warranty and/or a breach for which the City terminates this document);
 - (c) any negligence, wrongful act or omission, or breach of statutory duty by the Service Provider or by its employees, contractors, officers or suppliers;
 - (d) fraud, misrepresentation or Wilful Misconduct by the Service Provider. In this clause "Wilful Misconduct" means any deliberate and wrongful act or omission taken with reckless disregard or wanton indifference to the likely consequences; or
 - (e) any Infringement Claim,

to the fullest extent permitted by law. For the avoidance of doubt, the *Civil Liability Act* 2002 (NSW) does not apply to this document.

- 15.2 The Service Providers responsibility to indemnify the City under clause 15.1 shall be reduced to the extent any negligent act or omission by the City, its employees or agents contribute toward any such losses, liabilities, costs, expenses and taxes.
- 15.3 The Service Providers total liability to the City, for any and all claims arising under or in connection with this document (including any indemnity), the provision or failure to provide

the Services, whether in tort (including negligence), in contract (including indemnities), under statute or otherwise shall be limited to \$1.9 million. This limitation of liability does not include breach of privacy, breach of intellectual property rights and any insured loss for death to any person or any loss or damage to property owned by a third party or the City in which case a limit of \$20 million per occurrence applies.

15.4 Neither party is liable for economic, special or consequential loss, including but not limited to loss of profits, loss of revenue, loss of business opportunities, loss of anticipated savings and damage to goodwill.

16. INSURANCE

16.1 Insurance policies

While this document is in force, the Service Provider must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances with an insurer authorised and licenced to operate in Australia having a Standard and Poors, Moodys, AM Best, Fitch's or equivalent rating agency's financial strength rating of A- or comparable rating:

- (a) worker's compensation insurance or registrations as required by law;
- (b) public and products liability insurance with a limit of indemnity of not less than the amount specified in Item 8 of Schedule 1 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 8 of Schedule 1 for each occurrence and in the aggregate for all occurrences in any 12 month policy period giving rise to a products liability claim, which covers the liability of the Service Provider and its Personnel (including to each other), in respect of:
 - (i) loss of, damage to, or loss of use of, any tangible property; and
 - (ii) the bodily injury of, disease or illness to, or death of, any person (including worker to worker liability but excluding any liability insured under the insurance referred to in clause 16.1(a)),

arising out of or in connection with the performance of this document by the Service Provider; and

16.2 Duration of insurance

The insurances referred to in clause 16.1 must be effected on or before the Start Date and be thereafter maintained until the expiry or termination of this document.

(a) Any insurance referred to in clause 16.1 written on a claims made basis must be effected on or before the Start Date and be thereafter maintained until seven (7) years after the expiry or termination of this document.

16.3 Evidence of policies

The Service Provider must, whenever requested by the City, provide the City with a certificate of currency evidencing compliance with clause 16.1.

17. STEP IN RIGHTS

(a) If the Service Provider fails to perform a material obligation strictly in accordance with the terms of this document and 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 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 debt due from the Service Provider to the City; 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) the City will set off any debt from the Service Provider arising under this clause or make appropriate adjustments to the Service Provider's invoice for the subsequent month.
- (d) This clause 17 does not limit any other remedy which the City may have against the Service Provider for any breach of this document.



18.5 18.6 18.



19. **DISENGAGEMENT**

19.1 Application

This clause 19 applies whenever Services are to be terminated. This includes:

- (a) 3 months before the Expiry Date or the expiry of a previous Further Term (as applicable); or
- (b) if Services are terminated before that date, the date on which the City issues a termination notice in respect of this document or a Work Schedule.

19.2 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.

19.3 Requirements for Disengagement

- (a) The Service Provider must ensure that as part of the Disengagement Services:
 - the City's right to use the Materials, equipment and parts provided by the Service Provider to the City under this document and the Service Provider's Material continues following the Disengagement Period at no cost to the City (other than agreed maintenance and support fees);
 - 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 its best efforts to ensure that the Disengagement Services are completed by the end of the Disengagement Period.

19.4 Implementation of Disengagement

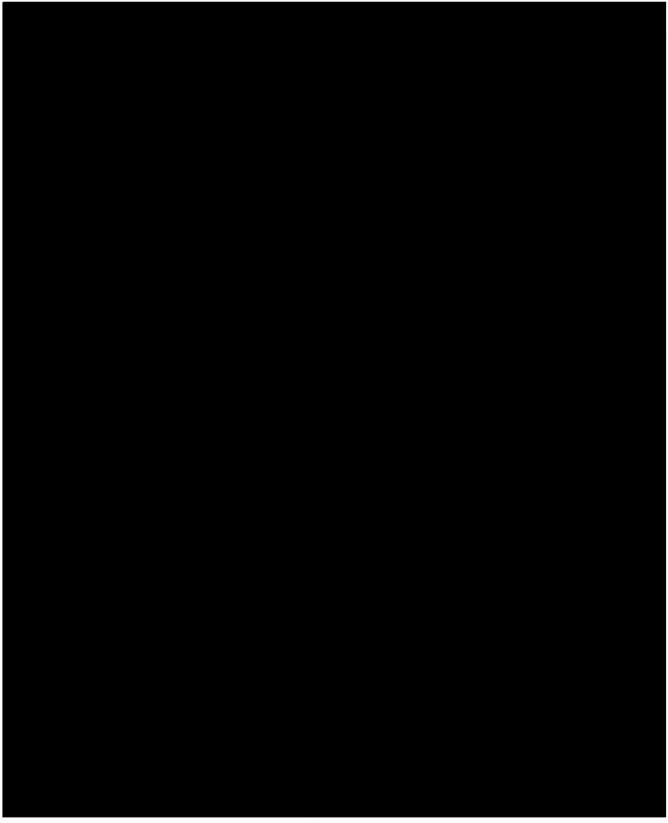
- (a) The Service Provider must ensure that, at all times during the Term, on 30 days' notice it is able to deploy all necessary resources to complete the Disengagement Services.
- (b) If clause 19 applies, the Service Provider must, unless directed otherwise by the City:
 - (i) do all things necessary to effect the Disengagement Services;
 - (ii) at the Service Provider's expense, immediately 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 19.
- (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 this document.

19.5 Third party services

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. 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.

19.6 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.





21. FORCE MAJEURE

21.1 Notice and suspension of obligations

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

- (a) that party must immediately give the other party prompt notice of that fact including:
 - (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
- (b) the obligations under this document 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.

21.2 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.

21.3 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.

21.4 Termination

If a Force Majeure Event continues for more than 10 Business Days, the City may terminate this document by giving at least one Business Day's written notice to the other party.

22. **DISPUTE RESOLUTION**

22.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 22.

22.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Service Provider's Representative and the Contract Manager for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 22; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person,
 - relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party giving the Dispute Notice (**Resolution Period**), the Service Provider's Representative and the Contract Manager must meet at least once to attempt to resolve the Dispute.
- (c) The Service Provider's Representative and the Contract Manager may meet more than once to resolve a Dispute. The Service Provider's Representative and the Contract Manager may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.

22.3 Condition precedent to litigation

Subject to clause 22.4, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

22.4 Summary or urgent relief

Nothing in this clause 22 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

23. NOTICES

- (a) A notice, consent or other communication under this document 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 fax. If it is sent by mail, it is taken to have been received 6 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address and fax number are those set out in the Schedule for the Service Provider's Representative and the Contract Manager, or as the person notifies the sender from time to time.

24. AMENDMENT AND ASSIGNMENT

24.1 Amendment

This document can only be amended or replaced by another document executed by the parties.

24.2 Assignment

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.

25. SECURITY

- 25.1 The Service Provider must, upon execution of this document, give to the City a Guarantee for the Guarantee Amount as security for performance of the Service Provider's obligations under this document.
- 25.2 If the Service Provider is in default of any of the term of this document, the City may without notice to the Service Provider have recourse to and claim under the Guarantee.
- 25.3 The rights of the City under this clause 25 will not derogate from any of the rights and remedies available to the City under this Agreement or at law or in equity in relation to any default of the Service Provider.
- 25.4 The Service Provider's only remedy if the City wrongfully calls upon the Guarantee will be for the return to the Service Provider of the Guarantee or its equivalent, to the extent so wrongly called.

- 25.5 Following the expiration of the Term or the Further Term (as the case may be), so long as the Service Provider is not then in default under the terms of this document, the City will release the Guarantee or return it to the Service Provider as directed by the Service Provider, upon written request to do so.
- 25.6 If the Service Provider must provide a rebate to the City in lieu of payment of the Fee by City then the Service Provider will not be required to provide a Guarantee under this clause 25.

26. CHANGE IN LAW

- (a) If:
 - (i) a Change in Law occurs;
 - the Service Provider acting reasonably considers that the Change in Law will directly and necessarily increase or decrease the scope of the Services or the cost of performing the Services (Change in Law Services); and

then the Service Provider must within 60 days of becoming aware of, or ought reasonably to have been aware of, the relevant Change in Law, notify the City by way of a Notice which complies with Clause 26(c) (**Change in Law Notice**) of this document.

- (b) The Service Provider must not perform any Change in Law Services until it has complied with the balance of this Clause 26 and Clause 10 of this document if the Change in Law also gives rise to a direction of the City to change the Services.
- (c) A Change in Law Notice must be in writing and detail:
 - (i) the reasons why (including any supporting information) the Service Provider considers the relevant change is a Change in Law
 - (ii) if the Change in Law involves an increase to the scope of the Services, any additional obligations, cost or resources reasonably required to perform or which the Service Provider will incur as a result of the Change in Law Services
 - (iii) the obligations under the agreement that the Service Provider considers it would not be able to comply with (if any) if the Service Provider does not perform the Change in Law Services (including any part of the Services which would be prohibited as a consequence of the Change in Law)
 - (iv) whether the Change in Law can be mitigated by, or gives rise to the opportunity for an innovation
 - (v) if the Change in Law involves a decrease to the scope of the Services, the obligations under the agreement that the Service Provider reasonably considers it is no longer required to comply with as a result of the Change in Law and the resulting reduction in cost; and
 - (vi) any other information relevant to the Change in Law and its application to the Services.

- (d) Within 30 days of receipt of a Change in Law Notice, and without limiting the Service Provider's obligations to comply with all laws, the City may:
 - (i) dispute that there has been a Change in Law
 - (ii) dispute the quantum of the increase in the Service Provider's costs and/or the lessening of the Service Provider's income as referred to in Clause 26(a)(2) of this document
 - (iii) confirm that there has been a Change in Law but dispute the Service Provider's assessment of the Change in Law Services, in which case, the dispute will be referred for resolution under Clause 13 of this Document
 - (iv) confirm that there has been a Change in Law and the description of the Change in Law Services in which case, the Service Provider must perform (or omit, as relevant) the Change in Law Services, and, without limiting the Service Provider's obligation to mitigate the effect of a Change in Law under Clause 26(f) of this Document, the Change in Law is deemed to be a Variation for the purposes of Clause 22 of this document
 - (v) if the Services may be varied so that the Change in Law Services are not required, direct a variation to the Services in accordance with Clause 10 of this Document (and, in this case, the variation does not need to be agreed with the Service Provider).
- (e) Following agreement by the parties or resolution of the effect of a Change in Law in accordance with Clause 26 of this document, the City will increase or reduce the Service Rates to account for the net increase of the Service Provider's net costs lessening of the Service Provider's income (if any) or costs (if any) incurred by the Service Provider in complying with the Change in Law.
- (f) If a Change of Law occurs, the Service Provider is obliged to take all reasonable steps to mitigate the adverse impact of such Change of Law upon this document. The Service Provider shall identify and take all such practical steps prior to lodging its Change in Law Notice. The City may direct the Service Provider to provide additional information in the Change in Law Notice, in which case, the Service Provider must re-submit its updated Change in Law Notice within 7 days and Clause 26(d) and Clause 26(e) of this document will apply again.
- (g) Except as expressly stated in this Clause 26:
 - (i) the City is not liable for, or in connection with, any Claim by the Service Provider; and
 - (ii) the Service Provider is absolutely barred from making any Claim,
 - arising out of, or in connection with, any change to any Law (including a Change in Law).
- (h) If the City becomes aware of a Change in Law, the City may issue a Change in Law Notice regarding that Change in Law notwithstanding that the Service Provider has not notified the City of the Change in Law under this provision or otherwise. Upon receipt of a Change in Law Notice from the City, the Service Provider may:
 - accept the Change in Law Notice, in which case, the Service Provider must perform (or omit, as relevant) the Change in Law Services and Clause 26(e) will apply;

- (ii) amend the Change in Law Notice, in which case the Service Provider must comply with the whole of this Clause 26 of this document, as if it was submitting a new Change in Law Notice; or
- (iii) dispute that there has been a Change in Law, in which case, the dispute, and the determination of the effect of the Change in Law, are referred to Clause 22 of this document for resolution.
- (i) The procedures outlined in this Clause 26 of this document, do not in any way diminish the obligation of the Service Provider under this document to minimise costs and to maximise savings in accordance with good industry practice.
- (j) Any dispute arising under Clause 26 of this document must be referred for resolution under Clause 22 of this document.

27. PROPERTY

27.1 Damage to Property

The Contractor will immediately remedy any damage done by its employees, agents or subcontractors to any property of the Council or any other person. Should the Service Provider fail to do so within a reasonable time, the City may effect the necessary repairs following consultation with the Service Provider pay reasonable compensation to the owner of the property. The cost of effecting any necessary repairs or the amount of any reasonable compensation will be paid on demand by the Service Provider to the City or may be deducted from any moneys due or becoming due to the Service Provider under this Contract, at the option of the City.



27.3 Independent Expert

For the purposes of Clause 27.2 of this Contract, an 'independent expert' shall be a person agreed upon by the City and the Service Provider as having the skills necessary to carry out the review. If no such agreement is reached within 21 days of the Service Provider's request for such review, either the City or the Service Provider 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.

28. GENERAL

28.1 Governing law

- (a) This document is governed by the law in force in New South Wales, Australia.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

28.2 Access to information

In accordance with s121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Service Provider agrees to allow the City immediate access to the following information contained in records held by the Service Provider:

- (a) information that relates directly to the performance of the Services by the Service Provider;
- (b) information collected by the Service Provider from members of the public to whom the Service Provider provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Service Provider from the City to enable the Service Provider to provide services to the public.

28.3 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

28.4 Duty of cooperation

Each party must:

- (a) do all that is needed on its part to enable the other party to perform any obligation under this document which cannot be performed effectively without the co-operation of both parties; and
- (b) not do anything with the intention of making it impossible to perform its own obligations under this document, or to make it impossible for the other party to carry out its obligations under this document.

28.5 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

28.6 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

 no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

28.7 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

28.8 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

28.9 **Set off**

The City at its discretion may set off or apply any amounts payable by it to the Service Provider under this document towards satisfaction of any amount payable to the City by the Service Provider under this document after giving the Service Provider prior written notice of its intention do this.

28.10 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

28.11 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) clauses 1 to 25 of this document;
- (b) any Schedule (including any Work Schedule); and
- (c) the provisions of any tender document, delivery docket, invoice, account or other document of the Service Provider,

the order of precedence between them will be the order listed above, this document having the highest level of precedence, unless the City agrees in writing to change the order of precedence.

28.12 No fetter

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

28.13 Counterparts

This document may be executed in counterparts.

EXECUTED as an agreement.

Signed for COUNCIL OF THE CITY OF SYDNEY by its duly authorised officer, in the presence of: Signature of witness	Signature of officer Pavid Ridnalan Name
120 P. S.	Name
MATTUR DONALE	
Name	
EXECUTED by VEOLIA ENVIRONMENTAL (AUSTRALIA) PTY LTD:	RWWalls-
Signature of director	Signature of director/secretary
CHRISTOPHER BRIAN GODFREY	REGINALD WILLIAM WALLIN SECRETARY
Name	Name
	19/12/2017

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION						
1.	Contract Manager	Name: Kim Finnimore Address: Town Hall House, 456 Kent Street, SYDNEY NSW 2000 Fax number: +612 9265 9788						
2.	Expiry Date	30 June 2022, or at the expiration of	of any Further Term					
3.	Further Terms		Length of Further Terms (if applicable): 12 months each Maximum number of Further Terms (if any): 3 (three)					
4.	Site	N/A						
5.	Service Provider's Representative							
6.	Start Date	18 December 2017						
7.	WHS Returnable	Document Description	Due Date					
		Signed Acknowledgement Form of the City of Sydney Contractor Safety Book	15 December 2017					
		Risk Assessment	15 December 2017					
		Safe Work Method Statement	15 December 2017					
		Any other document which the City considers relevant to the safe delivery of the Services	As required					

8.	Insurance	Insurance type	Limit of liability
		Public and Products liability (including Pollution Liability)	
9.	Guarantee Amount		
			1 1

SCHEDULE 2

Pro Forma Work Schedule

1.	Term	As per Schedule 1; unless term with the Major Services Agreen						
2.	Payment (clauses 7.3)	receipt by the City: 30	quired within this period afte					
3.	Reports, Meetings (clause 8) and Reviews	Frequency, including attend Me of this Work Schedule. The City	The Service Provider must provide the Reports and on the Frequency, including attend Meetings as set out in Annexure A of this Work Schedule. The City will Review the Service Providers performance as outlined in Annexure A.					
4.	Quality assurance system (clause 4.8)	Documented Quality Assurance System and/or Quality Management Plan is required by 1 December 2017						
5.	Work Schedule Start Date	The Date of this Agreement						
6.	Work Schedule End Date	30 June 2022 or at the expiration of any Further Term, whichever comes first.						
PAR	T 2: SERVICES	A THE REAL PROPERTY.	AND AND A PARTY.					
7.	Services	The Service Provider will (at its out in Annexure B of this Work the terms of this Work Schedul	Schedule in accordance with					
8.	Training	The Service Provider must provide the City with the training services set out in Annexure B of this Work Schedule.						
9.	Milestones and Performance Dates	The Service Provider must perf with the timeframes set out in						
		Milestone	Performance Date					

		Annually by 30 th June each financial year until June 2019					
		hdfill					
10.	Specifications	The Service Provider must provide the Services and the Developed Material so that they meet the functional and technical specifications set out in Annexure B of this Work Schedule.					
11.	Service Levels	The Services must be provided in accordance with the service levels set out in this document and Annexure B					
12.	Service Level Rights	The City will be entitled to exercise its Service Level Rights in in accordance with this document and Annexure B.					
PART	3: FEE						
13.	Fee	The City will pay the Service Provider the following Fees:					
		As per Annexure C					
14.	Schedule of Rates	The Schedule of Rates is set out in Annexure C of this Work Schedule as the Pricing Schedule.					

Work Schedule

Annexure A

Reports & Reviews

GARDEN ORGANICS

Monthly Statistics Report

When the Service Provider submits its payment claim the Service Provider, within four (4) business days of the last Working Day of each month, must submit a report to the City summarising and substantiating all Requirements covered by the claim. The format of the Statistics Report must be Approved within one (1) week after the Contract Start Date. The City can direct the Service Provider to change either the format or contents of the activities report at any time during the Contract term.

Note: All environmental incidents and unscheduled interruptions are to be reported immediately. Copies of reports to Authorities are also to be passed to the City within seven (7) days, unless otherwise provided.

Monthly and Annual Performance Reports

The Service Provider must submit a performance report on all Requirements to the City no later than four (4) Business Days after the last Working Day of each month. Financial year performance reports shall also be required summarising all information for the previous twelve months.

Note: Both the Statistics and Performance Reports are to be provided to the Manager in electronic format as nominated by the Manager within one (1) week after the Contract Start Date.

From the Start Date, the monthly performance report will include but not be limited to the following monthly data and key deliverables:

- The date, time and vehicle registration number, material stream delivered to the Receival and Processing/Transfer Facility.
- The total of material (measured in tonnes) delivered to the facility by the City for processing in the preceding month.
- · Details on the levels of Contamination.
- · Details on the tonnages of Residual Material.
- Estimates of the quantities and percentage of total Recyclables delivered of recovered materials from the material delivered by the City.
- 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:
 - The type and quantity of material.
 - o The date it was removed from site.
 - Who the item was sold to, donated to or removed by.
- · The destination of recovered materials.
- · The results of any audits undertaken
- All complaints and queries received in respect of its performance of the Requirements.
- · The results of the investigations made into all complaints.
- Any breach of a local law or the requirements of any Authority.
- Any accidents or other incidents where a possibility of injury to persons or property damage arose.
- Any breach of this Contract by the Service Provider.

Any other information reasonably required by the City.

The Annual Performance Report will include annual % Garden Organics diverted from landfill (as the total performance for the Processing Facility) in line with the Service Providers tender submission target, being 97%; therefore demonstrating achievement of this nominated performance or not. Where the target has not been achieved, the Service Provider is to provide details of proposed and actual methodologies to achieve the nominated target in the following year and collectively over the term of the service provision to date and the whole term of the Service Agreement.

Meetings:

The Service Provider and the Manager shall meet on a bi-monthly basis to review prior and current Performance Reports. If applicable the Monthly Statistics Report may also be reviewed.

Annual Performance Reports shall be reviewed at the bi-monthly meetings held immediately after the end of each financial year.

Meeting location will be by prior mutual agreement.

Performance Review:

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 Contract Term.

Performance will be evaluated annually on a financial year basis, and upon completion of the contract. Each assessment will form the basis of the Performance Review.

The City will use annual performance reviews and a final performance review at the completion of the Contract 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.

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.

KPI Score Rating Scale:

Sc	ore Rating Scale						
1 unacceptable / deficient							
2	limited / flawed						
3	adequate / satisfactory / appropriate						
4	competent / proficient						
5	strong						

General Key Performance Indicators

Ke	ey Performance	Rating	P. S. T.		Comments		
	dicator	1	2	3	4	5	
1	Key Deliverables						

2	Quality of work
3	Time
4	Reporting
5	Communication
6	WH&S compliance

Descriptions of General Key Performance Indicators:

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.

Quality of Work

Was the Agreement 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? Where works undertaken using innovative methods?

Time

Was the Agreement performed in accordance with the agreed dates?

Reporting

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?

Communication

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

Work Health and Safety

Did the Service Provider comply with all requirements in accordance with all relevant WH&S legislation, standards, codes and practices in the performance of the Agreement?

Key Performance Indicator (With Repeating Activities)

	KPI (With Repeating Activities)	1	2	3	4	5
1.	The receival and Processing/Transfer 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 Garden Organics.			
5.	All Garden Organics are processed by the Service Provider at the Approved Facility.			
6.	The Service Provider has followed the procedures for contaminated and rejected loads.			
7.	If agreed, the Service Provider has supplied to the City a range of organics products in accordance with the contract requirements			
8.	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.			
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.			

CLEAN-UP AND CLEANSING WASTE (NON-PUTRESCIBLE)

Monthly Statistics Report

When the Service Provider submits its payment claim the Service Provider, within four (4) business days of the last Working Day of each month, must submit a report to the City summarising and substantiating all Requirements covered by the claim. The Statistics Report format for approval is to be provided to the Manager in electronic format within one (1) week after the Contract Start Date.

Note: All environmental incidents and unscheduled interruptions are to be reported immediately. Copies of reports to Authorities are also to be passed to the City within seven (7) days, unless otherwise provided.

Monthly and Annual Performance Reports

The Service Provider must submit a performance report on all Requirements to the City no later than four (4) Business Days after the last Working Day of each month. Financial year performance reports shall also be required summarising all information for the previous twelve months.

Note: The Performance Reports format for approval are to be provided to the Manager in electronic format within one (1) week after the Contract Start Date.

From the Start Date, the monthly performance report will include but not be limited to the following monthly data and key deliverables:

- The date, time and vehicle registration number, material stream delivered to the Receival and Processing/Transfer Facility.
- The total of material (measured in tonnes) delivered to the facility by the City for processing in the preceding month.
- · Details on the levels of Contamination.
- · Details on the tonnages of Residual Material.
- Estimates of the quantities and percentage of recovered materials from the material delivered by the City.
- 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:
 - o The type and quantity of material.
 - o The date it was removed from site.
 - o Who the item was sold to, donated to or removed by.
- The destination of recovered materials.
- · The results of any audits undertaken
- All complaints and queries received in respect of its performance of the Requirements.
- The results of the investigations made into all complaints.
- Any breach of a local law or the requirements of any Authority.
- Any accidents or other incidents where a possibility of injury to persons or property damage arose.
- · Any breach of this Contract by the Service Provider.
- · Any other information reasonably required by the City.

The Annual Performance Report will include annual % Clean-Up and Cleansing Waste (Non-Putrescible) diverted from landfill (as the total performance for the Processing Facility) in line with the Service Providers tender submission target, being 11% from Contract Start Date, 30% from July 2019 and 70% from January 2020; therefore demonstrating achievement of this nominated performance or not. Where the target has not been achieved, the Service Provider is to provide details of proposed and actual methodologies to achieve the nominated target in the following year and collectively over the term of the service provision to date and the whole term of the Service Agreement.

Meetings:

The Service Provider and the Manager shall meet on a bi-monthly basis to review prior and current Performance Reports. If applicable the Monthly Statistics Report may also be reviewed.

Annual Performance Reports shall be reviewed at the bi-monthly meetings held immediately after the end of each financial year.

Meeting location will be by prior mutual agreement.

Performance Review:

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 Contract Term.

Performance will be evaluated annually on a financial year basis, and upon completion of the contract. Each assessment will form the basis of the Performance Review.

The City will use annual performance reviews and a final performance review at the completion of the Contract 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.

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.

KPI Score Rating Scale:

Score Rating Scale							
unacceptable / deficient							
limited / flawed							
adequate / satisfactory / appropriate							
competent / proficient							
strong							

General Key Performance Indicators

Ke	y Performance	erformance Rating			Comments		
In	dicator	1	2	3	4	5	
1	Key Deliverables						
2	Quality of work						
3	Time						
4	Reporting	,					
5	Communication						
6	WH&S compliance						

Descriptions of General Key Performance Indicators:

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.

Quality of Work

Was the Agreement 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? Where works undertaken using innovative methods?

Time

Was the Agreement performed in accordance with the agreed dates?

Reporting

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?

Communication

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

Work Health and Safety

Did the Service Provider comply with all requirements in accordance with all relevant WH&S legislation, standards, codes and practices in the performance of the Agreement?

Key Performance Indicator (With Repeating Activities)

	KPI (With Repeating Activities)	1	2	3	4	5
1.	The receival and Processing/Transfer 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 Clean-Up and Cleansing Waste (non-putrescible).					
5.	All Clean-Up and Cleansing Waste (non-putrescible) are 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 Service Provider has provided all monthly activity reports to the City on time.		
9.	The Service Provider's reports, plans and required information is accurate and provided to the City on time.		
10.	The Service Provider has cooperated to allow for audits, when required.		
11.	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.		

Work Schedule

Annexure B

Services, Service Levels, Disengagement of Services, Specifications

NOTE: All Services, Service Levels, Disengagement of Services and Specifications as presented in Annexure B are not definitive and therefore other all sections as agreed within the RFT (including amendments) the and Service Providers RFT submission also apply.

GARDEN ORGANICS

Services:

The Service Provider will be required to receive, sort and reprocess or market all Garden Organics delivered by the City collection Service Provider. The City's priority is to minimise waste disposal to landfill.

The Garden Organics approved for receival and processing include items such as grass clippings, pruned trees and shrubs, weeds, leaves, branches and untreated timber cut to fit into a Garden Organics MGB; pruned, bundled and tied trees and shrubs from the City's Clean up Material collections.

Service Levels:

The Service Provider must perform the Requirements in accordance with the following Service Levels:

- compliance with all terms of the Contract
- compliance with approved Operational and Management Plan
- compliance with the approved Quality Management Plan
- compliance with the Work Health and Safety Management System
- compliance with Environmental Management System
- compliance with Environmental Laws
- Garden Organics are received at the Receival and Processing/Transfer Facility*
- Compliance with the KPIs set out in annexure A.

* The nominated Receival and Processing/Transfer Facility (primarily the Port Botany Resource Recovery Facility (and transhipped to ANL at Badgerys Creek)) will be available and staffed between 6.00am and 6.00pm five days per week (Mondays to Fridays, 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.

Without limiting any other rights or remedies of the City under this Agreement or otherwise, if the Service Provider fails to perform its obligations to the standard required by a Service Level:

- 1. the Service Provider must promptly
 - (a) investigate the underlying cause of the failure;
 - (b) prepare and supply to the City a comprehensive report on the problem;
 - (c) take whatever action is reasonably necessary to minimise the impact of the problem;
 - (d) correct the problem as soon as practicable; and
 - (e) keep the City advised at all times as to progress being made in rectifying the problem; and

2. the City may, in its absolute discretion require the Service Provider to submit to the City, within the period specified by the City a remedial plan; and implement the remedial plan.

If the Service Provider does not implement the remedial plan within a reasonable period after the remedial plan has been accepted by the City or if implementation of the remedial plan does not result in the Service Provider performing to the standard required by the Service Level, the City may exercise its rights as contained within this Agreement.

Disengagement of Services:

Disengagement of Services means the services to be provided by the Service Provider in anticipation of the termination of this document, 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) 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.

The Disengagement Period means the period commencing on the date specified in clause 19 of this Agreement and ending on the intended date of termination of this document.

Specifications:

Notation: These specifications are not stand alone and include all additional requirements and deliverables as outlined in the Request for Tender.

1) Supply

All Garden Organics material collected by the City's collection Service Provider is to be supplied to the Service Provider throughout the Contract Term. The City makes no warranty regarding the quantity or quality of the material delivered.

The amounts set out in the RFT 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.

2) Processing Fees

The Service Provider shall be paid the processing fees in accordance with the Schedule of Rates (Annexure C). Unless otherwise provided, the processing fees shall not vary with the level of Contamination in the incoming loads.

3) Contamination

Unless otherwise provided, the Service Provider shall accept all loads of Garden Organics delivered regardless of the level of contamination.

Where the Service Provider claims to the City that loads of Garden Organics are contaminated, the Service Provider must maintain records (including photographs) of these loads. Each claimed contaminated load must be notified to the Manager.

Where three (3) loads in any one calendar month are identified as contaminated and notified to the Manager, the City shall require that the Service Provider attend meetings with the Manager and the City's Garden Organics collection Service Provider.

The Manager shall determine the timing and frequency of these meetings. Attendance at these meetings (at the City's Offices) shall be at the Service Provider's cost.

These 'contamination meetings' shall be designed to assist the City, the Service Provider and the Garden Organics collection Service Provider to review all information and data regarding the continuing contamination or other related issue/s.

The Service Provider shall be responsible for presenting all data requested by the Manager for this review purpose. The Service Provider, the City and the collection Service Provider shall determine a course of action to ensure that the issue/s do not recur. The Manager shall be the arbitrator of the action to be followed by the Service Provider.

4) Rejected Loads

If a load of Garden Organics delivered to the Service Provider contains greater than 15% by weight contamination the load may be rejected.

Each load is to be inspected as it is received. If the Service Provider and the collection Service Provider agree that the load contains greater than 15% by weight contamination prior to unloading the vehicle, the load may be rejected by the Service Provider and the collection Service Provider shall be responsible for disposing of the load. The Service Provider must notify the Manager immediately that a load has been rejected and provide the Manager with all details of the load including the time; date; registration details of the collection vehicle and so on.

If the Service Provider and the collection Service Provider agree that the load contains greater than 15% by weight Contamination after unloading the material, the Service Provider may reject the load.

The Service Provider must notify the Manager immediately that a load has been rejected and provide the Manager with all details of the load including the time; date; registration details of the collection vehicle and so on.

If the Service Provider and collection Service Provider disagree that the load contains greater than 15% by weight Contamination after unloading, the Service Provider shall inform the Manager that the load shall be separated.

If the Service Provider and the collection Service Provider cannot agree, the Service Provider shall arrange and pay for an independent auditor to audit the load to determine whether it contains greater than 15% by weight Contamination. The auditor's decision shall be final. The independent auditor must be Approved by the Manager.

Where the audit shows that the load contained more than 15% by weight of Contamination, the Service Provider shall accept that the load has been rejected and shall not be paid the processing fee for this load. The Service Provider shall arrange for the disposal of the rejected load.

The City shall be responsible for paying the handling and disposal fees for this load at the Approved disposal facility.

Where the audit shows that the load contained less than 15.1% Contamination the Service Provider must process the load in accordance with the Contract and the City will reimburse the Service Provider the cost for this audit.

5) Design Flexibility and Processing Capacity

General

The characteristics of the Garden Organics collected by the City are influenced by numerous factors outside the control of the City or the Service Provider. The Service Provider's nominated Receival

and Processing/Transfer Facility shall be capable of accommodating variations in feedstock characteristics, including short and long-term changes in the quantities of material.

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.

Provide Adequate Capacity for Term of Contract

The Service Provider must provide a Receival and Processing/Transfer Facility with adequate capacity to receive and process all material delivered under the Contract, for the Contract Term. The nominated Facility (Port Botany Resource Recovery Facility) is the primary Facility for receipt of Garden Organics within this Agreement.

Capacity at Start Date

The Service Provider has ensured the City that the Receival and Processing/Transfer Facility has the total capacity as required at the Start Date.

6) Beneficial Products

Quantity and quality

The Service Provider will ensure that the quantity and composition of each type of Beneficial Products complies with the details contained in Schedule 12 of their RFT submission, including the 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.

End Use of Beneficial Products

The Service Provider must ensure the proposed end use for each type of material recovered through its Receival and Processing/Transfer Facility is in accordance with Schedule 12 of their RFT submission.

The Service Provider shall 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 shall provide verifiable evidence of the re-use of recovered materials as Beneficial Products. The Service Provider shall provide updated reports to the City quarterly.

Stockpile

The Service Provider must ensure that at any one (1) time, the amount of each type of material stockpiled at the Receival and Processing/Transfer Facility does not exceed the maximum quantity specified in Schedule 12 of their RFT submission with respect to the relevant type of material.

The Service Provider shall keep all records and maintain and submit all reports to the City and the NSW Environmental Protection Authority in accordance with this Agreement and with all environmental protection licence conditions and the laws of NSW. The Service Provider has detailed in Schedule 12 of their RFT submission the methods to be utilised by the Service Provider to conform with all reporting requirements for the Receival and Processing/Transfer facility.

Contamination

The Service Provider will identify, separate, store and treat Contamination in accordance with Schedule 12 of their RFT submission. Where the definition of Contamination includes materials that are not included in "Residual Material", the Service Provider must manage these materials in accordance with the procedures outlined in Schedule 12 of their RFT submission, 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.

7) Residual Material

Disposal of Residual Material

All Residual Material must be disposed of in the Approved Disposal Facility nominated in Schedule 12 of their RFT submission.

The Service Provider is responsible for handling, storage (where required) and transporting Residual Material to the Approved Disposal Facility, at its cost. The Service Provider is responsible for the payment of all disposal fees for the Residual Material.

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 Receival and Processing/Transfer Facility to the City, as directed by the Manager.

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.

Minimisation of Residual Material

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.

The Plan to Minimise Residual Material must be:

- a) Submitted to the Manager for Approval within four (4) weeks after the Start Date; and
- b) 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 Start Date.

The Plan must include but not be limited to the following:

- The maximum monthly level of Residual Material;
- Detail on the situations under which either whole loads, or parts of a load will be rejected from the Receival and Processing/Transfer Facility;
- Procedures for the identification and handling of hazardous wastes;
- Relevant company policies;
- Staff incentives that may exist to encourage resource recovery;
- Effectiveness of resource recovery strategies.

8) Cost of Disposing of Residual Material - s. 88 LEVY

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.

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.

9) Supply of Organics Products to the City

The Service Provider has not nominated the City for purchase of beneficial products from the Service Provider (or ANL). The Service Provider during the term of this Contract may offer the City to purchase beneficial products, upon submission to and approval by the Manager.

Preferred Product Types

- Garden Mulch (coarse grade), complying with Australian Standard 4454 (2012) Composts,
 Soil Conditioners and Mulches, at minimum.
- Garden Compost, complying with Australian Standard 4419 (2003) Soils for Landscaping or Garden use, with pH 5.8-7.5, weed and contamination free, and less than 12mm fraction.

Product Packaging

The Service Provider shall supply the requested products to the City as follows:

- · Packaged in consumer-ready bags containing 25 to 30kg net;
- Bags delivered in bulk on pallets to various locations within the City of Sydney LGA, determined at the discretion of the City; or
- Alternatively, recycled organic products may be supplied and delivered as bulk loose material
 to a nominated bagging company location within the City of Sydney LGA and the City will
 assume responsibility for packaging. This option will only be considered by the City at their
 sole discretion on a case-by-case basis.
- bulk loose material supplied and delivered to a City Depot or a nominated site locations within the City of Sydney LGA per m³ (min delivery 4m³).

10) Service Continuity

Available for Acceptance of Material

It is the Service Provider's responsibility to ensure the Receival and Processing Facility, and any Transfer Facility nominated in this Agreement and referenced in Schedule 12 of their RFT submission are available for the acceptance of all material delivered under this Contract throughout the Contract Term.

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 Schedule 12 of their RFT submission.

Unscheduled Down Time

The Service Provider must minimise unscheduled down time during the Contract Term in accordance with the methods specified in Schedule 12 of their RFT submission.

If at any time during the Contract Term, except in the instance of a Force Majeure event, there is unscheduled down-time (i.e. in which the Receival 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 the alternative facility nominated for that purpose in Schedule 12 of their RFT submission; or such other facility approved by the City and which is approved by the relevant Authority.

All costs associated with sourcing an alternative site and delivering the material to that site, such as storage and transport costs, gate fees and levies or taxes, will be the responsibility of the Service Provider.

11) General Audits

The Service Provider shall cooperate with the City to accommodate audits of Garden Organics delivered by the City. These audits are for general or strategic purposes.

The City may require audits of delivered Garden Organics for the purpose of ascertaining composition of collected materials for waste education or other strategic purposes. The Service Provider will act in good faith decide with the Manager how and when an audit can be carried out. The Service Provider will offer space and facilities to allow for the City to undertake an audit of the Garden Organics. The Service Provider will assist to ensure all materials audited are then delivered to the Receival and Processing Facility for processing in accordance with the Contract.

The City will be responsible for arranging and appointing the auditor and for all costs associated with carrying out the audits. The City shall not audit the Garden Organics in accordance with this clause more than once in every Contract Year.

12) Data Collection and Record Keeping

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, but not be limited to 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 Receival and Processing Facility or sorting at any Transfer Facility, by each vehicle for each load.
- iv. The weight of each stream of Garden Organics, prior to being transported off site for reprocessing and the weight of material rejected from the Receival and Processing/Transfer Facility for disposal to an Approved disposal facility.
- v. If a Transfer Facility is utilised, the weight of materials and separated Contamination (if relevant), delivered to and from these sites must be recorded and reported to the City.

Weighbridge

The Service Provider must utilise the weighbridge nominated in Schedule 12 of their RFT submission.

The Service Provider (at its own expense) must:

- i. provide the weighbridge specified for the receival of the delivered material;
- ii. ensure that the weighbridge is capable of receiving the delivered material;
- iii. ensure that the weighbridge is in good working order at all times;
- iv. if the weighbridge is inoperable then the Service Provider must arrange an alternative facility;
- v. arrange for the accuracy of the weighbridge to be independently checked and certified every six (6) months;
- vi. maintain records of the checks of the weighbridge's accuracy: and
- vii. in relation to the weighbridge, comply in all respects with the *Trade Measurement Act 1989* (NSW).

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 weighbridge to be utilised for the weighing of the City's delivered materials, the Service Provider will be responsible for paying to the City the additional costs associated with the change in location that results in additional costs to the City's collection Service Provider.

CLEAN-UP AND CLEANSING WASTE (NON-PUTRESCIBLE)

Services:

The Service Provider will be required to receive, sort and reprocess or market all Clean-Up and Cleansing Waste (Non-Putrescible) delivered by the City collection Service Provider. The City's priority is to minimise waste disposal to landfill.

The <u>Clean-Up Waste</u> is all approved material from the City's kerbside collected domestic Clean-Up Material from the City's weekly collections. The approved material for receival and processing include items such as disused household furniture and goods, floor coverings, small amounts of building materials, and so on.

The <u>Cleansing Waste (Non-Putrescible)</u> is all material from a number of sources including:

- public place litter bins;
- street sweepings (including leaf litter);
- illegally dumped material (may contain mattresses)
- > Other including other miscellaneous waste.

Service Levels:

The Service Provider must perform the Requirements in accordance with the following Service Levels:

- compliance with all terms of the Contract
- compliance with approved Operational and Management Plan
- compliance with the approved Quality Management Plan
- compliance with the Work Health and Safety Management System
- · compliance with Environmental Management System
- · compliance with Environmental Laws
- Clean-Up and Cleansing Waste (Non-Putrescible) are received at the Receival and Processing/Transfer Facility*
- Compliance with the KPIs set out in annexure A.
- * The nominated Receival and Processing/Transfer Facility (primarily the Port Botany Resource Recovery Facility) will be available and staffed for receipt of:
 - ➤ Clean-Up Waste between 6.00am and 6.00pm five days per week (Mondays to Fridays, 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.
 - Cleansing Waste (Non-Putrescible) between 3.00am and 6.00pm 5 days per week (Monday to Friday, including public holidays), 5.00am and 12.00pm on Saturday, including public holidays). Outside these operating hours any waste, delivered to the nominated Receival and Processing/Transfer Facility will be disposed of to landfill via the Matraville Transfer Terminal and charged as Putrescible waste

Without limiting any other rights or remedies of the City under this Agreement or otherwise, if the Service Provider fails to perform its obligations to the standard required by a Service Level:

- > the Service Provider must promptly
 - o investigate the underlying cause of the failure;
 - o prepare and supply to the City a comprehensive report on the problem;

- take whatever action is reasonably necessary to minimise the impact of the problem;
- correct the problem as soon as practicable; and
- keep the City advised at all times as to progress being made in rectifying the problem; and
- > the City may, in its absolute discretion require the Service Provider to submit to the City, within the period specified by the City a remedial plan; and implement the remedial plan.

If the Service Provider does not implement the remedial plan within a reasonable period after the remedial plan has been accepted by the City or if implementation of the remedial plan does not result in the Service Provider performing to the standard required by the Service Level, the City may exercise its rights as contained within this Agreement.

Disengagement of Services:

Disengagement Services means the services to be provided by the Service Provider in anticipation of the termination of this document, 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) 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.

The Disengagement Period means the period commencing on the date specified in clause 19 of this Agreement and ending on the intended date of termination of this document.

Specifications:

Notation: These specifications are not stand alone and include all additional requirements and deliverables as outlined in the Request for Tender.

1) Supply

All Clean-Up and Cleansing Waste (Non-Putrescible) material collected by the City's collection Service Provider is to be supplied to the Service Provider throughout the Contract Term. The City makes no warranty regarding the quantity or quality of the material delivered.

The amounts set out in the RFT 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.

2) Processing Fees/Rebates

The Service Provider shall be paid the processing fees in accordance with the Schedule of Rates (Annexure C). Unless otherwise provided, the processing fees shall not vary with the level of Contamination in the incoming loads.

The processing fee per tonne as included in the Schedule of Rates includes all costs to the Service Provider in performing the Requirements. The Service Provider has nominated the percentage of feedstock recovered (being 11% from Contract Start Date, 30% from July 2019 and 70% from January 2020;) 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 Contract Term.

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.

3) Contamination

Unless otherwise provided, the Service Provider shall accept all loads of Clean-Up and Cleansing Waste (Non-Putrescible) delivered regardless of the level of contamination.

4) Design Flexibility and Processing Capacity

General

The characteristics of the Clean-Up and Cleansing Waste (Non-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 Receival and Processing/Transfer Facility shall be capable of accommodating variations in feedstock characteristics, including short and long-term changes in the quantities of material.

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.

Provide Adequate Capacity for Term of Contract

The Service Provider must provide a Receival and Processing/Transfer Facility with adequate capacity to receive and process all material delivered under the Contract, for the Contract Term. The nominated Facility (Port Botany Resource Recovery Facility) is the primary Facility for receipt of Clean-Up and Cleansing Waste (Non-Putrescible) within this Agreement.

Capacity at Start Date

The Service Provider has ensured the City that the Receival and Processing/Transfer Facility has the total capacity as required at the Start Date.

5) Beneficial Products

Quantity and quality

The Service Provider will ensure that the quantity and composition of each type of Beneficial Products complies with the details contained in Schedule 12 of their RFT submission, including the 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.

End Use of Beneficial Products

The Service Provider must ensure the proposed end use for each type of material recovered through its Receival and Processing/Transfer Facility is in accordance with Schedule 12 of their RFT submission.

The Service Provider shall 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 shall provide verifiable evidence of the re-use of recovered materials as Beneficial Products. The Service Provider shall provide updated reports to the City quarterly.

Stockpile

The Service Provider must ensure that at any one (1) time, the amount of each type of material stockpiled at the Receival and Processing/Transfer Facility does not exceed the maximum quantity specified in Schedule 12 of their RFT submission with respect to the relevant type of material.

The Service Provider shall keep all records and maintain and submit all reports to the City and the NSW Environmental Protection Authority in accordance with this Agreement and with all environmental protection licence conditions and the laws of NSW. The Service Provider has detailed in Schedule 12 of their RFT submission the methods to be utilised by the Service Provider to conform with all reporting requirements for the Receival and Processing/Transfer facility.

Contamination

The Service Provider will identify, separate, store and treat Contamination in accordance with Schedule 12 of their RFT submission. Where the definition of Contamination includes materials that are not included in "Residual Material", the Service Provider must manage these materials in

accordance with the procedures outlined in Schedule 12 of their RFT submission, 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.

6) Residual Material

Disposal of Residual Material

All Residual Material must be disposed of in the Approved Disposal Facility nominated in Schedule 12 of their RFT submission.

The Service Provider is responsible for handling, storage (where required) and transporting Residual Material to the Approved Disposal Facility, at its cost. The Service Provider is responsible for the payment of all disposal fees for the Residual Material.

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 Receival and Processing/Transfer Facility to the City, as directed by the Manager.

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.

Minimisation of Residual Material

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.

The Plan to Minimise Residual Material must be:

- c) Submitted to the Manager for Approval within four (4) weeks after the Start Date; and
- d) 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 Start Date.

The Plan must include but not be limited to the following:

- The maximum monthly level of Residual Material;
- Detail on the situations under which either whole loads, or parts of a load will be rejected from the Receival and Processing/Transfer Facility;
- Procedures for the identification and handling of hazardous wastes;
- Relevant company policies;
- Staff incentives that may exist to encourage resource recovery;
- Effectiveness of resource recovery strategies.

7) Cost of Disposing of Residual Material - s. 88 LEVY

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.

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.

8) Service Continuity

Available for Acceptance of Material

It is the Service Provider's responsibility to ensure the Receival and Processing Facility, and any Transfer Facility nominated in this Agreement and referenced in Schedule 12 of their RFT submission

are available for the acceptance of all material delivered under this Contract throughout the Contract Term.

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 Schedule 12 of their RFT submission.

Unscheduled Down Time

The Service Provider must minimise unscheduled down time during the Contract Term in accordance with the methods specified in Schedule 12 of their RFT submission.

If at any time during the Contract Term, except in the instance of a Force Majeure event, there is unscheduled down-time (i.e. in which the Receival 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 the alternative facility nominated for that purpose in Schedule 12 of their RFT submission; or such other facility approved by the City and which is approved by the relevant Authority.

All costs associated with sourcing an alternative site and delivering the material to that site, such as storage and transport costs, gate fees and levies or taxes, will be the responsibility of the Service Provider.

9) General Audits

The Service Provider shall cooperate with the City to accommodate audits of Clean-Up or Cleansing Waste (Non-Putrescible) delivered by the City. These audits are for general or strategic purposes.

The City may require audits of delivered Recyclables for the purpose of ascertaining composition of collected materials for waste education or other strategic purposes. The Service Provider will act in good faith decide with the Manager how and when an audit can be carried out. The Service Provider will offer space and facilities to allow for the City to undertake an audit of the Clean-Up or Cleansing Waste (Non-Putrescible). The Service Provider will assist to ensure all materials audited are then delivered to the Receival and Processing/Transfer Facility for processing in accordance with the Contract.

The City will be responsible for arranging and appointing the auditor and for all costs associated with carrying out the audits. The City shall not audit the Clean-Up or Cleansing Waste (Non-Putrescible) in accordance with this clause more than once in every Contract Year.

10) Data Collection and Record Keeping

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, but not be limited to the following:

- vi. Time of entry and departure of the City's (or the City's contracted) collection vehicles.
- vii. Vehicle registration details for each vehicle for each load delivered;
- viii. Weight of material delivered, for processing at the Receival and Processing Facility or sorting at any Transfer Facility, by each vehicle for each load.
- ix. The weight of each stream of Clean-Up and Cleansing Waste (Non-Putrescible), prior to being transported off site for reprocessing and the weight of material re Clean-Up and Cleansing Waste (Non-Putrescible) rejected from the Receival and Processing/Transfer Facility for disposal to an Approved disposal facility.
- x. If a Transfer Facility is utilised, the weight of materials and separated Contamination (if relevant), delivered to and from these sites must be recorded and reported to the City.

Weighbridge

The Service Provider must utilise the weighbridge nominated in Schedule 12 of their RFT submission.

The Service Provider (at its own expense) must:

viii. provide the weighbridge specified for the receival of the delivered material;

- ix. ensure that the weighbridge is capable of receiving the delivered material;
- x. ensure that the weighbridge is in good working order at all times;
- xi. if the weighbridge is inoperable then the Service Provider must arrange an alternative facility;
- xii. arrange for the accuracy of the weighbridge to be independently checked and certified every six (6) months;
- xiii. maintain records of the checks of the weighbridge's accuracy: and
- xiv. in relation to the weighbridge, comply in all respects with the *Trade Measurement Act 1989* (NSW).

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 weighbridge to be utilised for the weighing of the City's delivered materials, the Service Provider will be responsible for paying to the City the additional costs associated with the change in location that results in additional costs to the City's collection Service Provider.



Waste Type	Delivery Site	Base Rate	s.88 Levy	Recovery %	Levy Rate applicable	=_	Rate including GST
		ئ	î		1 .	-	_
		_		•	1-	-	_
F		_	_	•	ı—	-	_
F	F	_	_	•	1-	-	_
F	F	_	_	-	1-		_

