

# Major Services Contract for Domestic Waste Collection

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## Domestic Waste Collection Number 1822

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

**[Insert name of Service Provider]**  
ABN **[Insert ABN]**

CoSVer1/17

**KEY DETAILS**

**1 Date** See Execution page

**2 Parties**

**City**

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

**Service Provider**

Name **[To be inserted following selection of successful Tenderer]**  
ABN **[To be inserted]**

**BACKGROUND**

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

**TERMS**

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

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

**EXECUTION**

**Executed** as a deed on

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

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**Signed** by **[Service Provider's name to be inserted]** ABN **[to be inserted]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

OR

**Signed** for **[Service Provider's name to be inserted]** ABN **[to be inserted]** under power of attorney in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date of power of attorney

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## GENERAL CONDITIONS OF CONTRACT

### 1 Definitions and interpretation

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#### 1.1 Definitions

in the Contract the Definition(s) in this Clause 1.1 and further in Clause 3.1 of Schedule 3 Section D Part 1 (General Specification), except where the context otherwise requires:

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

**Authorisation** means:

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

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

**Business Day** means a day other than a Saturday, Sunday or a public holiday in New South Wales; or

**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:

- (a) 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 the Service Provider for the purposes of the Contract, 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 Contract, 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.

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

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

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

**Contractor** means Service Provider.

**Contract Service Area** means the area within which the Services will be provided as illustrated in Schedule 5 and further described in the Specifications.

**Contract Manager** means the person named in Item 1 who is appointed by the City to manage and supervise the performance of the Services.

**Cost** means:

- (a) any cost, charge, expense or other expenditure (including legal fees, Costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against a party); and
- (b) all interest, fines, penalties, charges or fees,

whether or not paid or due.

**Critical Success Factors** shall mean the key performance indicators as per Schedule 3 D1 Clause 20.6 and Key Result Areas Schedule 3 D1 Clause 20.7

**Date of the Contract** means the date referred to in the Formal Instrument of Contract or, if undated, the date on which the City executes the Contract.

**Defect** means one or both of the following:

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

**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 as part of the Services.

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

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

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

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

**Equipment** means all items supplied by the Service Provider in accordance with clause 19 and Clause 13 of Schedule D1 of this Contract.

**Expiry Date** means the date referred to in Item 2.

**Fee** means the fee as set out in Part A and Part B of Schedule 2 as may be adjusted in accordance with the Contract.

**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).

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

**Further Term** means an extension of the Term under clause 25.2.

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

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST** means the same as in the GST Law.

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

**Information Documents** means:

- (a) the documents and other information described in Item 3; and
- (b) any other information identified by the City, whether before, on or after the Date of the Contract, as being for information only.

**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, in relation to the Service Provider, where:

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

**Intellectual Property Right** means:

- (a) all intellectual property rights, including copyright, trade marks, designs, circuit layouts, patents, inventions, discoveries and rights of confidence; and
- (b) all other rights or forms of protection of a similar nature or having similar or equivalent effect to any of them, whether under international convention or otherwise,

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

**Item** means an Item in Schedule 1.

**Key Personnel** means the persons nominated in Item 4, as may be varied in accordance with clause 6.2(d).

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

**Liability** means any liability whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

**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 Schedule 1.

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

**Operations Manager** means the person named in Item 5 of Schedule 1 who is appointed by the Service Provider to manage and supervise the performance of the Services.

**Performance Date** means a date by which a Milestone must be completed by the Service Provider as set out in Schedule 1.

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

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

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

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

**Response and Rectification Requirements** means the requirements set out in [\*].

**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 Schedule 2.

**Security** means:

- (a) an approved unconditional undertaking (the form in Schedule 6 is approved);
- (b) an approved performance undertaking given by an approved financial institution; or
- (c) such other form of security approved by the City.

**Service Level Measurements** means the measurements set out in section Clause 20.3 of Schedule 3 Section D Part 1 (General Specification).

**Service Level Rights** means the rights that may be exercised by the City in relation to a service level specified in Schedule 3, including the right to claim rebates and other remedies.

**Service Levels** means service levels as set out in Clause 20.3 of Schedule D1.

**Services** means the services described in the Specifications, as may be varied in accordance with clause 16.1.

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

**Specifications** means the document(s) referred to in Schedule 3.

**Start Date** means the date set out in Schedule 1.

**Transition In Fee** means the fee specified in section [\*] of Schedule [\*] per month, which is payable only during the Transition In Period.

**Transition In Period** means the period commencing on the date of execution of the Contract and expiring on 30th June 2019.

**Transition In Plan** means the plan so described in Schedule 3, D1 Clause 4.5 (a).

**Transition In Services** means the services in Schedule 3, D1 Clause 4.5 b) to j) inclusive.

**Transition In Services Plan** means the transition in services plan which complies with the requirements set out Schedule 3, D1 Clause 4.5, Service Plans which is to be developed into an approved Plan by the Service Provider in accordance with the clause.

**Transition Out Period** means the period commencing on the date specified in clause 27 and ending on the intended date of termination of the Contract, which will either be:

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

**Transition Out Plan** means the transition out plan which complies with the requirements set out in section [\*] of Schedule [\*] which is to be developed into an approved Plan by the Service Provider in accordance with clause 23 of this Contract

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

- (a) selling, transferring, assigning or relocating the Developed Material (whether finalised or works in progress), and any associated equipment, parts, documents, files, plans and related items;
- (b) novating or assigning or securing the novation or assignment of such third party agreements (including software licences) as are specified by the City;
- (c) any other transition out services set out in section [\*] of [\*], and
- (d) transferring the Services,

to another services provider or to the City itself.

**Subcontractor** means a person engaged by the Service Provider in accordance with clause 6.3 to assist in the provision of the Services.

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

**Term** has the meaning given to that term in clause 25.1.



**WHS Law** means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW).

**WHS Returnable Documents** means the work health and safety documentation described in Item 10, including risk assessments and safe work method statements in relation to the Services.

**Work Site** means the site referred to in Item 6.

## 1.2 Interpretation

In the Contract, except where the context otherwise requires:

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

## 1.3 Contra proferentem

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

## 1.4 Ambiguity or discrepancy

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

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

## 1.5 **Miscellaneous**

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

## 2 **Contract Aims and Objectives**

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### 2.1 The Aims and Objectives of the Contract are:

- (a) to achieve and maintain a high standard of performance in provision of the services by the Service Provider using best practice methods and systems;
- (b) to maintain services within the performance benchmarks for missed services, early starts and other customer complaints;
- (c) to regularly assess the performance of the Service Provider and to gain continual improvement to work practices and resource recovery;

- (d) to promote the health, safety and welfare of all persons engaged in or affected by the services;
- (e) to minimise noise impacts and to ensure all split materials are clean up during collection;
- (f) to provide environmental compliant services;
- (g) to facilitate a sustained effort to increase the type, quality and amount of resources recovered from the waste stream;
- (h) to preserve the resource integrity and value of recoverable and reusable materials delivered to the processing facility
- (i) to provide high standard, integrated waste and resource recovery services, based on 'best practice' principles, which are complementary to national, state and regional waste strategies as well as Council's own waste management strategy and policies
- (j) to fulfil the Council's obligations under legislation relating to provision of waste and resource recovery services
- (k) to fulfil the Council's obligations under the Council's charter in the Local Government Act 1993 including to 'properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible in a manner which is consistent with and promotes the principles of ecologically sustainable development' and 'have regard to the long term and cumulative effect of its decisions'
- (l) to provide cost-effective services that users perceive as offering value for money
- (m) to deliver a service that provides a high level of Customer satisfaction
- (n) to meet and adhere to the approved Quality Plan.

### **3 Engagement of the Service Provider**

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#### **3.1 Key obligations**

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

- (ii) any other payment to be made under an express provision of the Contract,

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

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

### 3.2 **Independent contractor**

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

### 3.3 **No authority**

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

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

### 3.4 **Conflict of interest**

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

### 3.5 **Basis of engagement**

The Service Provider acknowledges that:

- (a) the Services may be varied or reduced or excluded from this Contract in accordance with clause 16; and
- (b) the City may engage other service providers to perform some or all of the Services.

### 3.6 Transition In Period

- (a) During the Transition In Period, the Service Provider must provide the Transition In Services in accordance with Schedule 3 Part D1 Clause 4.5.
- (b) In consideration for the Transition In Services being provided, the City will pay the Service Provider the Transition In Fee.
- (c) The purpose of the Transition In Services is to:
  - (i) enable the Service Provider to transition the performance of the Services from the City or its existing service providers to performing the Services from the day after the expiry of the Transition-In Period; and
  - (ii) eliminate or minimise any disruption to the Services (including the Transition Services) as a result of the transition of the Services to the Service Provider from the City or its existing service providers.
- (d) The Service Provider must ensure that as part of the Transition In Services:
  - (i) it provides the Transition In Plan to the City on the Start Date for approval and makes any changes to the Transition In Plan required by the City;
  - (ii) it implements the approved Transition In Plan;
  - (iii) it makes available to the City all of its Personnel and provides all resources necessary to perform the Transition Services;
  - (iv) there is no degradation of Service Levels or quality of service during the Transition Period; and
  - (v) there is no interruption to the Services during the Transition In Period.
- (e) The Service Provider acknowledges all Service Levels and Service Level Rights apply during the Transition In Period.
- (f) The City will, and will procure that any existing service providers, provide all reasonable assistance to the Service Provider during the Transition In Period and in performing the Transition In Services.

## **4 Provision of the Services**

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### **4.1 General**

The Service Provider must:

- (a) perform the Services (including providing the Deliverables) in accordance with the terms of the Contract;
- (b) comply strictly with the Specifications; and
- (c) ensure that all Services and Deliverables comply with all applicable Laws and Australian Standards.

### **4.2 Acknowledgements by Service Provider**

- (a) The Service Provider represents and confirms that it has the requisite technology, Personnel, resources and ability to enable it to perform the Services and all of its other obligations under the Contract.
- (b) The Service Provider acknowledges and agrees that the City has entered into the Contract relying on the representations and confirmations set out in clause 4.2(a).

### **4.3 Standard of performance**

In providing the Services and performing its obligations under this Contract, the Service Provider must at all times ensure that the Services are provided:

- (a) in a highly professional and ethical manner and with the level of due care and skill which may be expected of a professional organisation experienced in providing the services of the type and complexity of the Services;
- (b) so that the Services and any Deliverables are fit for the purposes for which services of that type are commonly acquired and any other purposes which have been notified to the Service Provider by the City;
- (c) in a fully integrated, consistent and seamless manner with no overlaps or gaps between the performance of the Services;
- (d) in accordance with all Laws and the City's Policies;
- (e) so that the Services meet or exceed the Service Levels and critical success factors;
- (f) at the Service Provider's Cost at all times;
- (g) in accordance with the Response and Rectification Requirements; and
- (h) as otherwise agreed by the parties.

### **4.4 Additional Service Provider obligations**

The Service Provider must:

- (a) supply everything necessary for the performance of its obligations under this Contract;
- (b) 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 a 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 including advising the City of any changes to any Laws affecting the Services within 5 Business Days of the change coming into effect;
- (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.

#### 4.5 **Timely provision of the Services**

The Service Provider must provide the Services expeditiously.

#### 4.6 **Acceleration Directions**

- (a) The City may direct the Service Provider to accelerate the progress of the Services (whether or not the City seeks to advance rate of progress) by written notice entitled "Acceleration Direction".
- (b) Provided that:
  - (i) a notice given under clause 4.6(a) is not necessarily given due to the default of the Service Provider; and
  - (ii) the Service Provider has received a written notice entitled "Acceleration Direction" before incurring the cost,

the Service Provider will be entitled to the cost of acceleration. The cost of complying with the direction to accelerate will be agreed by the

City and the Service Provider prior to commencement of acceleration, or, failing agreement, the Fee will be increased by the reasonable direct costs incurred by the Service Provider (if any) valued in accordance with clause 16.3.

#### 4.7 **Safety and the environment**

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

- (a) immediately inform the Contract Manager if it becomes aware of the existence or possibility of any work health, safety and environmental issues (including any potential breach of any WHS Law) that comes to its attention in connection with the Services;
- (b) have a work health and safety management system in place and apply that system at all times whilst carrying out the Services;
- (c) if applicable, prior to commencing any Services on the Work Site, ensure that all Personnel have undertaken any required induction; and
- (d) as necessary, consult, cooperate and coordinate activities with the City and any other persons who have a common duty under the WHS Law.

#### 4.8 **Review of Deliverables**

- (a) The Contract Manager may:
  - (i) review any Deliverable, or any resubmitted Deliverable, prepared and submitted by the Service Provider; and
  - (ii) within the number of days set out in Item 7 of the submission by the Service Provider of such Deliverable or resubmitted Deliverable, reject the Deliverable.
- (b) If any Deliverable is rejected, the Service Provider must promptly (and in any event within the period specified in Item 8) resubmit the amended Deliverable to the Contract Manager.
- (c) The Service Provider acknowledges and agrees that:
  - (i) neither the Contract Manager nor the City assume or owe any duty of care or other responsibility to the Service Provider, and shall not be required to check any Deliverable for Defects, errors, omissions or compliance with the Contract; and
  - (ii) any review of, or comment by, the Contract Manager or the City in relation to a Deliverable provided by the Service Provider under the Contract, shall not relieve the Service Provider from its liabilities and responsibilities under the Contract or otherwise at law.



#### 4.9 Risk of loss of documents

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

#### 4.10 Authorisations

The Service Provider must:

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

#### 4.11 Quality assurance

- (a) The Service Provider must establish and maintain a documented quality assurance system about the Services in accordance with any standard referred to in Item 9.
- (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.

#### 4.12 WHS and environmental obligations

- (a) The Service Provider must accurately complete and provide to the City the WHS Returnable Documents by the due dates set out in Item 10.
- (b) The Service Provider must:
  - (i) take all measures necessary to protect people, the environment and property;
  - (ii) understand its legislative responsibilities as a PCBU as it relates to this Contract;
  - (iii) ensure all Services are delivered in full compliance with legislative requirements and the City's applicable policies;
  - (iv) work collaboratively with the City to manage shared work health and safety responsibilities;
  - (v) adopt a proactive and innovative approach to managing safety;

- (vi) deliver all Services with the intent of improving the sustainability of the City's operations, delivering both economic and socio-environmental benefits;
- (vii) be cognisant of safety at all times and consider the potential impact of their works on others; and

ensure the Services meet the safety, security and environmental requirements set out in this clause 3.11 and elsewhere in this Contract.

(c) Without limiting clause 4.1(c), the Service Provider must in the performance of the Services:

(i) comply with the City's environmental and work health and safety policies as notified by the City to the Service Provider in writing; and

(ii) without limiting clause 4.12(c)(i):

(A) act in such a manner as to avoid nuisance, unreasonable interference, or damage to the environment and in accordance with any environmental management plan provided by the City to the Service Provider;

(B) dispose of all solid, liquid and gaseous contaminants in accordance with applicable Laws and/or the City's requirements and/or the requirements of any relevant Government Agency;

(C) remove all refuse resulting from the performance of the Services; and

(D) not use or permit the use of any toxic chemicals or materials in connection with the performance of the Services without the City's prior consent and the prior consent of any relevant Government Agency or land owner.

(d) 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 4.12(c)(i) or with any work health and safety requirements applicable to the Services.

(e) 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.

(f) The City or any person authorised by the City is entitled to review and audit:

(i) compliance by the Service Provider with clause 3.11;

(ii) the Service Provider's work health and safety systems; and

- (iii) any procedures or work practices adopted by the Service Provider which have work health and safety implications.
- (g) The Service Provider must do the following to permit anyone entitled to conduct a review and audit under clause 3.11:
  - (i) allow access to any property, premises, plant or equipment of the Service Provider utilised in relation to the Services;
  - (ii) allow access to any records and documentation including those of any sub-contractor which are relevant to the review and audit; and
  - (iii) allow communication with any Personnel.
- (h) The Service Provider must reimburse the City on demand for all Costs incurred by the City as a result of or in connection with:
  - (i) a breach of the WHS&E Requirements; or
  - (ii) poor safety management by the Service Provider in connection with the Services.

#### 4.13 Industrial Relations

- (a) The Service Provider agrees that the responsibility for industrial relations with regards 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 and the Deliverables.

#### 4.14 Service Provider to Comply with Statutory and Legal Obligations

The Service Provider must ensure that all legal obligations that arise, whether by or under this Contract, statute, Industrial Instrument, in equity or at common law, as a consequence of or in connection with the performance of the Services are fully complied with. This includes ensuring that all persons employed or engaged by the Service Provider to provide the Services also comply with legislative requirements.

The Service Provider's obligations, as created by this Clause include, without limitation, the following:

- (a) Where any person, facility, premises, vehicle, plant, Equipment, or activity is required to be licensed, registered, approved or accredited the Service Provider must ensure that the appropriate licence, registration, Approval or accreditation is in force and current at all times during the performance of the Services.
- (b) Where development consent is required to be obtained pursuant to Part 4 of the *Environmental Planning and Assessment Act 1979* in respect of the use of any land, the Service Provider must ensure such consent is obtained and is in force prior to the commencement of, and at all times during, such use.

- (c) Irrespective of who performs the Services, the Service Provider must ensure the Services are performed in a safe manner and in accordance with all applicable legislation and Codes of Practice, including but not limited to the:
- (i) Dangerous Goods (Road and Rail Transport) Act 2008;
  - (ii) Environmental Planning and Assessment Act 1979;
  - (iii) Environmentally Hazardous Chemicals Act 1985;
  - (iv) Fair Work (State Referral and Consequential and Other Amendments) Act 2009 (Cth);
  - (v) Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth);
  - (vi) Fair Work Act 2009 (Cth);
  - (vii) Industrial Relations (Commonwealth Powers) Act 2009 (NSW);
  - (viii) Industrial Relations Act 1996;
  - (ix) Local Government Act 1993;
  - (x) Protection of the Environment Operations Act 1997;
  - (xi) Road Transport (General) Act 2005;
  - (xii) Road Transport (Safety and Traffic Management) Act 1999;
  - (xiii) Transport Industry Waste Collection and Recycling Contract Determination or any replacement Contract Determination, if it applies to the Service Provider or any of the Service Provider's subcontractors; and
  - (xiv) Waste Avoidance and Resource Recovery Act 2001;
  - (xv) Waste Management Award 2010 or any replacement Modern Award, if it applies to the Service Provider or any of the Service Provider's employees;
  - (xvi) Work Health and Safety Act 2011 (NSW)
  - (xvii) Workers Compensation Act 1987;
  - (xviii) Workplace Injury Management and Workers Compensation Act 1998

and all regulations, Industrial Instruments, codes and/or guidelines pursuant to any of such Acts and any enactments in lieu of such Acts as may be repealed.

#### 4.15 Repeals

Where legislation applying to this Contract is repealed or amended, then any replacement legislation shall govern the performance of this Contract in substitution for the repealed or original legislation. If there is no such replacement legislation, or the parties cannot agree on the application of the replacement or amended legislation, the parties must negotiate in good faith to reach agreement on varying the Contract to accommodate the repeal or amendment. If the parties fail to reach agreement within a reasonable time the matter shall be resolved by expert determination pursuant to Clause **Error! Reference source not found.** of this Contract and the parties agree to be bound by such determination.

### 5 Changes in the Services

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#### 5.1 Service Changes in Case of Emergencies

- (a) Where in the opinion of the City an emergency exists which poses a risk to public health, public safety or the environment the City may direct the Service Provider to provide additional or varied Services.
- (b) Where the Service Provider is directed to provide additional or varied Services under this Clause it shall be paid at rates determined under the Contract or, if no such rates are available at a reasonable rate for the Services provided and any dispute shall be resolved pursuant to Clause 26 of this Contract.

#### 5.2 Service Changes for changes to Contract Service Area

- (a) The City may at any time request changes to Contract Service Area provided under this Contract.
- (b) If during a contract calendar year, the Cities proposed Contract Service Area increase is less than equal to 10% of the current Contract Service Area than the Schedule of Prices shall apply to all additional Mobile Bin collection.
- (c) Notwithstanding Clause 5.2b) from 1<sup>st</sup> July 2019 till 30<sup>th</sup> June 2022 any changes to the Contract Service Area the Schedule of Prices shall apply to all additional Mobile Bin collection.

### 6 Contract Manager and Service Provider's Personnel

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#### 6.1 Contract Manager

- (a) The Contract Manager has authority to act on behalf of the City as its agent and for all purposes in connection with the Contract, except as notified to the Service Provider by the City.
- (b) The Contract Manager may, from time to time, appoint individuals to exercise delegated functions of the Contract Manager, provided that:

- (i) the Contract Manager gives the Service Provider written notice of respectively:
  - (A) the appointment, including the name and delegated functions of the appointed person; and
  - (B) the termination of each appointment.
- (c) 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.

## 6.2 Service Provider's Personnel

- (a) The Service Provider must only engage Personnel in the performance of the Services who:
  - (i) are appropriately qualified, competent and experienced in the provision of the type of services required under the Contract; and
  - (ii) hold and maintain all necessary professional, technical, trade or other licences, authorisations and registrations relevant to the Services and the Contract.
- (b) The City has the right to object (without giving reasons) to the Personnel proposed to be engaged by the Service Provider to perform the Services before the Service Provider may permit the Personnel to work on the Site. If the City objects to the Personnel, then the Service Provider must not permit that Personnel to work on any Site. In exercising its right in this clause, the City has a right to interview Personnel at the management level.
- (c) The City may, at any time during the Term in its absolutely discretion, give notice requiring the Service Provider to remove Personnel from work relating to the Services, in which case the Service Provider must promptly arrange for the removal of such Personnel and ensure that any replacement Personnel are acceptable to the City. The City is not bound to give any reasons for the direction and will not be in any way liable in respect of any claim made by such a person for wages and damages and the Service Provider must indemnify and keep indemnified the City against any such claim.
- (d) The Service Provider must:
  - (i) ensure that each Key Personnel undertakes the role specified in Item 4, and must not replace any Key Personnel without the prior written approval of the Contract Manager;
  - (ii) not permit any Key Personnel to undertake any other role or assignment which would conflict with the Service Provider's obligations under the Contract;

- (iii) ensure the Personnel comply with any specific dress code and other requirements notified in writing by the City from time to time, including any requirement to display identification (such as name tags or badges) and accreditation issued by the City;
- (iv) ensure the Personnel render the Services in a polite and helpful manner;
- (v) promptly, but in any event no later than 5 Business Days:
  - (A) advise the Contract Manager in writing if it becomes aware or if a Key Personnel in fact ceases to be employed by the Service Provider; and
  - (B) advise the Contract Manager with whom the Service Provider proposes to replace the affected Key Personnel, with the Contract Manager able to reject any person proposed under this clause 6.2(d)(v)(B) at the Contract Manager's sole discretion; and
- (vi) ensure that the Personnel comply with all Laws applicable to the provision of the Services.
- (e) The Service Provider must ensure that whilst on duty no Personnel:
  - (i) consumes any alcoholic beverage;
  - (ii) is intoxicated;
  - (iii) is under the influence of any drug which could impede his or her ability to safely or efficiently perform the Services; or
  - (iv) uses any telephones or other equipment on a Site without the consent of the owner of that equipment.
- (f) The Service Provider is solely responsible for maintaining the employer/employee relationship with all Personnel, including but not limited to payment to Personnel of all wages, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits or allowances under any legislation, industrial award, agreement or contract of employment that are the employer's responsibility to pay for work performed by Personnel in the execution of an assignment.
- (g) The Service Provider's responsibility for the performance of the Services and for the work and performance of its Personnel is not lessened or otherwise affected in any way by this clause 6.2 or by anything done in accordance with this clause 6.2.

### 6.3 Subcontracting

- (a) Without limiting clause 6.2, the Service Provider may only engage Subcontractors in connection with the provision of the Services if, before the engagement of any proposed Subcontractor, the City has consented in writing to the engagement of that Subcontractor for the relevant part of the

Services. The City's consent may be withheld at the City's absolute discretion.

- (b) If the Service Provider engages a Subcontractor, the Service Provider must:
  - (i) ensure the services performed by the Subcontractor meet the applicable requirements of the Contract;
  - (ii) be entitled to immediately terminate the engagement of the Subcontractor if the Contract is terminated;
  - (iii) ensure that the proposed Subcontractor and its officers, employees, agents or contractors involved in the performance of the subcontracted services:
    - (A) are appropriately qualified, competent and experienced in the provision of the type of services required under the Contract; and
    - (B) hold and maintain all necessary professional, technical, trade or other licences, authorisations, registrations and insurances relevant to the subcontracted services; and
  - (iv) on request from the Contract Manager, provide the City with a copy of any subcontract entered into with the Subcontractor (without prices if the Service Provider requires).
- (c) The obligations of the Service Provider under the Contract are not lessened or otherwise affected by any subcontracting.
- (d) The Service Provider is responsible for the acts and omissions of its Subcontractors as if they were acts and omissions of the Service Provider.
- (e) If the Service Provider fails to perform or observe any of its obligations in this clause 4.3, then the City may terminate this Contract by notice in writing to the Service Provider.

## **7 Service Provider's Vehicles, Plant and Equipment**

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### **7.1 Generally**

The Service Provider will ensure that all of its Vehicles, Plant and Equipment being used in the performance of this Contract:

- (a) comply with all applicable Acts, regulations and by-laws; and,
- (b) are suitable for the purpose for which they are to be used; and,
- (c) are maintained in good repair and condition; and,
- (d) are safe and without risks to health.



## 7.2 Deficient Vehicles, Plant and Equipment

### Notice of Efficiency

If the Contract Manager, acting reasonably, considers that any item of the Service Provider's Vehicles, Plant and Equipment is deficient, the Contract Manger may give Notice to the Contractor:

- (a) specifying the deficiency;
- (b) stating a date by which the deficiency is to be remedied;
- (c) stating that the item of the Service Provider's Vehicles, Plant and Equipment is not to be further used in the performance of the Services or otherwise in connection with this Contract until the deficiency has been remedied;
- (d) stating that the item of the Service Provider's Vehicles, Plant and Equipment may only be used subject to specified conditions until the deficiency has been remedied;
- (e) and may require the Service Provider to obtain the Council's Approval before using the item of Vehicles, Plant and Equipment which has been subject to a Notice of deficiency.

## 7.3 Reasons for Direction

Any Notice given under this Clause will give reasons for the Council's direction.

## 8 Property

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### 8.1 Damage to Property

The Service Provider 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 Council 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 Council or may be deducted from any moneys due or becoming due to the Service Provider under this Contract, at the option of the Council.

### 8.2 Damage to Mobile Bins Used in this Contract

Where the Service Provider damages Mobile Bins it will repair at its cost the Mobile Bins. Where the Council is dissatisfied with a repair the Council may direct the Service Provider to carry out a further repair or replace the damaged Mobile Bin at the Service Provider's cost.

### 8.3 Cost of Damage

The Council following consultation with the Service Provider will determine the cost of effecting any necessary repairs or the amount of reasonable compensation to be

paid to the owner of any property in accordance with Clause 8 of this Contract, which may include any professional fees and costs that are deemed by the Council to be attributable to the application of Clause 8 of this Contract.

Where the costs determined under Clause 8 exceed ten thousand dollars (\$10,000) the Service Provider may request an independent expert review of the costs. The costs of such review are to be added to the amount of the Claim for costs of damage. If, after obtaining an independent expert review of the costs, the Parties cannot agree on an amount to satisfy Clause 8 of this Contract, the Service Provider may commence dispute resolution procedures under this Contract.

#### **8.4 Independent Expert**

For the purposes of Clause 8.3 of this Contract, an 'independent expert' shall be a person agreed upon by the Council 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 Council 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.

### **9 Security**

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#### **9.1 Provision**

Security must be provided by the Service Provider in accordance with Item 11.

#### **9.2 Recourse**

- (a) Security will be subject to recourse by the City where the City:
  - (i) remains unpaid after the time for payment;
  - (ii) considers that the Service Provider is in breach of any of its obligations under the Contract, or otherwise has a Claim against the Service Provider;
  - (iii) considers that it is entitled to terminate the Contract either at law or under the Contract; or
  - (iv) has any other entitlement under the Contract to have recourse to the Security,

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

#### **9.3 Reduction and release**

- (a) Subject to clause 17.2, the City's entitlement to the Security will cease upon the expiry of the Term or the Further Term.
- (b) Upon the City's entitlement to Security ceasing, the City will release and return forthwith the Security to the Service Provider.

#### 9.4 **No injunction**

The Service Provider acknowledges and agrees that it will not at any time take steps to injunct or restrain or attempt to injunct or restrain any issuer of Security contemplated in this clause 9 from paying the City pursuant to that Security or the City from taking any steps to obtain payment under any such Security or using the proceeds of any such Security.

### 10 **Behaviour and conduct**

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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.

### 11 **Administration of the Contract**

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#### 11.1 **Directions by Contract Manager**

- (a) The Service Provider must comply with all reasonable directions given by the Contract Manager.
- (b) If a direction by the Contract Manager is given orally, 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 2 Business Days of the direction being given.

#### 11.2 **Operations Manager**

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

## 12 Milestones and Service Levels

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### 12.1 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 8.1(b), the City:
  - (i) must, to the extent the Service Provider's obligations are suspended under clause 23 or the delay arises from the City's failure to comply with this Contract; and
  - (ii) otherwise may, in its absolute 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.

### 12.2 Compliance with Service Levels

- (a) The Service Provider must comply with each of the Service Levels.
- (b) Without limiting any other rights or remedies of the City under this Contract or otherwise, if the Service Provider fails to perform its obligations to the standard required by a Service Level:
  - (i) 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
  - (ii) the City may, in its absolute discretion:
    - (A) require the Service Provider to:
      1. submit to the City, within the period specified by the City, a remedial plan; and

2. on notification by the City that the remedial plan is acceptable to the City, implement the remedial plan; or

(B) exercise its Service Level Rights.

- (c) If the Service Provider does not implement the remedial plan within a reasonable period (in the sole discretion of the City) after the remedial plan has been accepted by the City under clause 8.2(b)(ii) 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 the Service Level Rights.
- (d) The City may bring proceedings to recover damages from the Service Provider if the City's actual loss resulting from the Service Provider not performing to the standard required by a Service Level exceeds any amount recovered by the City from the Service Provider under a Service Level Right.

### 12.3 **Service Level and Critical Success Factor measurement**

- (a) Without limiting any right or remedy of the City under this Contract or otherwise, the Service Provider must:
- (i) measure its performance against the Service Levels and the Critical Success Factors at the frequency set out in Schedules 3 and as otherwise reasonably requested by the City from time to time;
  - (ii) provide the City with the results of all performance reviews in accordance with Schedule 3.
  - (iii) use measurement and monitoring tools and procedures reasonably required by the City to measure performance accurately;
  - (iv) if requested by the City, establish an automated process for measuring the delivery of Services against Service Levels and the Critical Success Factors; and
  - (v) provide the City with information and access to measurement and monitoring tools and procedures used in assessing the Service Provider's performance pursuant to this clause.
- (b) The City may appoint an independent third party to review measurement and monitoring tools and/or procedures implemented by the Service Provider in accordance with clause 8.3(a).
- (c) The City may also elect to establish and operate its own performance measurement and monitoring systems to measure and monitor the performance of the Service Provider against the Service Levels and the Critical Success Factors.

## **13 Access to a Work Site**

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### **13.1 Non-exclusive access**

- (a) Without limiting the Service Provider's other obligations under the Contract and subject to any limitation in Item 12, the City must give the Service Provider non-exclusive access to that part of a Work Site sufficient to enable the Service Provider to carry out the Services.

### **13.2 Requirement for access to a Work Site**

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

## **14 City's Property**

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### **14.1 Access to the City's Property**

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

- (a) the City will grant the Service Provider access to the City's Property for the sole purpose of and only to the extent necessary as determined by the City to enable the Service Provider to provide the Services to the City, and by such means as the City determines in its absolute discretion;
- (b) the Service Provider must comply with any systems, health, safety, technical, security and other requirements, regulations, policies, directions and safety standards notified to it by or on behalf of the City from time to time or as might reasonably be inferred from the use to which the City's Property are put;
- (c) the Service Provider must not use its access or connection to the City's Property to:

- (i) interfere with or disrupt the City's Property or any equipment or service of any person (including the City customers and service providers);
  - (ii) circulate any unsolicited or unauthorised marketing, publicity or advertising material;
  - (iii) transmit computer worms or viruses;
  - (iv) send harassing, obscene, indecent or threatening electronic mail or messages; or
  - (v) forge electronic mail or messages or their source; and
- (d) the City may, without notice, suspend or terminate the Service Provider's access or the connection to the City's Property if:
- (i) the Service Provider fails to comply with its obligations under this clause 14; or
  - (ii) the City reasonably believes that the Service Provider's access or connection to the City's Property is impairing, interfering with or damaging any part of the City's Property or their operation or any other equipment or service of any person (including any customers or service providers of the City).

#### 14.2 **Service Provider acknowledgment**

The Service Provider acknowledges and agrees that access to the City's Property under clause 14 is at its own risk, except for any negligent act or omission by the City.

#### 14.3 **Public information**

The Service Provider must not:

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

except with the prior written consent of the City.

#### 14.4 **Keys**

The Service Provider:

- (a) must comply with any directions of the City concerning the use of keys (including electronic cards or other devices necessary for obtaining access) supplied by the City to the Service Provider;
- (b) will be responsible for all keys issued;

- (c) must not lend the keys or remove the keys from a Work Site;
- (d) must maintain a key register which sets out, at a minimum:
  - (i) what keys have been provided to the Service Provider from the City;
  - (ii) the current location of those keys; and
  - (iii) the movement of those keys, including which Personnel have had access to or used those keys;
- (e) must not use the keys other than for access for provision of the Services;  
and
- (f) must meet the costs of the City supplying additional or replacement keys and any 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.

## **15 Reports, meetings and audits**

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### **15.1 Reports**

The Service Provider must provide to the City:

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

### **15.2 Meetings**

The Service Provider must:

- (a) attend all meetings set out in the Specifications including but not limited to monthly and annual contract performance meetings, transition in plan Milestones;
- (b) attend such other meetings in relation to the Services as may be reasonably requested by the Contract Manager; and
- (c) if requested by the Contract Manager, ensure that any relevant Subcontractors attend the meetings contemplated in this clause 15.2.



### 15.3 Availability, audit and access

- (a) Without limiting any of its other obligations under the Contract, the Service Provider must:
  - (i) keep complete, accurate and up to date records, including books of account, labour time sheets, final accounts and any other documents or papers which:
    - (A) show all details in relation to the Services (including evidence of compliance with clause 4.11 and matters relating to work health and safety such as any applicable safe work method statements); and
    - (B) are maintained in a form and manner that facilitates access and inspection under this clause 15;
  - (ii) at the request of the Contract Manager at any time during the performance of the Services, and the additional period of time (if any) stated in Item 13 following the completion of the Services or the earlier termination of the Contract, make available (within 5 Business Days) one complete set of the records referred to in clause 15.3(a)(i) for inspection and copying by:
    - (A) the City or the Contract Manager; or
    - (B) any other person nominated by the Contract Manager;
  - (iii) provide the Contract Manager with copies of documents affecting the Services as may be required by the Contract Manager;
  - (iv) participate in audits under the Contract at the frequency and in relation to the matters specified by the City (including on an ad hoc basis if requested by the City), for the purpose of ensuring that the Contract is being properly performed and administered. The City may, but is not obliged to, appoint an independent person to assist in the audits. Audits may consider all aspects of the Service Provider's performance; and
  - (v) participate promptly and cooperatively in any audits conducted by the City or its nominee.
- (b) The Service Provider must promptly take corrective action to rectify any error, non-compliance or inaccuracy identified during an audit in relation to the discharge of its obligations under the Contract.

## 16 Variation or suspension of Services

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### 16.1 Directions to vary

- (a) The Contract Manager may, by a written document titled "Variation Order", direct the Service Provider to vary the Services (including by way of

increase, decrease, omission or change), if the variation is within the general scope of the Contract. The Service Provider must comply with any direction issued pursuant to this clause 16.1(a).

- (b) If the Service Provider receives a direction from the Contract Manager which, although not stated to be a "Variation Order", the Service Provider considers to be a direction to carry out a variation, the Service Provider must:
  - (i) within 5 Business Days of receipt of such direction, advise the Contract Manager that it considers the direction to be a variation direction; and
  - (ii) not commence the services the subject of the direction until the Contract Manager advises:
    - (A) whether it considers the direction to be a variation; or
    - (B) that the Service Provider should commence the relevant service immediately whether or not the Contract Manager considers the direction to be a variation.
- (c) If the Service Provider does not comply strictly with the requirements of clause 16.1(b), the Service Provider will not be entitled to any additional time or costs for complying with the direction.
- (d) If the Contract Manager directs a variation which omits any part of the Services, the City may thereafter carry out this omitted service either itself or by engaging another Service Provider.
- (e) The variation to the Services must be performed in accordance with and subject to the terms and conditions of the Contract and is deemed to be incorporated into the Contract.

## **16.2 Consequences of variation or proposed variation**

- (a) Before directing a variation, the Contract Manager may request the Service Provider to provide a written estimate of the time, cost and programming effects of the proposed variation.
- (b) If the Contract Manager requests the Service Provider to provide an estimate under clause 16.2(a), the Service Provider must provide the written estimate within the time nominated by the Contract Manager.

## **16.3 Valuation of variations**

- (a) Unless otherwise agreed in writing between the Contract Manager and the Service Provider, the value of a variation must be determined using the rates and prices that in the opinion of the Contract Manager are reasonable, having regard to the market for services similar to the Services.
- (b) Following valuation of a variation in accordance with this clause 16.3, the Contract Manager will adjust the Fee accordingly.

#### 16.4 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 its 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.

#### 16.5 Change in law

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

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

then, to the extent the Services cost more for the Service Provider to perform due to the new or changed law, any such additional cost shall be valued pursuant to clause 16.3.

#### 16.6 Suspension of Services

- (a) Except as permitted by law or directed by the Contract Manager, the Service Provider must not suspend the performance of any or all of the Services.
- (b) The Contract Manager may immediately suspend the performance of any or all of the Services at any time and for any reason by giving a direction to that effect to the Service Provider.
- (c) Except to the extent permitted by law, the Service Provider must resume the performance of the suspended Services as soon as practicable after being directed by the Contract Manager and, in any event, not later than 5 Business Days after receiving a written direction to do so from the Contract Manager.
- (d) The Service Provider is entitled to claim reasonable costs and expenses to the extent they:
  - (i) are necessarily incurred during any suspension directed under clause 16.6(b);
  - (ii) are substantiated to the reasonable satisfaction of the City; and
  - (iii) do not exceed the maximum daily amount (if any) specified in Item 14,

provided the Service Provider will have no entitlement under this clause 16.6(d) to the extent the suspension is a result of an act or omission of the Service Provider or its Personnel.

- (e) To the extent permitted by law, the Service Provider is not entitled in contract, tort or otherwise to any payment or compensation for any costs or losses suffered by the Service Provider as a result of a suspension of the Services, except as provided for in this clause 16.6.

## 17 Payment, Invoicing and GST

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### 17.1 Fee

- (a) In consideration of the supply of the Services under this Contract, the City will pay the Fee to the Service Provider in accordance with Schedule 2 and this clause 13.
- (b) Except as otherwise stated in this Contract, the Fee is inclusive of all Costs, disbursements, levies and Taxes (other than GST) incurred by the Service Provider in providing the Services, including any Costs incurred by the Service Provider in procuring any equipment for use in connection with the Services.

### 17.2 Set off

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

- (a) any debt or other moneys due from the Service Provider to the City under the Contract, including a debt due arising under clause **Error! Reference source not found.**; or
- (b) any other money where the City has a bona-fide Claim against the Service Provider under the Contract provided that the City has given the Service Provider prior written notice of such Claim.

### 17.3 Invoices

- (a) Invoices will be issued and payments will be made as set out in the first Work Schedule issued under this document, and in accordance with clauses 13 of this document.
- (b) Any correctly rendered invoice submitted to the City under this document must specify:
  - (i) the City's purchase order number;
  - (ii) the details of the Services provided and any reference number (if applicable);
  - (iii) the date of performance of the Services;
  - (iv) the month to which the invoice applies; and
  - (v) the Fee for the Services.

- (c) Unless otherwise set out in a Work Schedule, invoices must be issued:
  - (i) monthly, in advance, for recurring costs; and
  - (ii) monthly, in arrears, for usage and adhoc costs incurred during a month.

#### 17.4 Method of payment

The Service Provider must be paid by electronic funds transfer and the appropriate banking details of the Service Provider have been notified to the City.

#### 17.5 Effect of payment

The Service Provider acknowledges that any payment made to it by the City does not imply or constitute an admission on the part of the City that the Services have been properly performed or a waiver or release of the Service Provider's obligations under this document.

#### 17.6 Disputed invoices

If the City disputes an invoice, then within 30 days of the date of the invoice the City must:

- (a) pay to Service Provider the portion of the invoiced amount(s) not in dispute; and
- (b) give the Service Provider details about the disputed amount.

#### 17.7 Responsibility for Taxes

- (a) The Service Provider is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Services.
- (b) The Service Provider must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Service Provider is responsible under clause 17.7(a).

#### 17.8 GST

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include

any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 13.1 if the payment is consideration for a taxable supply.

- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 17.8(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) In this document:
  - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
  - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

#### 17.9 Withholding tax

The City may deduct from amounts payable to the Service Provider under this document any amounts required by law to be deducted from such payments. The City will:

- (a) before deducting any such amounts inform the Service Provider of its intention to do so; and
- (b) provide to the Service Provider on request, receipts issued from the Australian Taxation Office evidencing payment of any amounts deducted under this clause 17.9.

#### 17.10 Fee reviews

- (a) A rise and fall condition shall apply to the Fee and the appropriate rise and fall adjustment shall be calculated as set out in Clauses 13.11 and 13.12 of this Contract for the duration of the Contract unless by agreement between the parties.
- (b) Rise and fall adjustments made in accordance with this clause 13 shall be deemed to cover all increases and decreases in costs incurred by the Service Provider in carrying out its obligations under the Contract.
- (c) Such adjustments shall be made at three (3) monthly intervals on 1 July, 1 October, 1 January and 1 April in each year (the Quarter Dates). The first such adjustment shall occur on the Date of the Contract.

#### 17.11 Calculation of Revised Fee

- (a) For the purpose of calculating rise and fall amounts, the following formulae shall be used:
  - (i) Wages, Payroll Tax and Superannuation Guarantee Levy Rise and Fall

$$\frac{R1 = (A - B) F}{B}$$

- (ii) Fuels and Lubricants Rise and Fall

$$\frac{R2 = (C - D) F}{D}$$

- (iii) Tyres, Workers Compensation Insurance, Vehicle Registration and Insurance and other materials Rise and Fall

$$\frac{R3 = (E - G) F}{G}$$

- (iv) Costs and Profit Return Rise and Fall

$$\frac{R4 = (E - G) F}{G}$$

Where:

**R1, R2, R3 and R4** = Rise and Fall factor amounts as decimals.

**F** = The Rise and Fall percentage factor nominated by the Service Provider in the Schedule of Rates as being the proportion of the Fees applicable to that particular segment, applied as a percentage and entered as a decimal;

**A** =  $A1 (1 + A2 + A3)$ . Where A1 is the amount specified in the *Waste Management Award 2010 – Clause 19, Classification Level 6* as first published for the quarter for which a Rise and Fall Claim is being made. A2 is the payroll tax expressed as a percentage of A1 and entered in the equation as a decimal, A3 is the Superannuation Guarantee expressed as a percentage of A1 and entered in the equation as a decimal;

**B** =  $B1 (1 + B2 + B3)$ . Where B1 is the amount specified in the *Waste Management Award 2010 – Clause 19, Level 6* as first published for the quarter during which the Tender Closing Date occurred. B2 is the payroll tax expressed as a percentage of B1 and entered in the equation as a decimal, B3 is the Superannuation Guarantee expressed as a percentage of B1 and entered in the equation as a decimal;

**C** = The net average daily Terminal Gate Price for Sydney for diesel fuel ("TGP") for the 90 days prior to the commencement of the quarter for which the Rise or Fall is to be determined less the current daily diesel fuel rebate, if any, applicable to the Service Provider. The TGP for Sydney for diesel fuel is the price so published on the Australian Institute of Petroleum's website [www.aip.com.au](http://www.aip.com.au).

**D** = The TGP for the 90 days prior to the closing date of the Service Provider's tender.

**E** = The index number allocated by the Australian Bureau of Statistics as the Consumer Price Index: All Groups Sydney as

first published by the aforesaid Bureau for the quarter for which a Rise and Fall Claim is being made.

**G** = The index number allocated by the Australian Bureau of Statistics as the Consumer Price Index: All Groups Sydney as first published by the aforesaid Bureau for the quarter during which the Tender Closing Date specified in Item 10 in the Annexure occurred.

- (b) To calculate the actual amount to be applied as Rise and Fall to a Fee, the City shall apply the following formula:

$$\mathbf{ARF} = \mathbf{Rf} \times \mathbf{T}$$

Where:

**ARF** = The actual Rise or Fall in the Fee expressed in dollars.

**Rf** = The total of R1, R2, R3 and R4 as calculated pursuant to subparagraph (a) expressed to six (6) decimal places.

**T** = The Fee for each Service-Entitled Premises.

If the Australian Bureau of Statistics ceases to publish the Consumer Price Index or the basis upon which that Index is calculated is substantially changed then the City may nominate another suitable Index for the purpose of calculation of Rise and Fall under this Contract.

If the *Waste Management Award 2010* ceases to exist or is superceded for any reason then the City shall select some similar Award for the purposes of the formula in Clause 13 of this Contract.

## 18 Step in rights

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- (a) Without limiting clause 14(b), if the Service Provider fails to perform a material obligation strictly in accordance with the terms of this Contract 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:
- (i) instruct the Service Provider to suspend performance of part or all of the Services until any further notice is issued by the City directing the Service Provider to recommence the performance of the relevant Services; and
  - (ii) step-in (either by itself or through a third party), to perform those obligations or Services which the Service Provider has been instructed to suspend the performance of.
- (b) Notwithstanding clause 14(a), if the Service Provider fails to perform any of its obligations in this Contract which the City determines has given or may give rise to an emergency or a security alert or safety or other risk, the City may:



- (i) instruct the Service Provider to suspend performance of part of the Services or all of the Services (until any further notice is issued by the City directing the Service Provider to recommence the performance of the relevant Services);
  - (ii) arrange for that non-compliance or breach to be remedied immediately without waiting for the Service Provider to rectify the non-compliance or breach; and
  - (iii) in its absolute discretion:
    - (A) suspend payment to the Service Provider; or
    - (B) terminate this Contract with immediate effect, by notice in writing to the Service Provider.
- (c) 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 losses and damages incurred by the City in performing the obligation which the Service Provider has failed to perform pursuant to clauses 14(a) and/or 14(b) will be a debt due and payable 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 pursuant to clauses 14(a) and/or 14(b), then any Costs, 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 and payable from the Service Provider to the City.
  - (iii) The City has the right to set off any debt from the Service Provider arising under this clause 14 or make appropriate adjustments to the Service Provider's invoice for the subsequent month.
- (d) This clause 14 does not limit any other remedy which the City may have against the Service Provider for any breach of this Contract..

## **19 Equipment, Data and Privacy**

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### **19.1 Ownership Of Equipment**

- (a) If the City agrees that the Service Provider is to procure the Equipment on behalf of the City under this Contract for the purposes of providing the Services, the City will own that Equipment.
- (b) The Service Provider must maintain the Equipment in safe and good repair and condition for the Term so that when the Equipment is handed back to the City, the Equipment is in safe and good repair and condition, subject to wear and tear.

## 19.2 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.

## 19.3 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.

## 19.4 Use and disclosure of the City's Data

The Service Provider:

- (a) 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 Contract.

## 19.5 Confidentiality

The City's Data is Confidential Information and is subject to the confidentiality obligations in clause 19.

## 19.6 Obligation to cease use

In addition to the Service Provider's obligations under clause 15, 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 Contract.

## 20 Intellectual Property

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### 20.1 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.

### 20.2 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 Contract.

### 20.3 **Developed Material**

- (a) The City will exclusively own all Intellectual Property Rights in and to the Developed Material from the date of its creation. For the avoidance of doubt, the City may use the Developed Material for any purpose, including disclosing the Developed Material to any third parties, and the Service Provider consents to the Developed Material being used for any purpose.
- (b) By this Contract, the Service Provider:
  - (i) 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;
  - (ii) 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 Contract;
  - (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 Contract, but not to any greater extent or for any other purpose.

### 20.4 **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 Contract 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 16.4(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;
  - (ii) 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 Contract.
- (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 Contract.

## 20.5 **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 16.5(a).
- (c) Without limiting the City's other rights or remedies under this Contract 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
  - (D) terminate this Contract on 10 Business Days' written notice to the Service Provider.

## 20.6 Protection of information

The Service Provider must protect the Developed Material from harm, including, but not limited to:

- (a) preventing unauthorised update;
- (b) employing appropriate back-up and recovery processes; and
- (c) minimising the risk of accidental damage including the introduction of errors.

## 20.7 Inspection of information and related documents

- (a) The Service Provider must:
  - (i) allow any person authorised by City to inspect and verify from time to time during the ordinary business hours of the Service Provider all or any part of the Developed Material and any documents or data relating thereto and the Service Provider must give any assistance necessary for the carrying out of the inspection and verification and permit the taking of copies of any information or related documents or data; and
  - (ii) enable any person authorised by the City to review the contents of the Developed Material and the processes for using and maintaining the Developed Material.
- (b) A review of the contents of the Developed Material under clause 16.7(a) includes, but is not limited to:
  - (i) access to and analysis of manual records;
  - (ii) access to and analysis of databases; and
  - (iii) access to and analysis of application programs.

- (c) Review of the processes for using and maintaining Developed Material under clause 16.7(a) includes, but is not limited to, observation testing and the conduct of interviews regarding processes and standards for:
  - (i) granting and revoking access to data and applications;
  - (ii) password usage;
  - (iii) data entry, including audit trails; and
  - (iv) analysis and correction of data errors.

## **21 Indemnity**

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### **21.1 Indemnity**

The Service Provider must indemnify the City and each of its employees and agents against, and pay on demand the amount of, all losses including loss of profit, Liabilities, Costs 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 Contract by the Service Provider (including a breach of any warranty and/or a breach for which the City terminates this Contract);
- (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) any breach of a Law by the Service Provider in providing the Services;
- (e) a breach of the WHS&E Requirements by the Service Provider;
- (f) poor safety management by the Service Provider in the performance of the Services;
- (g) fraud, misrepresentation or wilful misconduct by the Service Provider;
- (h) any Infringement Claim; or
- (i) a breach of clause 20 by the Service Provider,

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

## 22 Insurance

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### 22.1 Service Provider's insurances

The Service Provider must:

- (a) from the date the Service Provider commences the Services, effect and maintain the following insurances:
  - (i) public liability insurance that:
    - (A) is for not less than the amount referred to in Item 16;
    - (B) is written on an occurrence basis covering the liability of the Service Provider and its Personnel to third parties (including each other) for property loss or damage or loss of use (including to property of the City in the care, custody or control of the Service Provider) and injury to, disease or illness (including mental illness) of or death of persons arising out of, or in connection with, the performance of the Services; and
    - (C) covers the City for its vicarious liability for the acts and omissions of the Service Provider and its Personnel;
  - (ii) workers compensation insurance as required by law;
  - (iii) professional indemnity insurance that:
    - (A) is for not less than the amounts referred to in Item 17;
    - (B) covers the Service Provider for civil liability arising from breach of its professional duty in performing the Services as a result of an act or omission of the Service Provider and including cover for breaches of any consumer protection legislation and unintentional breaches of Intellectual Property Rights;
    - (C) has a retroactive date of no later than the date on which the Service Provider commences the Services or any earlier preparatory work; and
    - (D) includes a definition of professional business which is broad enough to cover all professional activities and services to be provided by the Service Provider under the Contract;



- (iv) plant and equipment insurance that:
  - (A) covers the repair and/or replacement costs for damaged or stolen units owned or used by the Service Provider under the Contract;
  - (B) covers liability to third parties for loss, damage, injury or death arising from the use and operation of any unit by the Service Provider under the Contract;
- (v) compulsory third party and comprehensive motor vehicle insurance that:
  - (A) covers the repair and/or replacement for any damaged or stolen motor vehicle used by the Service Provider under the Contract;
  - (B) covers liability to third parties for loss, damage, injury or death arising from the use and operation of any vehicle by the Service Provider under the Contract; and
- (vi) Property or Industrial Special Risk insurance that:
  - (A) covers against any loss or damage to buildings, contents, fittings, machinery, equipment or other tools not otherwise insured which the Service Provider owns or has care and control over that is used in carrying out Services under the Contract.
- (b) effect the insurances set out in clause 22.1(a) with an insurer licensed by the Australian Prudential Regulatory Authority in Australia or with an investment grade rating from an industry recognised rating agency such as Moodys, Standard & Poors or A M Best;
- (c) ensure that its Subcontractors maintain the insurances stated in Item 18;
- (d) on request, provide the City with a certificate of currency for each policy of insurance and the financial security rating of each insurer;
- (e) ensure that:
  - (i) if the insurer gives the Service Provider notice of cancellation of, rescission of or intention not to renew any required insurance policy, the Service Provider as soon as possible informs the City in writing that the notice has been given and effects the appropriate replacement insurance in accordance with the requirements of this clause 22;
  - (ii) the Service Provider does not cancel, rescind or fail to renew any required insurance policy without effecting replacement insurance as required by the Contract so as to ensure no gap in cover and inform the City in writing as soon as possible of the identity of the replacement insurer and the terms of that insurance, and providing such evidence as the City reasonably requires that the replacement

insurance complies in all relevant respects with the requirements of the Contract; and

- (iii) if the available limit under its professional indemnity insurance is materially depleted by claims unrelated to the Contract, it informs the City as soon as possible and reinstates or replaces the available limit unless the City has otherwise agreed in writing; and
- (f) ensure that it:
  - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
  - (ii) if necessary, takes all reasonable steps to rectify any situation which might prejudice any insurance;
  - (iii) renews or replaces any required insurance policy if it expires during the relevant period;
  - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the City;
  - (v) immediately notifies the City in writing of any event which may result in a required insurance policy lapsing, being cancelled or rescinded; and
  - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies.

The obtaining of insurance as required under this clause 22.1 will not in any way limit, reduce or otherwise affect or be affected by any of the obligations, responsibilities and liabilities of the Service Provider under any other provision of the Contract or otherwise at law or in equity.

## **22.2 Period of insurance**

The insurance which the Service Provider is required to obtain under clause 22.1 must be maintained:

- (a) in the case of public liability insurance, workers compensation insurance, plant and equipment, compulsory third party and comprehensive motor vehicle insurance and property or industrial special risk insurance, until the completion of the Services or the earlier termination of the Contract; and
- (b) in the case of professional indemnity insurance, until the expiration of the period specified in Item 19.

### 22.3 **Notice of potential claim**

The Service Provider must:

- (a) as soon as possible inform the City in writing of any occurrence that gives rise or may give rise to a claim under an insurance policy maintained in compliance with clause 22.1 which arises in connection with the Contract and may involve the City; and
- (b) keep the City informed of all significant developments concerning the claim, except in circumstances where the City is making a claim against the Service Provider,

provided that, in respect of professional indemnity insurance, the Service Provider:

- (c) is not required to provide details of individual claims; and
- (d) must notify the City if the estimated total combined value of claims made against the Service Provider and claims which may arise from circumstances reported by the Service Provider to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

### 22.4 **Severability and cross liability**

- (a) This clause 22.4 does not apply to statutory insurances required under the Contract.
- (b) The Service Provider must ensure that insurances maintained in compliance with clause 22.1 which extend cover to more than one insured provide that:
  - (i) the insurance (with the exception of limits of liability) will operate in the same manner as if there were separate policies of insurance covering each insured and the acts and omissions (including any failure to comply with the duty of disclosure) of any one insured will not be imputed to any other insured for the purposes of determining rights to cover of that other insured;
  - (ii) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom coverage extends; and
  - (iii) a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds.

## 23 Warranties

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### 23.1 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:
  - (i) 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.

### 23.2 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) 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 Schedule 3; and
  - (iii) be fit for the purpose communicated by the City and fit for any purpose for which they are commonly acquired;
- (e) 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 to the best of the Service Provider's knowledge 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 Contract and applicable Laws, will:
  - (i) 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
  - (ii) 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.

### 23.3 Breach of warranties

If the Service Provider is in breach of clause 23.2, 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 23.3(a), by written notice to the Service Provider, terminate this document with effect from the date that is specified in the notice.

## 24 Confidentiality, privacy and related matters

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### 24.1 Confidential information

- (a) Subject to clause 24.1(b):
  - (i) the Service Provider must:
    - (A) keep confidential the terms of the Contract, any documents produced under the Contract and any information leading to the creation of the Contract; and
    - (B) ensure that each of its Personnel comply with the terms of clause 24.1(a)(i)(A); and
  - (ii) each party must keep confidential all information of the other that:
    - (A) is by its nature confidential;
    - (B) is marked or designated as confidential at the time of its disclosure by or on behalf of the disclosing party; or
    - (C) the receiving party knows or ought to know is confidential.
- (b) Neither party is obliged to keep confidential any information disclosed to it by or on behalf of the other party:
  - (i) which is otherwise in the public domain other than by a breach of the Contract by the receiving party;
  - (ii) the disclosure of which is:
    - (A) required by law;
    - (B) made with the prior written consent of the disclosing party;
    - (C) made to a court in the course of proceedings to which the disclosing party is a party; or

- (D) required by the listing rules of a recognised stock exchange; or
- (iii) which is disclosed by the receiving party to its legal or other advisers, or to its Personnel in order to comply with its obligations or to exercise its rights under or in connection with the Contract provided that such persons are under an obligation to keep the information confidential.
- (c) The Service Provider must promptly return to the City or destroy such Confidential Information on the written request by the City provided that (except in the case of any termination of the Contract), the Service Provider may retain for bona fide record keeping purposes only one copy of any Deliverable. The copy of the Deliverable retained by the Service Provider must be kept in a secure area and access restricted to the Deliverable in accordance with this clause 20.

## 24.2 Privacy

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

- (a) comply with the Privacy Laws and any other privacy guidelines and requirements that the City notifies the Service Provider that it must comply with;
- (b) only use Personal Information for the sole purpose of fulfilling its obligations under the Contract;
- (c) protect all Personal Information from unauthorised access, modification, disclosure or use; and
- (d) immediately notify the City on becoming aware of any unauthorised access, modification, disclosure or use of Personal Information or privacy breach in relation to any Personal Information.

## 24.3 No publicity

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

## 24.4 Public Access to Government Information

- (a) The Service Provider acknowledges and agrees that the City may disclose information in the Contract (including the entire Contract) on its nominated website established for disclosures under the *Government Information (Public Access) Act 2009* (NSW) ('GIPA Act').

- (b) The Service Provider must, upon receipt of a written request by the City, provide the City with immediate access to the following information contained in records (as defined in the GIPA Act) held by the Service Provider:
  - (i) information that relates directly to the Services; and
  - (ii) information received by the Service Provider from the City to enable it to provide the Services.
- (c) For the purposes of clause 24.4(b), information does not include:
  - (i) information that discloses or would tend to disclose the Service Provider's financing arrangements, financial modelling, cost structure or profit margin;
  - (ii) information that the Service Provider is prohibited from disclosing to the City by provision made by or under any law; or
  - (iii) information that, if disclosed to the City, could reasonably be expected to place the Service Provider at a substantial commercial disadvantage in relation to the City, whether at present or in the future.
- (d) The Service Provider must provide copies of any of the information in clause 24.4(b), as requested by the City, at the Service Provider's own expense.

## **25 Term and termination**

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### **25.1 Term**

The Contract commences on the Date of the Contract and, unless otherwise extended under clause 25.2 or terminated on its terms, expires on the Expiry Date ('Term').

### **25.2 Further Terms**

- (a) The City may extend this Contract for the Further Term (if any) specified in Schedule 1, commencing on the Expiry Date or the expiry of a previous Further Term (as applicable), by giving written notice to the Service Provider no later than 3 months prior to the Expiry Date or the expiry of a previous Further Term (as applicable). The maximum number of Further Terms is specified in Schedule 1.
- (b) The Service Provider must perform its obligations under this Contract until the expiry of the Further Term or from the date of service of the notice in clause 21.2(a).
- (c) The Service Provider acknowledges that extensions of this Contract for a Further Term will be dependent upon the Service Provider meeting or exceeding the Service Levels and the Critical Success Factors, but meeting



or exceeding the Service Levels and the Critical Success Factors will not necessarily guarantee that a Further Term will be granted.

- (d) Nothing precludes the City from procuring a new contract under the Local Government Act 1919 during the Term or any Further Term and without any notice to the Service Provider.

### 25.3 City may terminate for convenience

- (a) The City may terminate the Contract at any time and for any reason, and in its sole discretion, by giving to the Service Provider not less than the period of prior written notice specified in Item 21.
- (b) If the Contract is terminated pursuant to this clause 25.1, the City must pay the Service Provider:
  - (i) any accrued portion of the Fee for Services carried out up to and including the date of termination; and
  - (ii) the Service Provider's direct costs and expenses (excluding profit) reasonably and necessarily incurred by reason of the termination except to the extent that such costs and expenses are already payable pursuant to clause 25.3(b)(i)
- (c) Except as set out in clause 25.3(b), the Service Provider is not entitled to any other payment in connection with the termination of the Contract under this clause 25.1, including for any costs, losses (including loss of profit) or damage.

### 25.4 Termination for cause

- (a) In addition to any other rights that it has under the Contract or at law, the City may terminate the Contract by giving notice in writing to the Service Provider if:
  - (i) the Service Provider breaches any provision of the Contract and that failure or breach:
    - (A) is incapable of remedy; or
    - (B) if it is capable of remedy, continues for 10 Business Days after the date the City gives the Service Provider a notice requiring the breach to be remedied;
  - (ii) the Service Provider notifies the City of an actual or perceived conflict of interest under clause 3.4 that is unable to be rectified or managed by the Service Provider to the reasonable satisfaction of the City within a reasonable time;
  - (iii) an Insolvency Event occurs; or
  - (iv) the Service Provider breaches a material obligation.

- (b) In addition to any other rights that it has under the Contract or at law, the Service Provider may terminate the Contract by giving notice in writing to the City if the City breaches any provision of the Contract and that failure or breach continues for 10 Business Days after the date the Service Provider gives the City a notice requiring the breach to be remedied.
- (c) The parties agree that any termination in accordance with clause 25.4(a) or clause 25.4(b) will be treated as if it were termination for repudiation of the Contract by the Service Provider or the City (as the case may be).

## **25.5 Service Provider's obligations on termination or completion of the Services**

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

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

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

## **26 Dispute resolution**

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### **26.1 Notice of dispute**

- (a) If a Dispute between the parties arises out of, or in any way in connection with, the subject matter of the Contract, then either party may, by hand or by registered post, give the other and the Contract Manager a written notice of dispute adequately identifying and providing details of the Dispute.
- (b) Notwithstanding the existence of a Dispute, the parties must, subject to clause 25 and clause 26.3, continue to perform the Contract.

### **26.2 Negotiation**

- (a) Within 10 Business Days after receiving a notice of dispute, representatives from the senior management of the parties set out in Item 22 must undertake genuine negotiations with a view to resolving the Dispute.
- (b) If the Dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may commence legal proceedings as they see fit.

### 26.3 **Expert determination**

- (a) If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may refer the dispute to expert determination in accordance with clauses 26.4 to 26.11.
- (b) Clauses 26.2(b) and 26.4 to 26.11 will only apply if both parties agree in writing, within 20 Business Days of services of the notice of dispute, to have the matter resolved by way of expert determination.

### 26.4 **The expert**

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

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

### 26.5 **Not arbitration**

An expert determination conducted under this clause 26 is not arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

### 26.6 **Procedure for determination**

The expert will:

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

### 26.7 **Disclosure of interest**

The expert must:

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

## 26.8 **Costs**

Each party will:

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

## 26.9 **Conclusion of expert determination**

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 26 within 20 Business Days from the acceptance by the expert of his or her appointment.

## 26.10 **Liability of expert**

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud. The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 8 or such other terms as the parties and the expert may agree.

## 26.11 **Determination of expert**

The determination of the expert:

- (a) must be in writing;
- (b) will be:
  - (i) substituted for the relevant direction of the Principal's Representative (where applicable); and
  - (ii) final and binding,unless:
  - (iii) the amount determined by the expert exceeds the amount in Item 23; and
  - (iv) a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following subclauses.

## 26.12 **Litigation**

If a notice of appeal is given under clause 26.11(b)(iv), or if the parties are unable to resolve the dispute within the timeframe set out in clause 26.2(b), then either party may commence proceedings in relation to the dispute.

### 26.13 Summary relief

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

## 27 Disengagement

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### 27.1 Application

This clause 27 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 the Contract.

### 27.2 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.

### 27.3 Requirements for Disengagement

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

## 27.4 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 27 applies, the Service Provider must, unless directed otherwise by the Contract Manager:
  - (i) do all things necessary to effect the Disengagement Services;
  - (ii) at the Service Provider's expense, 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 27.
- (c) The Service Provider acknowledges all Service Levels and Service Level Rights apply during the Disengagement Period.
- (d) The fees payable for the Disengagement Services will be the same as, or calculated in the same manner as, the fees in effect immediately prior to the termination or expiry of the Contract.

## 27.5 Third party services

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

## 27.6 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.

## 28 Force Majeure

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### 28.1 Notice and suspension of obligations

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

- (a) that party must 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 Contract of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

## **28.2 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.

## **28.3 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.

## **28.4 Termination**

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

## **29 Amendment and Assignment**

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### **29.1 Amendment**

This Contract can only be amended or replaced in writing.

### **29.2 Assignment**

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

### **29.3 Change of control**

- (a) The Service Provider, if it is a company whose shares are not listed on the Australian Stock Exchange is in default under this Contract if after:

- (i) the Start Date; or
- (ii) the date of assignment of this Contract to the Service Provider (if this Contract has been assigned to the Service Provider),

any person, who at the date in clause 29.3(a)(i) or (ii) beneficially holds or controls more than fifty (50%) per cent of:

- (iii) the Prescribed Rights; or
- (iv) the voting, income or participation rights in any other company which, at that date, beneficially holds or controls more than fifty (50%) per cent of the Prescribed Rights,

transfers (including, but not limited to, assigns, grants any option or other rights over, or otherwise disposes of) the whole or any part of the Prescribed Rights without the prior written consent of the City.

- (b) In seeking the consent of the City pursuant to clause 29.3(a), the Service Provider must:
  - (i) satisfy the City that:
    - (A) the proposed transferee is a respectable, responsible and solvent person; and
    - (B) will be capable of providing the Services in accordance with this Contract;
  - (ii) not be in breach of this Contract.
- (c) An approved transferee under clause 29.3(b) is deemed to hold the Prescribed Rights:
  - (i) from the Start Date; and
  - (ii) subject to the provisions of this clause.

#### **29.4 Termination**

If the Service Provider fails to perform or observe any of its obligations under this clause 26 then the City may terminate this Contract immediately by notice in writing to the Service Provider.

### **30 General**

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#### **30.1 Governing law**

- (a) This Contract is governed by the law in force in New South Wales.



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

### 30.2 Entire agreement

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

### 30.3 Operation of indemnities

- (a) Each indemnity in this Contract survives the expiry or termination of this Contract.
- (b) Each indemnity is a separate and independent obligation of the Service Provider.
- (c) A party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.

### 30.4 Council acting as an Authority

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

### 30.5 Exclusion of Part 4 of the Civil Liability Act 2002 (NSW)

In determining the rights, obligations and liabilities of the parties in any claim arising in relation to the Contract the operation of Part 4 of the *Civil Liability Act 2002* (NSW) which would otherwise be applicable is expressly excluded to the maximum extent permitted by law.

### 30.6 Notices

- (a) A notice, consent or other communication under the Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
  - (i) if it is delivered, when it has been received by a representative of the addressee at the addressee's address;
  - (ii) if it is sent by mail, 5 Business Days after it is posted; or

- (iii) if it is sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- (c) For the purpose of this clause 30.6, the address and email address of the City and the address and email address of the Service Provider are as set out at Item 24 and Item 25 respectively, or, in either case, another address or email address of which that party has given notice to the other party as its address for notices.
- (d) Notices referred to in the Contract must be given within the time provided for in the Contract. If the Service Provider fails to give a notice in that time, then:
  - (i) the City will not be liable upon any Claim by the Service Provider; and
  - (ii) the Service Provider will be absolutely barred from making any claim against the City,

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

### 30.7 **Inconsistency with other documents**

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

- (a) clauses **Error! Reference source not found.** to 26 of this Contract;
- (b) the schedules of this Contract;
- (c) any Schedule; and
- (d) 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 Contract having the highest level of precedence, unless the City agrees in writing to change the order of precedence.

### 30.8 **Liability for expenses**

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

### 30.9 **Survival of clauses**

Clauses 0 (Interpretation), 4 (Provision of Services), 21.1 (Indemnity), 22 (Insurance), 23 (Confidentiality, privacy and related matters), 26 (Dispute Resolution), 27 (Disengagement) and 26 (General) survive the expiry or earlier termination of the Contract, together with any other term which by its nature is intended to do so.

### 30.10 **Counterparts**

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

### 30.11 **Attorneys**

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

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**Schedule 1 - Contract information**

Item	Description	Contract reference	Details	
1.	Contract Manager	Clause 1.1	<b>[#To be inserted following selection of successful Tenderer]</b>	
2.	Expiry Date	Clause 1.1	30 June 2026	
3.	Information Documents	Clause 1.1		
4.	Key Personnel	Clause 1.1	<b><u>Role / Qualification</u></b>	<b><u>Name</u></b>
			<b>[#To be inserted following selection of successful Tenderer]</b>	<b>[#To be inserted following selection of successful Tenderer]</b>
5.	Operations Manager	Clause 1.1	<b>[#To be inserted following selection of successful Tenderer]</b>	
6.	Work Site	Clause 1.1	Any location where the Services are required to be performed within the Contract Service Area, as more particularly described in the Specifications in Schedule 3.	
7.	Timeframe for review of Deliverables	Clause 4.8(a)(ii)	As reasonably determined by the Contract Manager	
8.	Period of time for resubmission of an amended Deliverable	Clause 4.8(b)	30 Business Days	
9.	Quality assurance system	Clause 4.11	ISO 9001	
10.	WHS Returnable Documents	Clauses 1.1 and 4.12.	<b>Document Description</b>	<b>Due Date</b>
			Signed Acknowledgement Form of the City of Sydney Contractor Safety Book (page 19)	Before the commencement of any Services

Item	Description	Contract reference	Details	
			WHS Management Plan	21 days prior to commencement of Services
			Safe Work Method Statements	21 days prior to commencement of relevant or applicable part of the Services
			Any other document which the City considers relevant to the safe delivery of the Services	As required
11.	Service Provider's Security	Clause 9		
		(a) Form	Bank Guarantee	
		(b) Amount	10% of the estimated annual value of Services from 1 <sup>st</sup> July 2019.	
		(c) Time for provision	On or before the Date of the Contract	
12.	Limitation on providing Work Site access	Clause 13.1(a)	Work Site specific limitations only, including due to occupations of City owned properties, or due to Work Site or event specific restrictions to park access.	
13.	Additional period of time the City is permitted to access records and documents	Clause 15.3(a)(ii)	7 years	
14.	Maximum daily amount of costs and expenses for suspension	Clause 16.6(d)(iii)	<b>[#To be inserted following selection of successful Tenderer]</b>	
15.	Frequency of invoices	Clause <b>Error! Reference source not found.</b>	On the 5 <sup>th</sup> Business Day of each month for the part of the Services carried out up to and including to the last Sunday of the previous month.	
16.	Public liability Insurance	Clause 22.1(a)(i)(A)	\$20 million per occurrence and unlimited in the aggregate	
17.	Level of professional indemnity insurance	Clause 22.1(a)(iii)(A)	\$5 million per claim and \$10 million in the aggregate.	
18.	Insurance requirements for Subcontractors	Clause 22.1(c)	The insurances set out in clause 22.1(a) as relevant to that part of the Services undertaken by the relevant Subcontractor.	

Item	Description	Contract reference	Details
19.	Period for professional indemnity insurance	Clause 22.2(b)	7 years after the completion of the Services or the earlier termination of the Contract.
20.	Further Term	Clause 25.2	Two Further Terms of Two Years
21.	Period of notice for termination for convenience	Clause 25.3(a)	60 Business Days [Is this acceptable]
22.	Representative for senior negotiations	Clause 26.2	City: Manager Cleansing and Waste Service Provider: <b>[#To be inserted following selection of successful Tenderer]</b>
23.	Threshold value for whether an expert's determination is final and binding	Clause 26.11(b)(iii)	\$100,000
24.	Address of the City (including the Contract Manager) for service of notices	Clause 30.6(c)	Attention: <b>[#To be inserted following selection of successful Tenderer]</b>  Address: Council of the City of Sydney Level 12, Town Hall House 456 Kent Street Sydney NSW 2000  Email: <b>[#To be inserted following selection of successful Tenderer]</b>
25.	Address of the Service Provider for service of notices	Clause 30.6(c)	Attention: <b>[#To be inserted following selection of successful Tenderer]</b>  Address: <b>[#To be inserted following selection of successful Tenderer]</b>  Email: <b>[#To be inserted following selection of successful Tenderer]</b>
26.	Milestones and Performance Dates	The Service Provider must perform the Services in accordance with the timeframes set out in the following table:	
		<b>Milestone</b>	<b>Performance Date</b>

Item	Description	Contract reference	Details
		Transition In Services Trials of Textile Collection Trials of Food Organic Collection	<b>[#To be inserted following selection of successful Tenderer]</b>
27.	Specifications		The Service Provider must provide the Services and the Developed Material so that they meet the functional and technical specifications provide the Services set out in <b>Error! Reference source not found..</b>
28.	Service Levels		The Services must be provided in accordance with the service levels set out in the Specification in Schedule 3.
29.	Service Level Rights		The City will be entitled to exercise its Service Level Rights in in accordance with this Contract and Specification..

## Schedule 2 - Fee

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### (Clause 1.1)

The Fee is total sum payable by the City to the Service Provider in respect of all of the Services required to be carried out under the Contract, and is the aggregate of:

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

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

### Part A – Schedule of Prices

(None)

### Part B - Schedule of Rates

***[#To be inserted following selection of successful Tenderer]***



## Schedule 3 - Specifications

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### (Clause 1.1)

See attached documents titled:

Section D – Part 1: General Specification

Section D – Part 2: Garbage Collection Specification

Section D – Part 3: Recyclables Collection Specification

Section D – Part 4: Garden Organics Collection Specification

Section D – Part 5: Clean Up Collection Specification

Section D – Part 6: Food Organics Collection Specification

Section D – Part 7: Textiles Collection Specification

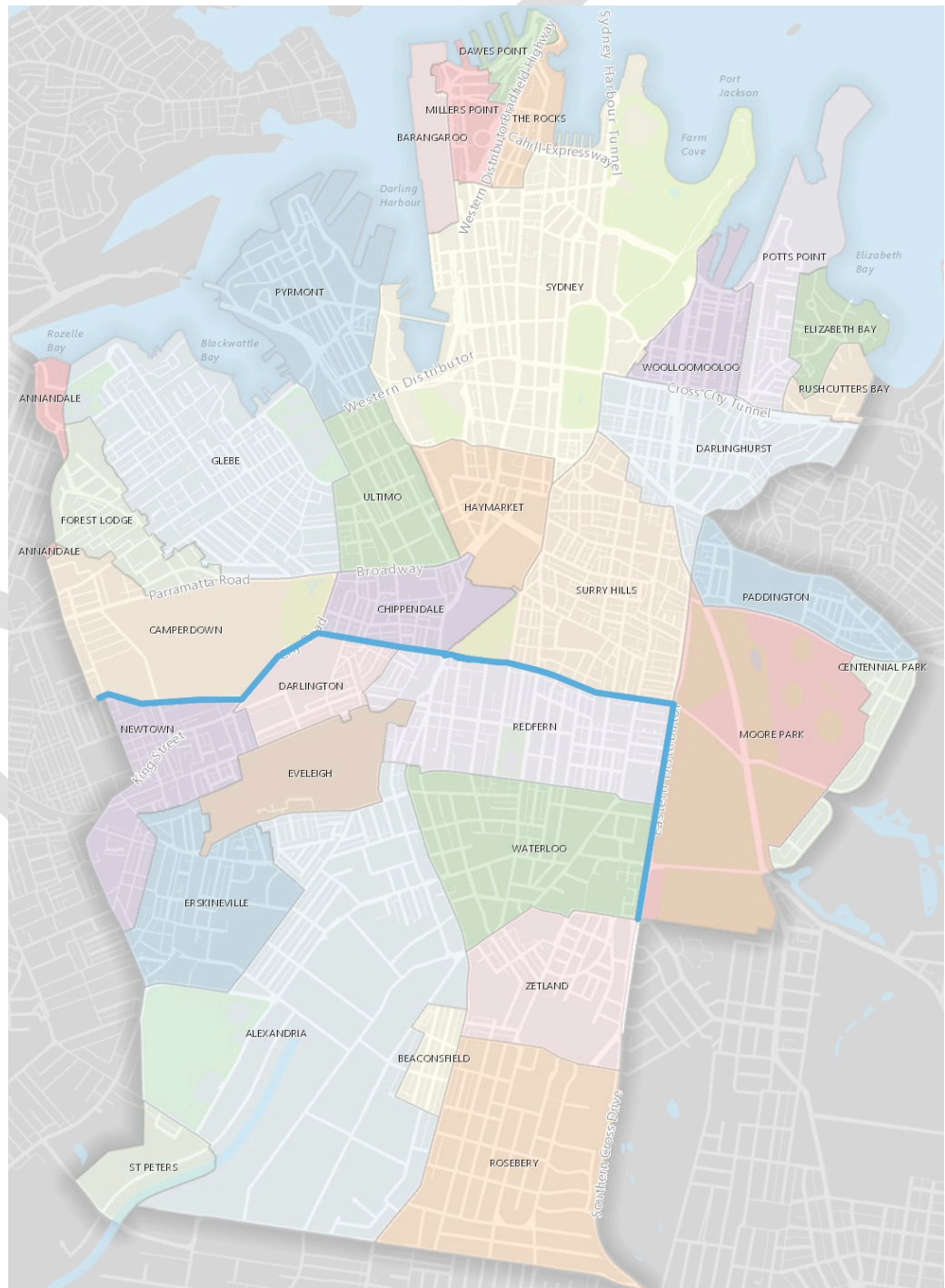
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## Schedule 4 – Contract Service Area

### (clause 1.1)

The entire Local Government Area for all services except:

- Garbage Collection for the area south of the blue dividing line shown below
- Clean Up Collection services for non-putrescible waste (Service Provider provides Clean Up Collection for entire Local Government Area for Whitegoods, Metals, e-waste, illegal dumps, mattresses option, customer service option).



## Schedule 5 – Statutory Declaration

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(Clause Error! Reference source not found.)

\_\_\_\_\_ of \_\_\_\_\_, do solemnly and sincerely declare as follows:

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

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

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

Signature of person making the declaration

\_\_\_\_\_  
Name of person making the declaration

in the presence of an authorised witness, who states:

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

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

\_\_\_\_\_  
Signature of authorised witness

Date:

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

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

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

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

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

Subcontractor: ..... ABN: .....  
(Business name)

of .....  
(Address of Subcontractor)

has entered into a contract with ..... ABN: .....  
(Business name of principal contractor)

Contract number/identifier ..... **(Note 2)**

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, **(Note 3)**

subject of the payment claim dated: ...../...../..... **(Note 4)**

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, **(Note 5)**

hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

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

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

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

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

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

(f) Signature ..... Full name  
.....

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

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

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

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

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

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

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

## Statement Retention

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

### Offences in respect of a false Statement

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

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

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

### Further Information

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

**Schedule 6 – Bank Guarantee**

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**Approved form of unconditional undertaking**

(clause 1 - Security)

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

..... ('the *financial institution*') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the City to a maximum aggregate sum of ..... (\$ ..... )

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

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

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

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

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

Dated at ..... this ..... day of ..... 20.....



## Schedule 7 – Expert determination agreement

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(Clause 26.10)

**THIS AGREEMENT** is made on ..... 20.....

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

**AND** ..... ("**Service Provider**")

**AND** ..... ("**Expert**")

### **BACKGROUND**

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

### **TERMS**

#### **1. DEFINITIONS**

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

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

#### **2. DECIDE ON DISPUTES**

The Expert must:

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

#### **3. PROCEDURES**

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

#### **4. EXPERT'S POWERS**

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

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

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

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

**5. MEET WITH PARTIES**

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

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

**6. REMUNERATION**

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

**7. CONFIDENTIALITY**

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

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

**8. NATURE OF EXPERT'S ROLE**

The Expert:

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

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

9. **TERMINATION**

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

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

10. **NOTICES**

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

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

11. **GOVERNING LAW**

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

12. **INCONSISTENCY BETWEEN AGREEMENT AND CONTRACT**

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

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

.....

.....  
(Signature of Witness)

.....  
(Name Of Witness in Full)

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

.....

.....  
(Signature of Witness)

.....  
(Name Of Witness in Full)

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

.....

.....  
(Signature of Witness)

.....  
(Name Of Witness in Full)

## **ANNEXURE 1**

Item 1: (Contract):

Item 2: (Dispute):

Item 3: (Procedures):

Item 4: (Expert's Hourly Remuneration):

Item 5: (Expert's Address):

Item 6: (Expert's Facsimile):

Item 7: (Governing law):

Item 8: (Inconsistency):

DRAFT