

Attachment 1 - Schedule of Rates

Please note this is a protected spreadsheet. Please enter information in cells marked with <Enter Price> and <Enter Text>

Material Description	\$ per Tonne (excl. GST)
Clean-up Waste Rate	<Enter Price>
Matresess (Per Item)	<Enter Price>
Unscheduled Opening Fee	<Enter Price>
Unscheduled Opening Rate (\$/hour)	<Enter Price>
Any other rates	
<Enter Text>	<Enter Price>
<Enter Text>	<Enter Price>



Volume 1 – Conditions of Tender

Tender Title	Processing and disposal services for general solid waste (non-putrescible)
Tender Closing Date and Time:	5.00pm on Friday 13 April, 2018
Tender Number:	A17/0666

Tender Title **Processing and disposal services for general solid waste (non-putrescible)**

Tender Number **A17/0666**

Issue Date **2 March, 2018**

Tender Closing Date:	13 April, 2018
Tender Closing Time:	5:00pm
Tender Lodgement:	Tenders Online http://www.tendersonline.com.au/waverley Should you require assistance completing your electronic submission, please contact either Contact Person.
Tender Questions:	Questions will be accepted up until 4pm Monday 9 April 2018 via the Tenders-Online forum only .

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No.	Volume	Tender Document
1	Volume 1	Conditions of Tendering
2	Volume 2	draft Agreement
3	Volume 3	Specifications
4	Volume 4	Commercial Response Schedules
5	Volume 5	Non-Commercial Response Schedules

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Volume 1 – Conditions of Tender

Part A – Information for Tenderers

Tender Title	Processing and disposal services for general solid waste (non-putrescible)
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Tender Closing Date and Time:	5.00pm on Friday 13 April, 2018
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Tender Number:	A17/0666
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Conditions of Tender

Tender Number A17/0666

Part 1 Information for Tenderers

1. Definitions

In the Conditions of Tender, unless expressed or implied to the contrary, defined terms have the meaning as specified in this clause 1.

These Conditions of Tender also use definitions found elsewhere in the Tender Documents.

ACL means the Australian Consumer Law, found in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as may be amended from time to time.

Addenda or **Addendum** means any document issued by Council pursuant to clause 10 of these Conditions of Tender.

Agreement means the contract pursuant to which any successful Tenderer will be engaged by Council to carry out the Services, in the form contained in Volume 3 of this RFT or as otherwise agreed between Council and the party it proposes to appoint as Contractor for the carrying out of the Services.

Alternative Tender has the meaning given to it in clause 14.6 of these Conditions of Tender.

Business Day has the meaning given to it in the draft Agreement contained in Volume 2.

Canvass means to directly or indirectly, discuss a Tender or canvass support for the purposes of trying to influence the decision making process in the award of that Tender.

Claim Includes any claim (including for any payment of money (including damages)):

- (a) under, arising out of, or in any way in connection with, this RFT or the Tender Process; or
- (b) otherwise at law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Clean-up Waste has the meaning given to it in the draft Agreement contained in Volume 2.

Closing Time means the deadline for the submission of Tenders on the Tender Closing Date as described in the table in clause 6, as may be updated by an Addendum in accordance with this RFT.

Conditions of Tender means Volume 1 of the RFT.

Conflict of Interest includes a conflict of a pecuniary interest (involving financial gain or loss) or non-pecuniary interest (based on animosity, friendship or family connection). A conflict of interest can also arise from avoiding personal losses as well as gaining personal advantage, financial or otherwise. Conflicts of interest can be actual, perceived, or potential.

Conforming Tender means a Tender that meets the requirements set out at clause 14.4.

Contact Person means the representative of Council described in clause 11.1.1.

Contractor The person (if any) with whom Council enters into a contract for the carrying out of the Services.

Council means each of:

- (a) Waverley Council, in respect of the Waverley LGA; and
- (b) Woollahra Municipal Council, in respect of the Woollahra LGA.

Council's Associates means Council's councillors, officers, employees, consultants, nominees, agents, contractors and advisors (other than the Contractor).

Day means a calendar day.

Disclosed Information means information, data and documents provided through Tenders Online, set out in this RFT or otherwise disclosed to Tenderers as part of the processes contemplated by this RFT, including the information, data and documents specified at clause 5.5.

Drawings means any diagrams, charts, maps, designs and other similar documents issued by Council as part of the Tender Documents.

Evaluation Criteria means each of the evaluation criteria specified in clause 7.3.

Evaluation Panel means the persons appointed by Waverley Council and Woollahra Municipal Council to undertake the evaluation of the Tenderers submission.

Evaluation Process means the evaluation process described in clause 7.

Final Date for Updates means the date so described in the table in clause 6 of these Conditions of Tender, as may be updated by an Addendum in accordance with this RFT.

GIPA Act *Government Information (Public Access) Act 2009* (NSW), as may be amended from time to time.

Intellectual Property Rights All and any patents, patent applications, trademarks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

Late Tender means a Tender described as such in clause 12.9.

Legislative Requirements includes:

- (a) acts, regulations, by-laws, ordinances, orders, awards and proclamations of the Commonwealth, the State or Territory or of the local government in which the Services or any part thereof is being carried out;

- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services; and
- (c) fees and charges payable in connection with the foregoing.

LG Act means the *Local Government Act 1993* (NSW), as may be amended from time to time.

LG Regulation means the *Local Government (General) Regulation 2005* (NSW), as may be amended from time to time.

Mandatory Criteria means each of the criteria specified in clause 7.2.

Memorandum of Understanding means the signed memorandum at Attachment 1 committing each Council to collaborate to undertake the Tender Process.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, or particularly as conferred by the *Copyright Act 1969 (Cth)*, and rights of a similar nature anywhere in the world whether existing before, on or after the Date of the Invitation to Tender.

Non-Conforming Tender means a Tender that is described in clause 14.5 and includes an Alternative Tender.

Personnel has the meaning given to it in clause 26.4 of these Conditions of Tender.

Probity Advisor means the probity advisor appointed by Council in relation to Tender Process.

Privacy Act means the *Privacy Act 1988* (Cth).

Request for Tender or **RFT** means this request to lodge a Tender, consisting of the parts described in clause 3.

Response Schedules means the response schedules contained in Volume 4 and Volume 5 of this RFT.

Schedule of Departures means the Response Schedule set out in Volume 4, Schedule C5.

Schedule of Prices means the Response Schedule set out in Volume 4, Schedule C2.

Services has the meaning given to it in the draft Agreement contained in Volume 2.

Services Commencement Date has the meaning given to it in the draft Agreement contained in Volume 2.

Services Specification means the Services specification forming part of the Agreement, as set out in Volume 3 of the Tender Documents, setting out the requirements for the Services.

Tender means a tender submitted by the Tenderer in response to this RFT, and may include an Alternative Tender or a Non-Conforming Tender.

Tender Box means the physical tender box for lodgement of Tenders in hard copy as described in clause 12.2.

Tender Closing Date means the date so described in the table in clause 6 of these Conditions of Tender, as may be updated by an Addendum in accordance with this RFT.

Tender Documents has the meaning given to it in clause 9.2 of these Conditions of Tender, and includes these Conditions of Tender.

Tendered Item means the items listed in a Tender which the Tenderer, in accordance with the Tender Documents, offers to provide to Council or requires payment for by Council, as set out in the Schedule of Prices.

Tenderer means the person, company or other entity submitting a Tender.

Tenderer's Associates means each of the Tenderer's related bodies corporate, and the directors, officers, employees, consultants, nominees, agents, contractors and advisors of either of them.

Tender Form means the document so named (in the form set out in Volume 4) to be submitted by a Tenderer to Council as part of its Tender.

Tender Price means the amount of money, rates and prices for which the Tenderer offers to perform the Services as set out in the Tender Documents.

Tender Process means the process for inviting, receiving and evaluating Tenders, and determining and notifying Tenderers of the outcome of the process in accordance with this RFT. If Council decides to reject all Tenders and enter into negotiations with one or more Tenderers, the carrying out of the negotiations, and the determination and notification of the outcome will also form part of the Tender Process.

Tenders Online means the electronic tendering system used to allow the electronic publication of information in regards to this RFT, including the Tender Documents, online forum for clarification and questions, issue of Tenderer notifications and Addenda and, to accommodate the electronic submission of Tenders.

Term has the same meaning as in the draft Agreement contained in Volume 2.

Volume means a volume of the RFT.

Waverley Council means Waverley Council ABN 12 502 583 608.

Woollahra Municipal Council means Woollahra Municipal Council ABN 32 218 483 245.

Waverley Services means the Services that the Contractor will be required to carry out under an Agreement with Waverley Council, including as specified in the Services Specification.

Woollahra Services means the Services that the Contractor will be required to carry out under an Agreement with Woollahra Municipal Council, including as specified in the Services Specification.

2. Interpretation

In these Conditions of Tender:

- 2.1.1 the singular includes the plural and vice versa and a gender includes other genders;
- 2.1.2 a reference to a party is to be construed as a reference to each Tenderer and Council and includes each of their successors and permitted assigns;

- 2.1.3 a reference to an item, clause, schedule, annexure or appendix is a reference to an item, clause, schedule, annexure or appendix to these Conditions of Tender and references to these Conditions of Tender include its schedules and any annexures;
- 2.1.4 where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- 2.1.5 a reference to a document or agreement including these Conditions of Tender includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- 2.1.6 headings and sub-headings are for ease of reference only and do not affect the interpretation of these Conditions of Tender;
- 2.1.7 no rule of construction applies to the disadvantage of the party preparing these Conditions of Tender on the basis that it prepared or put forward these Conditions of Tender or any part of it;
- 2.1.8 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 2.1.9 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee;
- 2.1.10 any covenant, term, condition or provision to be performed or warranty or guarantee or indemnity given by two or more persons shall bind those persons jointly and each of them severally;
- 2.1.11 where these Conditions of Tender provides that Council 'may' do a thing, it may do so in its absolute discretion;
- 2.1.12 a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- 2.1.13 the words 'including' and 'includes' and any variants of those words, will be read as if followed by the words 'without limitation'.

3. Tender documents

The Tender Documents forming part of this Request for Tender are:

- 3.1.1 Volume 1: the Conditions of Tender - Processing and disposal services for general solid waste (non-putrescible), comprising:
 - (a) Part A: Information for Tenderers; and
 - (b) Part B: Tender Conditions.
- 3.1.2 Volume 2: the Agreement (in draft form) - Processing and disposal services for general solid waste (non-putrescible);
- 3.1.3 Volume 3: the Services Specification - Processing and disposal services for general solid waste (non-putrescible);

- 3.1.4 Volume 4: the Response Schedules – Commercial, containing the schedules each Tenderer is required to complete when submitting a Tender with regards to pricing and commercial aspects; and
- 3.1.5 Volume 5: the Response Schedules – Non-Commercial, containing the schedules each Tenderer is required to complete when submitting a Tender with regards to technical and other non-commercial aspects.

4. Introduction

4.1 Details of the Councils

The Waverley Council local government area (**LGA**) is in the eastern suburbs of Sydney, NSW. The Waverley LGA covers an area of 9 square kilometres and is home to a thriving business community, numerous parks, beaches and protected coast areas that draw thousands of visitors daily to the area. There are currently approximately 72,000 residents in the Waverley LGA.

Waverley Council is committed to delivering ambitious, combined community and Council waste targets and contribute to greenhouse gas emissions reduction, as set out in our Environment Action Plan. To enable delivery of its targets, Waverley Council has adopted a Sustainable Waste Strategy, which outlines the approach and steps Waverley is taking to address the following key focus areas of reduce waste generation, maximise resource recovery, reduce greenhouse emissions, clean and attractive Waverley, solutions to problem wastes and green infrastructure integration.

The Woollahra Municipal Council LGA is adjacent to the Waverley Council LGA in the eastern suburbs of Sydney, NSW and covers an area of 12 square kilometres. There are approximately 54,000 residents living in the Woollahra LGA.

Woollahra Municipal Council is committed to developing a “waste wise” Woollahra. Woollahra Council is committed to providing services and promoting initiatives that increase recycling and minimise and avoid waste. Additionally Woollahra is committed to achieving targets and commitments developed under the Environmental Sustainability Action Plan to improve waste diversion and increase public place recycling.

Each Council has agreed to participate in the Tender Process. Each Council executed the Memorandum of Understanding that commits each Council to collaborate to undertake the Tender Process.

5. Services information

5.1 Context for required Services

Waverley Council and Woollahra Municipal Council are each issuing this Request for Tender in accordance with section 55 of the *Local Government Act 1993* (NSW) (**LG Act**).

Waverley Council and Woollahra Municipal Council are each committed to managing waste from households, businesses and public space in a sustainable way. Each Council is committed to working towards the NSW State Government targets to increase the recycling rate of household material, and to increase the overall waste diverted from landfill.

Waverley Council and Woollahra Municipal Council each wish to engage an appropriately qualified and experienced Contractor to carry out, for their respective LGAs, the receipt,

sorting, processing, recovery and disposal of Clean-up Waste (as that term is defined in the draft Agreement in Volume 2 of this RFT).

The Agreement will provide that the waste will be collected and delivered to Contractor's facilities by each Council's residential bulky waste service (clean-up) and internal Council operations. The Agreement will not require the Contractor to collect any waste materials.

5.2 Purpose of this RFT

Through this RFT, Waverley Council and Woollahra Municipal Council are now inviting the submission of Tenders for the carrying out of the Services in accordance with the requirements of the LG Act, including the *Tendering Guidelines for NSW Local Government* (October 2009).

Tenderers should note the intended outcome of the Tender Process is to form two separate Contracts for the performance of the Services:

- **Contract 1:** one contract will be with Waverley Council in respect of the Waverley Services; and
- **Contract 2:** one contract will be with Woollahra Municipal Council in respect of the Woollahra Services.

It is the intention of Waverley Council and Woollahra Municipal Council that the Services will be provided across the LGAs of both Councils by one Contractor under those separate Contracts. In this context, the construction of this RFT is that a Tender and, in particular, the Tender pricing in a Tender may only be accepted (if a Tender is accepted at all) by both Waverley Council and Woollahra Municipal Council – and separate Tender pricing or a Tender in respect of only one of the Waverley Services and the Woollahra Services will not be accepted.

The Services requirements are described within the Tender Documents.

5.3 Summary of Services requirements

A Tenderer wishing to lodge a Tender in response to this RFT in respect of the Services must tender for and be prepared to carry out Processing Services in respect of Clean up Waste at a Processing Facility.

The required Services are described in the Services Specification. A summary of the Services requirements is set out below.

Clean-up Waste

Waverley Council's waste collection services covers all residential dwellings (multi-unit, single-unit and semi-detached) via operations managed weekly in-house. Council offers households two (2) 'Your Call' clean-up collections plus one (1) scheduled collection each calendar year for unwanted household bulky waste goods. Mattresses are currently collected separately by an external contractor. Waverley Council also has dedicated public place cleansing services to clean streets, gutters and beaches, as well as collecting dumped rubbish.

Waverley Council currently provides its residents with a collection service to dispose of their unwanted bulky, household items, collecting a total of approximately 1,800 to 1,900 tonnes per annum. Council also carries out the collection of illegally dumped general solid waste (non-putrescible), collecting approximately 450-500 tonnes per annum. Over 2,100 mattresses are collected by external contractors and in-house staff annually in the Waverley LGA.

Woollahra Council's waste collection services cover all residential dwellings (multi-unit, single-unit and semi-detached) via operations managed weekly in-house. Council offers households three (3) Scheduled Clean-Up Service collections each calendar year and on-call special pick

up services for unwanted household bulky waste goods. Mattresses are currently collected by in-house staff as part of the Clean-Up service. All waste collected by these services will be included as 'Clean-up Waste' for the purposes of the Agreement in respect of the Woollahra Services.

Woollahra Municipal Council currently collects approximately 1,500 to 1,700 tonnes of general solid waste (non-putrescible) per annum from its residential service including illegally dumped waste. Over 1,800 mattresses are collected by in-house staff annually in the Woollahra LGA.

Each Council requires services for the processing, recovery and disposal of Clean-up Waste (as that term is defined in the Agreement) collected by the Council's residential bulky waste service and internal Council operations. The Contractor will not be required to collect waste materials. The Services relate to the receipt, sorting, processing, recovery for reuse/recycling, or disposal of the Clean-up Waste delivered to the Contractor's nominated Receiving Facility by each Council.

Council is seeking Tenders for Processing Clean-up Waste during the term of the Agreement. Council intends that under any Agreement that Council enters into on the basis of this Tender Process, the Agreement term will comprise a period of three years with two, one-year options for Council to extend that term at the sole discretion of Council;

The Tenderer must nominate a suitable:

- 5.3.1 Receiving Facility, for the receipt of Clean-up Waste from Council;
- 5.3.2 Clean-up Waste Facility, for the processing of Clean-up Waste; and
- 5.3.3 Mattress Facility for the processing of Mattresses,

as required by the Services Specification and the Agreement.

The Contractor will be required to achieve a Recovery Target in respect of Clean-up Waste processed at the Clean-up Waste Facility. However, mattresses delivered as part of the Clean-up Waste will be excluded from the recovery calculation. The Contractor will also be required to provide assurance of where materials are landfilled.

5.4 Form of Agreement

The Contractor will be required to carry out the Services in accordance with the Agreement. The draft terms of the Agreement are set out in Volume 2.

The Agreement will be a 'schedule of rates' contract.

5.5 Disclosed Information

- 5.5.1 Information on, or in connection with, the Services is provided to Tenderers:
 - (a) in Disclosed Information provided to the Tenderers in writing;
 - (b) in Disclosed Information arising from enquiries, meetings and briefings; and
 - (c) through independent due diligence inquiries by Tenderers.
- 5.5.2 Without limiting clause 5.5.1, the Memorandum of Understanding is provided to Tenderers for information only and is subject to the terms of this RFT regarding Disclosed Information.
- 5.5.3 A review of publicly available information should also be undertaken by Tenderers.

- 5.5.4 All information made available to Tenderers by or on behalf of Council (or the Council's Associates), is provided for the information of Tenderers and on the basis of the disclaimers, conditions, qualifications and releases set out in this RFT.

6. Timetable

The following timetable is indicative only and may be amended at any time in the absolute discretion of Council:

Action	Time/Date
Tender release (date the Tender was advertised)	2 March, 2018
Final date for enquiries (see clause 11)	5 Business Days prior to the Tender Closing Date
Final Date for Updates	2 Business Days prior to the Tender Closing Date
Tender Closing Date	13 April, 2018
Closing Time	5:00 pm on the Tender Closing Date
Evaluation of Tenders	To commence 17 April, 2018
Tender award	15 May, 2018 (estimated)
Services Commencement Date	19 May, 2018 (estimated)

7. Tender Evaluation

7.1 Evaluation of Tenders

- 7.1.1 The evaluation of Tenders will be based primarily on the information provided in the Tender submitted to Council. Any information subsequently provided by a Tenderer in interviews, presentations and in response to requests for clarification or additional information pursuant to these Conditions of Tendering may also be evaluated by Council as supplementary information to a Tenderer's Tender.
- 7.1.2 The evaluation process will be carried out by an Evaluation Panel. The Evaluation Panel will be supported by specialist consultants as required.
- 7.1.3 The evaluation and shortlisting of Tenders are confidential and will not be disclosed at any time during or after the Evaluation Process.

7.2 Mandatory Criteria

The following criteria (**Mandatory Criteria**) are minimum requirements that Council expects Tenderers to meet for their Tenders to be considered:

- 7.2.1 the Tenderer must be solvent at all times during the Tender Process;
- 7.2.2 the Tenderer must have the insurances at the minimum policy cover required by Volume 4, Schedule C4;
- 7.2.3 the Tenderer must possess key qualifications and accreditations that are required in order to carry out the Services;

- 7.2.4 the Tenderer must have Quality Management System, Work Health And Safety and Environmental Management third party ISO accreditation; and
- 7.2.5 the Tenderer must demonstrate to Council's satisfaction that the Tenderer's financial viability is sufficient to meet its obligations under the Agreement for the term of the Agreement (refer to clause 18.3 below).

Council reserves the right to exclude from the Tender Process any Tenderer or Tender that fails to meet any of the Mandatory Criteria.

7.3 Evaluation Criteria

In assessing Tenders and Tenderers, Council's Evaluation Panel will use the Evaluation Criteria set out below. The Evaluation Criteria might not be accorded equal weight and are not necessarily set out in any order of priority:

7.3.1 Non-commercial Evaluation Criteria

The following non-commercial evaluation criteria will be used in the Evaluation Panel's evaluation of the Tender:

(a) **Experience**

This includes an assessment of the Tenderer's demonstrated experience in performing or supplying similar services to the Services, including an assessment of:

- (i) the Tenderer's previous experience performing similar services to the Services in Australia and its demonstrated capability to provide services of comparable complexity and size;
- (ii) the overall suitability of the Tenderer and nominated subcontractors, including the Tenderer's and nominated subcontractors' probity, financial standing, reputation, history of statutory compliance and quality assurance system in place;
- (iii) the quality of the referee reports included in the Tender;

(b) **Demonstrated understanding of and capacity to carry out the Services**

This includes an assessment of the Tenderer's understanding of and capacity to reliably deliver the Services, including an assessment of:

- (i) the Tenderer's demonstrated ability and capability to perform the Services in accordance with the draft Agreement, Services Specification and the functional and technical requirements as outlined in the Tender Documents;
- (ii) the Tenderer's proposed methodology for processing Clean-up Waste, including a full disclosure of the proposed waste management practices to be used in dealing with Clean-up Waste under the Agreement;
- (iii) the Tenderer's nominated resource recovery rate (defined in the Agreement as the 'Recovery Target');
- (iv) the proposed location and access arrangements for each Nominated Facility; and

- (v) other issues relating to the fitness for purpose of the products offered, including subcontractors, Tenderer's quality standard and quality assurance system; and

7.3.2 **Commercial Evaluation Criteria**

The following commercial evaluation criteria will be used in the Evaluation Panel's evaluation of the Tender:

- (a) the Tenderer's Schedule of Prices; and
- (b) all other tendered prices, commercial items, commercial rates, and risk contingencies affecting price within the Tender.

As part of the assessment against the Commercial Evaluation Criteria Council will also consider the best value outcome for the provision of waste services generally within its LGA.

7.4 **Council may change criteria**

Without limitation to Council's rights under any other provision of these Conditions of Tender, Council may change any criteria set out or referred to in this clause 7 at any time on or before the Final Date for Updates.

8. **Proposed procedure after Tender Closing Time**

8.1 **Proposed procedure after Tender Closing Time**

8.1.1 Following the Tender Closing Time set out in clause 6, Council:

- (a) will consider Tenders in accordance with the Tender Documents and the LG Regulation and will not consider any variation of a Tender under clause 8.1.1(c) or 8.1.1(d) below that substantially alters the original Tender;
- (b) may use any other relevant information obtained in relation to a Tender including through this Tender Process or by independent inquiry in the evaluation of a Tender;
- (c) may seek further information from a Tenderer by way of explanation or clarification, or to correct a mistake or anomaly, in relation to any aspect of a Tender. Subject to clause 8.1.1(a), any such information provided by the Tenderer forms a variation to the Tender;
- (d) subject to clause 8.1.1(a), may consent to a request of a Tenderer to vary an Tender by providing further information by way of explanation or clarification, or by correcting a mistake or anomaly, if it appears reasonable to Council to allow the request;
- (e) will, if a Tender is varied in accordance with clause 8.1.1(c) or 8.1.1(d) above, provide all other Tenderers whose Tender have the same or similar characteristics as that Tender with the opportunity of varying their Tenders in a similar way;
- (f) meet with representatives of the Tenderer to discuss and clarify any aspect of the Tenderer's Tender.

- 8.1.2 For the purposes of clause 8.1.1(c) any further information that Council may, in its absolute discretion, request from a Tenderer may include information to enable the Tender of that Tenderer to be a Conforming Tender. Where the Tenderer does not provide that further information in order to have submitted a Conforming Tender within the time nominated by Council, Council may elect in its absolute discretion to declare the Tender of that Tenderer to be a Non-Conforming Tender.
- 8.1.3 Tenderers acknowledge and agree that Council makes no warranty or guarantee or representation that a Tenderer may be invited to make presentations or to provide further submissions, information or clarifications prior to Council's decision to accept or reject a Tender.

8.2 Tender presentation

- 8.2.1 Without limiting clause 8.1.1(c), following the Closing Time Council may (but may determine not to do so, in its absolute discretion) require the Tenderer to provide further information or give a presentation to Council's Evaluation Panel or other representatives of Council regarding its Tender, or to attend an interview.
- 8.2.2 If Council requires a Tenderer to attend and participate in a presentation session or interview:
- (a) the purpose of the presentation sessions or interviews is to enable Council and the Evaluation Panel to gain a full understanding of the Tenderer's Tender and seek clarification of a Tender if necessary;
 - (b) the Tenderer must attend and participate in all presentation sessions and interviews at its own expense; and
 - (c) any presentation session or interview will be conducted in accordance with protocols issued by Council to the Tenderer prior to the presentation session.

8.3 Acceptance or rejection of Tenders

After considering the Tenders (subject to the terms of this RFT), Council will in accordance with clause 178(1) of the LG Regulation, either, at its discretion:

- 8.3.1 accept the Tender that, having regard to all the circumstances, appears to be the most advantageous; or
- 8.3.2 decline to accept any of the Tenders.

8.4 Declining to accept any Tenders

If Council declines to accept any Tenders, Council may, in its absolute discretion, do one or more of the following:

- 8.4.1 enter into negotiations with any person or persons, whether or not a Tenderer, with a view to entering into a contract in relation to the subject matter of the RFT;
- 8.4.2 postpone or cancel the Tender Process;
- 8.4.3 invite fresh tenders on the basis of this RFT or an amended RFT;
- 8.4.4 invite fresh tenders from new tenderers who were not involved in the Tender Process;
or
- 8.4.5 take other actions as permitted under the LG Act or LG Regulation.

8.5 Negotiation

- 8.5.1 If Council elects to enter into negotiations with any or all Tenderers following a rejection of all Tenders, Council may appoint one or more Tenderers (or other persons) as preferred Tenderers subject to the satisfaction of such conditions (if any) as may be required by Council.
- 8.5.2 Council may enter into negotiations with one or more preferred Tenderers, which:
- (a) may be conducted on any basis which Council (in its absolute discretion) considers will enable Council to improve the value for money which it could obtain from acceptance of any Tender;
 - (b) without limiting subparagraph (i), may involve the amendment of any aspect of the Disclosed Information or the Tender Documents or a Tender; and
 - (c) does not prevent Council from raising issues with one Tenderer which it does not raise with other Tenderers.
- 8.5.3 Without limiting clause 9.1, the appointment of a Tenderer as a preferred Tenderer under clause 8.5.2 is not to be taken as a representation that Council will execute any contract with the preferred Tenderer and does not bind Council to do so.
- 8.5.4 Council may discontinue negotiations at any time and for any reason with a preferred Tenderer or appoint one or more other preferred Tenderers with whom to enter into negotiations.

8.6 Tenderer must sign Agreement

Within five Business Days of being requested in writing by Council to do so, the successful Tenderer must sign the Agreement and return it to Council.

Volume 1 – Conditions of Tender

Part B – Tender Conditions

Tender Title	Processing and disposal services for general solid waste (non-putrescible)
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Tender Closing Date and Time:	5.00pm on Friday 13 April, 2018
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Tender Number:	A17/0666
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Part 2 Tender Conditions

9. Tender documents

9.1 Invitations to Tender

- 9.1.1 In calling for Tenders, Council is issuing an invitation for Tenderers and does not intend to create any contract between Council and any Tenderer in relation to the Tender or the process by which it will be conducted.
- 9.1.2 In submitting a Tender, Tenderers will be deemed to have made an offer to Council in response to Council's invitation.
- 9.1.3 Council has no contractual or other legal obligation to the Tenderer with respect to the review, consideration, evaluation, acceptance or rejection of any Tender or the failure to review, consider, evaluate, accept or reject a Tender. The issue of this RFT in no way commits Council to award any contract pursuant to the Tender Process or otherwise.
- 9.1.4 Council is not bound or required to accept the lowest or any Tender and reserves the right to accept any Tender in whole or in parts or to enter negotiations with any Tenderer or any other person. Nothing in this RFT obliges or requires Council to declare a successful Tenderer.
- 9.1.5 This RFT (whether in whole or in part) and the Tender Process do not constitute or otherwise give rise to a tender process contract.
- 9.1.6 The subject matter of the RFT shall only have contractual effect when it is covered and contained in the express terms of an executed contract. Any such contract will be governed by the laws of New South Wales.

9.2 Tender Documents

The Tender Documents forming part of this Tender are:

- 9.2.1 Volume 1: the Conditions of Tender - Processing and disposal services for general solid waste (non-putrescible), comprising:
 - (a) Part A: Information for Tenderers; and
 - (b) Part B: Tender Conditions.
- 9.2.2 Volume 2: the Agreement (in draft form) - Processing and disposal services for general solid waste (non-putrescible);
- 9.2.3 Volume 3: the Services Specification - Processing and disposal services for general solid waste (non-putrescible);
- 9.2.4 Volume 4: the Response Schedules – Commercial, containing the schedules each Tenderer is required to complete when submitting a Tender with regards to pricing and commercial aspects, including the Tender Form; and
- 9.2.5 Volume 5: the Response Schedules – Non-Commercial, containing the schedules each Tenderer is required to complete when submitting a Tender with regards to technical aspects.

9.3 Tenderer has no right to claim

The Tenderer has no right or entitlement for time or financial compensation whatsoever (including to a Claim for economic loss or loss of opportunity) arising from or with respect to or by reason of any error, omission, or misrepresentation (express or inferred) in the Tender Documents.

10. Modification of the Tender Documents (Addenda)

10.1 Council may modify

10.1.1 Council may at any time prior to the Final Date for Updates change, amend, vary, update or supplement any provision or part of the Tender Documents in any manner Council requires in its absolute discretion by issuing a written Addendum in accordance with:

- (a) the procedure specified in clause 12.4 below (Council will make reasonable efforts to inform Tenderers in accordance with this procedure); or
- (b) otherwise, email,

to all Tenderers. Addenda issued will be numbered consecutively, commencing with the number 01.

10.1.2 Council may only give Addenda on or before the Final Date for Updates.

10.1.3 If Council issues an Addendum, then the relevant document is amended accordingly.

10.1.4 All conditions of this RFT will apply to any Addendum and any change, amendment, variation, update or supplement to this RFT.

10.1.5 Without limiting clause 10.1.1, Council may by Addendum in its absolute discretion at any time on or before the Final Date for Updates, change the Tender Closing Date, the Closing Time, the Final Date for Updates or any other date or time relating to the Tender Process.

10.1.6 If Council changes the Closing Time, any Tenderer that has (as at the date of issue of the relevant Addendum changing the Closing Time) lodged a Tender may:

- (a) notify Council via Tenders Online that the Tender should be disregarded by Council; or
- (b) lodge a further Tender and note in that further Tender that the earlier Tender should be disregarded by Council,

in which case the earlier Tender lodged before the initial Closing Time will not be considered by Council. If no such notice or further Tender is lodged prior to the changed Closing Time, that Tenderer is regarded as having lodged its Tender on the basis of the changed Closing Time.

10.2 Tenderer to acknowledge receipt

The Tenderer must acknowledge receipt of all written addenda in their Tender Form.

If Council issues an Addendum via the Tenders Online website or email, Council is not responsible if a Tenderer cannot or does not:

- 10.2.1 receive the email sent on behalf of Council; or
- 10.2.2 open or read the Addendum on the Tenders Online website or email or any attachment to the email,

due to any reason, including as a result of or in connection with any computer viruses, computer defects or system failure.

11. Tender Enquiries

11.1.1 Any enquiries, notices, consents or other communication by Tenderers under this RFT or in connection with a Tender are to be directed either:

- (a) to the Contact Person. The contact details for the Contact Person are:

Contact Person:	Lucas Atkinson
Email Address:	lucas.atkinson@waverley.nsw.gov.au
Contact Person:	Mark Ramsay
Email Address:	mark.ramsay.nsw.gov.au

or

- (b) via Tenders Online.

11.1.2 Tenderers may make written enquiries up to the date being five (5) Business Days before the Tender Closing Date.

11.1.3 Council reserves the right to provide the details of any enquiries and Council's responses to such enquiries, to all Tenderers on a non-attributed basis. If a Tenderer submits an enquiry on a commercial in confidence basis, the Contact Person will either not circulate the response or will allow the enquiry to be withdrawn without it being answered.

11.1.4 Any response to a Tenderer enquiry will be provided in writing.

11.1.5 If Council provides a response to an enquiry via the Tenders Online website or email, Council is not responsible if a Tenderer cannot or does not:

- (a) receive the email sent on behalf of Council; or
- (b) open or read the response on the Tenders Online website or email or any attachment to the email,

due to any reason, including as a result of or in connection with any computer viruses, computer defects or system failure.

11.1.6 If requested by Council, the Tenderer must acknowledge receipt of any response.

- 11.1.7 Unless explicitly stated otherwise in this RFT or otherwise with prior written approval from the Contact Person, Tenderers must not directly or indirectly contact or direct any enquiries to:
- (a) any government agencies or their representatives or personnel; or
 - (b) Council, Council's Associates or any involved State or Commonwealth officers in relation to any aspect of the Services or this RFT, other than the Contact Person.
- 11.1.8 All communications regarding the Services or a Tender must be via the processes set out in this RFT.
- 11.1.9 All media enquiries regarding this RFT must be directed to the Contact Person. No statement made in the media by any person (whether or not on behalf of Council) shall be binding on Council as between Council and any Tenderer.
- 11.1.10 Tenderers acknowledge and agree that if they approach any government agencies and organisations or any person other than the Contact Person:
- (a) such government agencies and organisations or persons have no authority to make statements for or on behalf of Council; and
 - (b) any statements made by or on behalf of them or information provided or otherwise made available by or on behalf of them:
 - (i) will not be binding on or otherwise commit Council, including in the Tender Process, under the Agreement or under any subsequent process;
 - (ii) does not necessarily represent the view of Council or any Council's Associate; and
 - (iii) is not necessarily endorsed by Council or any Council's Associate.

12. Lodgement of Tenders

A Tenderer wishing to lodge a Tender with Waverley Council and Woollahra Municipal Council must do so in accordance with this clause 12.

12.1 Electronic submission via Tenders Online

Tenders are required to be submitted electronically via the Tenders Online process.

The Tender must be:

- 12.1.1 addressed to the General Manager, Waverley Council **and** General Manager, Woollahra Municipal Council;
- 12.1.2 marked with the Tender Number and Tender Title
- 12.1.3 uploaded to Council's electronic tender box in PDF, Word or Excel:

www.tendersonline.com/waverley

Each Tender must be signed by or on behalf of the Tenderer in accordance with clause 17. In respect of Tenders submitted electronically via the Tenders Online, scanned signatures should

be included and original copies of executed documents must be provided to the Contact Person upon request.

It is strongly advised if using the electronic tender box that you allow enough time to resolve unforeseen circumstances which may prevent you from making your submission prior to the close of tenders.

A tenderer may submit more than one tender in response to this invitation.

12.2 Tender Box

If a Tenderer wishes to deposit their Tender personally in the physical Tender Box at Council, they must:

- 12.2.1 notify the Contact Person in writing of that intention, at least 15 Business Days prior to the Tender Closing Date; and
- 12.2.2 comply any directions given by the Contact Person in relation to the submission of the Tender in the Tender Box.

12.3 Tenders Online

Tenders Online is the electronic tendering system used to allow the electronic publication of information in regards to this RFT, including the Tender Documents, online forum for clarification and questions, issue of notifications and Addenda and, to accommodate the electronic submission of Tenders.

Tenders Online allows Tenderers to download Tender documentation and upload Tender responses. Tenderers must first register with Tenders Online at <https://www.tendersonline.com/waverley>

Tenders lodged electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Tenders lodged by post or by hand.

Access to and use of Tenders Online is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on Tenders Online, including in relation to file types and sizes that are acceptable.

Volume 4: the Response Schedules – Commercial and Volume 5: the Response Schedules – Non-Commercial provided by Council for Completion and return by the Tenderer must remain in the format that they were provided in, with no changes to the content or layout.

All other documentation must be provided in PDF format.

It is the responsibility of Tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on Tenders Online. The Council takes no responsibility for any problems arising from Tenderers' infrastructure and/or Internet connectivity.

Tenderers acknowledge that although the Council has implemented the security measures described on Tenders Online, the Council does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.

Tenderers should inform themselves concerning all security measures and other aspects of the Tenders Online technical environment. Tenderers should make their own assessment of the Tenders Online system prior to using it for any matter related to this RFT and no responsibility

will be accepted by the Council arising in respect of any use or attempted use by any party of Tenders Online.

12.4 Registered Tenderers & notices

In the event that the Council elects to vary or supplement this RFT or change the conditions of Tender, it will make reasonable efforts to inform Tenderers in accordance with the following procedure:

- 12.4.1 Tenderers may be informed by notices and other information issued as addenda posted on this RFT page on Tenders Online.
- 12.4.2 Tenderers who have registered and downloaded the Tender documentation should be notified by Tenders Online via email of any addenda issuance.
- 12.4.3 Tenders Online requires Tenderers to log in to their system to collect addenda as notified.
- 12.4.4 The Council will accept no responsibility if a Tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the Tenders Online page for this RFT.
- 12.4.5 If a Tenderer has obtained Tender documentation other than from Tenders Online, they must visit Tenders Online, register as a user and download the Tender documentation for this RFT.

It is in the interest of Tenderers to ensure they have correctly recorded their contact details prior to downloading Tender documentation. If Tenderers have not recorded their details correctly, they should amend their details and download the Tender documentation again.

12.5 Tenders Online Help Desk

All queries and requests for technical or operational support must be directed to:

Tenders Online Help Desk

Telephone: 1800 233 996 (business hours)

The Tenders Online Help Desk is available between 9am and 5pm, Monday to Friday (excluding NSW and national public holidays).

12.6 Virus Checking

In submitting their Tenders electronically, Tenderers represent that they have taken reasonable steps to ensure that Tender response files are free of viruses, worms or other disabling features which may affect Tenders Online and/or the Council computing environment. Tenders found to contain viruses, worms or other disabling features will be excluded from the evaluation process.

12.7 Scanned or Imaged Material

Scanned images, where they are required, are permitted so long as the total file size does not exceed the size limit as prescribed by Tenders Online. The use of scanned or imaged material, where it expands the Tender file size beyond the megabyte limit per upload, is prohibited.

12.8 Lodgement Process for Tenders Online

Before submitting an electronic Tender, Tenderers should:

- 12.8.1 ensure their technology platform meets the minimum requirements identified on Tenders Online;
- 12.8.2 take all steps to ensure that the Tender is free from anything that might reasonably affect useability or the security or operations of the Tenders Online and/or the Council computing environment;
- 12.8.3 ensure that the Tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Council; and
- 12.8.4 ensure that the Tender complies with all file type, format, naming conventions, size limitations or other requirements specified in this clause 12 or otherwise advised by the Council or required by Tenders Online.

Tenderers should allow sufficient time for Tender lodgement, including time that may be required for any problem analysis and resolution prior to the Closing Time.

Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic tender box open beyond the Closing Time. An error message will be issued if the lodgement process is attempted after the Closing Time.

Tenders lodged through Tenders Online will be deemed to be authorised by the Tenderer. If Tenderers have any problem in accessing the Tenders Online website or uploading a Tender they must contact the Tenders Online Help Desk prior to Closing Time.

12.9 Late Tenders, Incomplete Tenders and Corrupted Files

12.9.1 Tenders Online is designed to prevent lodgement of a Tender after the Closing Time.

12.9.2 Any Tender lodged:

- (a) after the Closing Time; or
- (b) electronically prior the Closing Time but where the submission is not complete by the Closing Time (refer to clause 12.9.3),

will be deemed to be a Late Tender, and will be opened and registered separately from Tenders that are lodged at or before the Closing Time.

12.9.3 **Electronic lodgement on Tenders Online must be fully complete by the Closing Time.** The electronic link will cut off right on Closing Time and if submission of the Tender has commenced prior to Closing Time but is not complete, it will be deemed to be a Late Tender. Where a Tender lodgement consists of multiple uploads, due to the number and/or size of the files, Tenderers must ensure that transmission of all files is completed and receipted before the Closing Time.

12.9.4 Council may in its absolute discretion, not consider:

- (a) a Late Tender;
- (b) an incomplete Tender (including those with electronic files which cannot be read or decrypted); or

- (c) a Tender which Council believes to potentially contain any virus, malicious code or anything else which might compromise the integrity or security of Tenders Online or Council's computing environment.

12.10 Tenders Online Security

Tenderers acknowledge that although the Council has implemented the security measures described on Tenders Online, the Council does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.

Tenderers acknowledge that:

- 12.10.1 lodgement of their Tender on time and in accordance with these conditions of Tender is entirely their responsibility; and
- 12.10.2 The Council will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person if, for any reason, a Tender or any other material or communication relevant to this Condition of Tender, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

Failure to comply with these conditions may render the tender a Non-Conforming Tender in Council's discretion.

12.11 Opening of Tenders

- 12.11.1 All Tenderers and members of the public may attend, or be represented at, the opening of Tenders.
- 12.11.2 Tenders will be opened at 4:00pm on the Closing Date at Waverley Council Chambers, Corner Paul Street and Bondi Road, Bondi Junction NSW 2022.
- 12.11.3 The name of the Tenderers who submitted a Tender by the Closing Time will be read out at the opening. No discussions will be entered into between the Council or the Council's Associates and the Tenderers present, concerning the Tenders submitted.

12.12 No representation

Any letter or other form of written or oral acknowledgment by Council of receipt of the Tender does not imply that the Tender has been admitted or accepted as a Conforming Tender or a Non-Conforming Tender and nor does it constitute any representation by Council as to any other matter.

13. Tender validity period

Any Tender lodged remains valid and binding upon the Tenderer for a period of 90 days from the Tender Closing Date or such later date as may be mutually agreed between the Tenderer and Council and must not otherwise be withdrawn by the Tenderer. Tenderers may withdraw their Tender at any time after the expiration of the 90 day period, provided the Tenderer has not been notified in writing of the acceptance of their Tender in accordance with clause 8.3.1.

14. Tender submission requirements

14.1 General

14.1.1 Tenderers must submit their Tenders in accordance with the provisions of this RFT.

14.1.2 Subject to clause 14.6, Tenderers must submit a Conforming Tender.

14.2 Documents to be submitted with Tenders

In their Tenders, Tenderers must provide all information required by the Tender Documents, including:

14.2.1 Volume 4 – Commercial Response Schedules, including:

- (a) completed Tender Form;
- (b) completed Tenderer Details (Schedule C1);
- (c) Schedule of Prices (Schedule C2);
- (d) Schedule of Financial Assessment Information (Schedule C3);
- (e) Schedule of Insurance Certificate (Schedule C4);
- (f) Schedule of Departures (Schedule C5);
- (g) Statement of Conflict of Interests and Fair Dealings (Schedule C6); and
- (h) Statement of Threatened or Pending Litigation (Schedule C7);

14.2.2 Volume 5 – Non-Commercial Response Schedules, including:

- (a) Quality Management Information (Schedule T1);
- (b) Work Health and Safety Management Information (Schedule T2);
- (c) Schedule of Environmental Management (Schedule T3);
- (d) Functional / Non Functional Specifications (Schedule T4);
- (e) Executive Summary of Proposal (including Capacity and Capability) (Schedule T5);
- (f) Schedule of Understanding of Requirement (Schedule T6);
- (g) Recent Relevant Experience and Referees (Schedule T7);
- (h) Key Personnel and Experience (Schedule T8);
- (i) Schedule of Proposed Subcontractors and Consultants (Schedule T9); and
- (j) Services Methodology (Schedule T10); and
- (k) LG Regulation Employment Matters (Schedule T11); and

14.2.3 any other information required by the Tender Documents.

If required by Council, relevant content of the Response Schedules, or the information which they contain (where relevant), may be incorporated into the Agreement that will be executed with a successful Tenderer.

The Tenderer acknowledges and agrees that all Tender Prices shall exclude any applicable Goods and Services Tax unless expressly stated otherwise.

14.3 Tenderer's warranty

In submitting a Tender, the Tenderer warrants that it complies with all applicable Legislative Requirements.

14.4 Conforming Tender

To be considered to be a Conforming Tender, a Tender must:

- 14.4.1 substantially comply with all applicable requirements of these Conditions of Tender;
- 14.4.2 be based on the entire scope of Services under the Agreement as specified in the Services Specification;
- 14.4.3 substantially comply with the requirements specified in the Services Specification;
- 14.4.4 substantially comply with the performance requirements contained in the draft Agreement; and
- 14.4.5 be complete Tenders, containing a properly executed Tender Form and all documentation that is required to be submitted under clause 14.2 of these Conditions of Tender.

14.5 Non-Conforming Tender

- 14.5.1 A Tender that does not comply with clause 14.4 above is a Non-Conforming Tender.
- 14.5.2 A Non-Conforming Tender may be rejected or otherwise not reviewed, evaluated or considered if (in Council's absolute discretion).
- 14.5.3 Council may however, in its absolute discretion and without having any obligation to do so, review, evaluate, consider and accept any Non-Conforming Tender .

14.6 Alternative Tenders

- 14.6.1 A Tenderer may submit a Tender (**Alternative Tender**), which does not conform to the requirements of clauses 14.4.2, 14.4.3 or 14.4.4 in all respects, provided that the Tenderer has submitted a Conforming Tender (or a Tender that Council nonetheless decides to consider under clause 14.5.3).
- 14.6.2 An Alternative Tender is not a Conforming Tender.
- 14.6.3 Alternative Tenders must:
 - (a) be clearly marked as 'Alternative Tender'; and
 - (b) clearly describe the extent to which the requirements of clauses 14.4.2, 14.4.3 or 14.4.4 are proposed to be varied by, amongst other things, completing the Schedule of Departures (Volume 4, Schedule C5); and

- (c) respond to each of the Response Schedules (or for a Response Schedule other than the Tender Form, state clearly that the Response Schedule for its submitted Conforming Tender is to be relied on for the Alternative Tender).
- 14.6.4 Council may or may not consider, accept or reject an Alternative Tender in its absolute discretion.
- 14.6.5 Alternative Tenders will (subject to the terms of this RFT and if evaluated at all) be reviewed and evaluated separately to other Tenders (whether a Conforming Tender or not).

15. Schedule of Departures

15.1 Schedule of Departures to be provided

- 15.1.1 Each Tenderer, whether it provides a Conforming Tender, or an Alternative Tender, is required to review the draft Agreement included at Volume 2 and draft Services Specification included at Volume 3 of this RFT and accept it as part of their Tender, subject to any qualifications that Tenderers expressly set out in the Schedule of Departures (Volume 4, Schedule C5) lodged with their Tender.
- 15.1.2 The contractual qualifications and proposed amendments set out in the Schedule of Departures (if any) will be deemed to be the only contractual qualifications or amendments sought by the Tenderer. Except where Council agrees otherwise, only those matters included in a Tenderer's Schedule of Departures will be admitted for consideration and clarification during the Tender Process or any negotiation.
- 15.1.3 The Schedule of Departures shall also include a marked up copy of the Agreement and Services Specification incorporating the alternate wording to describe the proposed departures and Microsoft Word format.

15.2 Format

The Schedule of Departures must be in the format and completed in accordance with the instructions specified in Volume 4, Schedule C5.

15.3 Tenders deemed compliant

If the Schedule of Departures is not completed or if it does not indicate clauses or conditions of the Agreement or Tender Documents that the Tenderer does not accept or will not be able to fully comply with, the Tenderer will be deemed to have fully complied with and accepted all those clauses and conditions. Such full compliance means:

- 15.3.1 in the case of a clause which is of an informative nature only – that the clause has been read and understood;
- 15.3.2 in the case of a clause which imposes a contractual condition – that the condition is agreed to in a strict and literal sense; and
- 15.3.3 in the case of a clause which specifies a characteristic or performance standard to be met by the Tenderer – that the Tenderer's offer is to provide or exceed the specified characteristic or standard.

15.4 Evaluation of departures

For Tender evaluation purposes Council may request the Tenderer to price any departure and in the absence of a timely response to such a request Council in its absolute discretion may calculate its own price for its evaluation of a Tender.

16. Reservations

To the extent permissible by law, and without limiting or otherwise affecting its other rights (including under this RFT), Council may at any time, in its absolute discretion, do any one or more of the following:

- 16.1.1 alter the RFT, including the Evaluation Criteria and the draft Agreement, at any time on or before the Final Date for Updates;
- 16.1.2 request clarification or additional information from any Tenderer;
- 16.1.3 provide additional information or clarification to any or all Tenderers;
- 16.1.4 amend, alter, suspend or cancel any aspect of the Services, abandon or terminate the Services, or alter the form of the Services, at any stage prior to signing the Agreement;
- 16.1.5 end, vary or waive the Tender Process, including:
 - (a) withdrawing the RFT, discontinuing the Tender Process or any negotiations with any Tenderer, or suspending, varying or abandoning the Tender Process at any time for any reason;
 - (b) waiving or varying any obligation of a Tenderer under the draft Agreement;
 - (c) varying, cancelling or amending the information, terms, procedures or processes set out in the RFT;
 - (d) changing the structure or timing of the Tender Process or any subsequent process;
 - (e) seeking a written response from any Tenderer in respect of any changes to the RFT, including these Conditions of Tendering;
- 16.1.6 communicate in any way or negotiate with one or any number of Tenderers after the Closing Time, in relation to features of the Tenders, cost, or any other matters;
- 16.1.7 seek:
 - (a) clarification or additional information orally or in writing from one or any number of the Tenderers or any other person, including information from any Tenderer as to its capacity to enter into a contract;
 - (b) subject to clause 176 of the LG Regulation, a written response from any Tenderer on any relevant matter as it deems fit without the need to correspond with other Tenderers; or
 - (c) oral presentations without prior notice to any other Tenderer or recipient of this RFT;

- 16.1.8 subject to the requirements of the LG Act and LG Regulation:
 - (a) if a question is asked, seek clarification or amendment of the question, circulate the question (or not) to all Tenderers and summarise the question or exclude from it commercial or strategically sensitive information; or
 - (b) respond or not respond to any questions submitted by any Tenderer in relation to the Tender Process and disclose the contents of Council's response (if any) to any such question to other Tenderers;
- 16.1.9 adopt different approaches with different Tenderers;
- 16.1.10 treat a Tender as having been duly lodged in its absolute discretion;
- 16.1.11 accept a Tender which is not a Conforming Tender;
- 16.1.12 refuse to review, evaluate, consider or accept any Tender, including:
 - (a) where Council is not satisfied that a Tenderer has acknowledged receipt of an Addendum;
 - (b) where Council is not satisfied that the Tender conforms to the requirements of this RFT; or
 - (c) where the Tenderer has not provided information by way of clarification or in response to a request for information;
- 16.1.13 allow a period of time, after Council has sought clarifications or further information, during which all Tenderers will have an opportunity to amend or change their Tenders;
- 16.1.14 allow any Tenderer to change its Tender;
- 16.1.15 enter into a contract with any Tenderer on such terms as Council in its absolute discretion accepts;
- 16.1.16 vary, amend or add to the Disclosed Information;
- 16.1.17 publish the names of some particular or all Tenderers;
- 16.1.18 accept or reject any Tender received after the Closing Time;
- 16.1.19 disqualify a Tenderer or terminate its further participation in the Tender Process in accordance with the Conditions of Tender;
- 16.1.20 withdraw preferred Tenderer status from any Tenderer (or any other person) at any time;
- 16.1.21 not give any reasons for any decision it makes in respect of the Tender Process or the Services;
- 16.1.22 make any decisions arising out of this RFT or any or all subsequent processes in its absolute discretion; or
- 16.1.23 formulate any decisions without being required to assign or provide any reason, and Council will not be liable to any Tenderer if it does any one or more of the above.

17. Execution of Tender Form

The Tenderer must be a recognised and acceptable legal entity with appropriate financial assets and capacity. However, that entity may include a consortium or partnership, unincorporated or incorporated vehicle as specified below.

- 17.1.1 **Corporation:** If the Tenderer is a single corporation, the Tender Form must be executed in accordance with section 127 of the *Corporations Act 2001* (Cth); and
- 17.1.2 **Consortium or partnership or joint venture:** If the Tenderer is a consortium, a partnership or an unincorporated joint venture, the Tender Form must be executed by each member of such consortium, partnership or unincorporated joint venture in the manner required above, or such other manner approved in writing by Council.

18. Warranties

18.1 Warranties

In submitting a Tender, the Tenderer:

- 18.1.1 warrants that:
- (a) it has the expertise, experience and resources necessary to perform the obligations of the Tenderer as set out in the RFT;
 - (b) if selected as the successful Tenderer, subject to final agreement on the Agreement and execution of the Agreement, it fully intends to carry out the Services;
 - (c) the prices and payments included in the Tender will cover the cost of performing all of its obligations described in this RFT and the Agreement and is adequate to form the basis of a sustainable commercial relationship with Council; and
 - (d) all information provided in its Tender will be true, complete and accurate;
- 18.1.2 warrants that it has carried out or will carry out all relevant investigations and has examined and acquainted itself with, and satisfied itself, or will examine and acquaint itself with, and satisfy itself, concerning the accuracy or otherwise of:
- (a) the contents of the Tender Documents, including all Disclosed Information and any other information which accompanies it or has been provided in connection with this Tender Process, and their completeness;
 - (b) all information which is relevant to its Tender;
 - (c) the risks, environmental approvals and authorisations, contingencies and other circumstances which could affect the Services and its Tender;
 - (d) the correctness and sufficiency of its Tender, including the prices and rates offered by the Tenderer in its Tender to perform the Services;
- 18.1.3 warrants that:
- (a) it has not breached the ACL in any way in the preparation of its Tender and will not do so in its participation in the Tender Process;

- (b) it has complied with the requirements of the Privacy Act and the *Privacy and Personal Information Protection Act 1998* (NSW) in giving any personal information in the Tender and that the individuals whose personal information is disclosed in the Tender have agreed to the use and disclosure of that information by Council for the purposes of its Tender; and
- (c) it does not have any actual or potential Conflict of Interest in lodging its Tender or in carrying out the Services if it is successful in becoming the Contractor;

18.1.4 warrants that:

- (a) it is not insolvent and there is no unfilled or unsatisfied judgment or court order outstanding against it or the Tenderer's Associates;
- (b) it will inform the Contact Person promptly in writing of a material change to the information provided in its Tender and of any change in its circumstances which may affect the truth, completeness or accuracy of that information; and
- (c) it will not change its proposed consortium members or major subcontractors without the prior written consent of Council (which may be given or withheld in its absolute discretion); and

18.1.5 acknowledges and agrees:

- (a) that it releases Council and the Council's Associates in accordance with clause 21.2 and warrants and acknowledges that it will not be entitled to make any Claim against Council or any Council's Associate in relation to any matter the subject of that release; and
- (b) to all of the conditions, requirements, qualifications, releases and disclaimers in this RFT.

18.2 Tenderer's ability

In submitting the Tender, the Tenderer further warrants:

- 18.2.1 the accuracy of all information provided by the Tenderer in the Tender;
- 18.2.2 that it has all necessary experience, skill and resources to perform and carry out its obligations in accordance with the Tender Documents;
- 18.2.3 that it is willing to accept the contractual terms and conditions of Council as contained or described in the Tender Documents; and
- 18.2.4 that the Tenderer is able to commence the Services the subject of this Tender as required by Council.

18.3 Financial Capacity

18.3.1 In submitting the Tender, the Tenderer further warrants:

- (a) it has the financial capacity to enter into the Agreement with Council;
- (b) that it will remain financially solvent throughout the Tender Process; and
- (c) will inform Council of any event that may have an impact on its financial capacity to undertake this contract.

- 18.3.2 Council may perform or procure such security, probity and/or financial checks and procedures as Council, in its absolute discretion, may determine are necessary in relation to the Tenderer, or any of the Tenderer's Associates. The Tenderer agrees to provide all reasonable assistance, at the Tenderer's cost, to Council in this regard.
- 18.3.3 In particular, Council intends to undertake independent financial check(s) of each Tenderer and/or the Tenderer's joint venturers and guarantors including Corporate Scorecard or similar financial assessment.
- 18.3.4 A failure by a Tenderer to comply with this clause 18.3 or failure to pass Council's financial check will result in a Tender being rejected or not considered, or (where applicable) preferred Tenderer status being revoked.

19. Investigations by Tenderers

19.1 Tenderer to investigate

Tenderers must make their own investigations as to the nature of the localities where the Services are required to be provided and the surrounds of those localities and satisfy themselves as to the accuracy and completeness of any matters stated in the Tender Documents and of any assumptions upon which Tenderers base their Tenders prior to submitting their Tender.

19.2 Tenderer remains responsible

Failure to investigate or to fully and properly investigate the conditions associated with any localities where the Services are to be provided will not relieve the Tenderer from responsibility for properly estimating the difficulty or cost of successfully performing the Services.

20. Representations by Council

20.1 Council makes no representations

Council does not make any representations, express, implied or inferred, or provide any undertakings to Tenderers other than to invite them to submit a Tender.

20.2 Council not obliged to contract

Council is not obliged to negotiate or sign a Agreement with any Tenderer.

20.3 Council may terminate Tender Process

Council may, by notice in writing to the Tenderers, terminate this tendering process at any time at no cost or loss (contingent or otherwise) to Council and the Tenderer will have no right or entitlement for any compensation whatsoever arising from such termination.

20.4 Council not liable for tenderer's costs

Without limiting the terms of clause 20.3 above, Council is not responsible for, or is not liable to pay for any costs, expenses, losses or damages which may be incurred by any Tenderer in the preparation or submission of its Tender.

21. Reliance by Tenderer

21.1 Disclosed Information acknowledgements

The Tenderer acknowledges and agrees that the Disclosed Information is made available to Tenderers on the following conditions:

- 21.1.1 it has not solely relied upon information provided by or on behalf of Council in preparing and submitting its Tender;
- 21.1.2 it has not relied upon any warranty or representation made by or on behalf of Council except such as expressly provided for herein;
- 21.1.3 the Disclosed Information may be issued to Tenderers from time to time prior to the Closing Time for the information only of the Tenderers and to anyone to whom it is disclosed in accordance with this RFT;
- 21.1.4 the Disclosed Information, as may be disclosed to a Tenderer from time to time, does not purport to:
 - (a) comprehensively describe the scope of the Services or contain all of the information that the Tenderer requires for the purposes of preparing and lodging a Tender or making a decision to enter into the Agreement; or
 - (b) have been prepared having regard to the Tenderer's business objectives, financial situation or particular needs;
- 21.1.5 except as otherwise expressly provided in the Agreement, the Disclosed Information will not limit nor form part of the Agreement;
- 21.1.6 no representation, guarantee or warranty (either express or implied) is, has been or will be made by Council in relation to the Disclosed Information, and in particular and without limitation, no representation, guarantee or warranty is, has been or will be made by Council that the Disclosed Information:
 - (a) is reliable, complete, current, accurate, suitable, comprehensive, adequate or correct;
 - (b) represents the opinion of Council or any other person at any time;
 - (c) contains all information held by or available to Council or any other person at any time, or all the information that the Tenderer or any of the Tenderer's Associates may require in preparing Tenders or in making any decisions in relation to the RFT or the Services; or
 - (d) can be relied on by a Tenderer or any other person;
- 21.1.7 no representation, guarantee or warranty (either express or implied) is, has been or will be made by Council in respect of:
 - (a) the RFT or the Services;
 - (b) any transaction or arrangement contemplated by the RFT or under the Agreement; or
 - (c) any other matter relevant to the Tenderer's decision to enter into the Agreement;

- 21.1.8 neither Council nor any Council's Associate has verified or has any obligation to verify the reliability, completeness, currency, accuracy, suitability, comprehensiveness, adequacy or correctness, of the Disclosed Information;
- 21.1.9 Disclosed Information may not have been prepared for the purpose of this RFT or with the Tenderer or any person in the position of the Tenderer in mind or for the purpose of the Services and has not been prepared for the purpose of the Tenderer's particular Tender;
- 21.1.10 each Tenderer assumes all risk in respect of their Tender and the Disclosed Information may not be relied upon by any Tenderer or any other person and no recourse may be had against Council or any Council's Associate in respect of any Disclosed Information;
- 21.1.11 statements by Council or a Council's Associate or any other person (whether contained within the Disclosed Information or otherwise) prior to this RFT, or made in relation to this RFT or the Services at any time:
- (a) are not binding on Council or any Council's Associate;
 - (b) do not commit Council or any Council's Associate to any action or position in respect of any matter;
 - (c) do not waive, fetter, limit or otherwise affect any right, discretion, power or privilege of Council or any Council's Associate. The rights, discretions, powers and privileges of Council and each Council's Associate are to the full extent of the law maintained, protected and reserved; and
 - (d) are subject to the disclaimers, limitations, qualifications and releases in this RFT;
- 21.1.12 Tenderers acknowledge and warrant that:
- (a) they are responsible for obtaining and have obtained their own independent qualified and professional advice and opinions on all matters relating to their Tenders, including financial, accounting, tax, environmental, legal and technical advice;
 - (b) they have diligently read and considered the Disclosed Information; and
 - (c) to the extent needed for their Tenders, they have diligently carried out their own investigations or made their own enquiries in relation to all matters relevant to their Tenders, including the nature, condition and characteristics of any relevant land, infrastructure and Services, and have satisfied themselves about the reliability, completeness, currency, accuracy, suitability, comprehensiveness, adequacy and correctness of any Disclosed Information;
- 21.1.13 disclosing the Disclosed Information to the Tenderer does not constitute an offer or recommendation by Council or any Council's Associate and does not form the basis of, or constitute a representation, guarantee or warranty in relation to, any binding transaction documents; and
- 21.1.14 neither Council nor any Council's Associate is obliged to:
- (a) disclose any information to the Tenderer or Tenderer's Associates;
 - (b) update any information disclosed to the Tenderer or Tenderer's Associates;

- (c) provide a Tenderer or a Tenderer's Associate with any information even if that information materially affects any information that the Tenderer or Tenderer's Associate already has; or
- (d) give the Tenderer or a Tenderer's Associate notice if they become aware of any inaccuracy, incompleteness or change in the information disclosed to the Tenderer or Tenderer's Associates.

21.2 Council not liable

21.2.1 Tenderers will have no Claim against Council or any Council's Associate with respect to this RFT, including the Conditions of Tendering, or anything contemplated by this RFT, including:

- (a) the exercise of or failure to exercise Council's rights under this RFT;
- (b) any action taken or not taken;
- (c) any decision made or not made;
- (d) the costs of making or not making a Tender; or
- (e) the costs of participating in the Tender Process,

and the Tenderer on behalf of itself and the Tenderer's Associates hereby releases Council and the Council's Associates from any obligation, duty, liability, proceedings, suits or Claims arising out of or in connection with this RFT.

21.2.2 The Tenderer releases Council and the Council's Associates from, and indemnifies Council and the Council's Associate against:

- (a) any Claim by the Tenderer or a Tenderer's Associate; or
- (b) any liability to the Tenderer or a Tenderer's Associate in respect of any damages, losses (including loss of profits), expenses (including legal expenses) or liability whatsoever suffered or incurred by the Tenderer or a Tenderer's Associate,

arising out of or in any way in connection with the Disclosed Information, including in respect of:

- (c) the provision of, or the purported reliance upon, or use of the Disclosed Information, to or by the Tenderer or any other person to whom the Disclosed Information is disclosed or a failure by Council or a Council's Associate to provide any information, data or documents to the Tenderer;
- (d) any negligence by or on behalf of Council or a Council's Associate (the Tenderer specifically acknowledges and agrees that any duty of care that Council or any Council's Associate may otherwise have owed to any Tenderer or Tenderer's Associate is specifically excluded and released);
- (e) any misrepresentation, misleading conduct, omission, inaccuracy, incompleteness or other defect in any Disclosed Information; or
- (f) the Disclosed Information being relied upon or otherwise used in the preparation of any information or document, including any information or document which is 'misleading or deceptive' or 'false or misleading' within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition*

and Consumer Act 2010 (Cth), or any equivalent provision of State or Territory legislation.

22. No collusion

The Tenderer warrants that:

22.1.1 neither the Tenderer nor any of its servants or agents nor any other party on its behalf:

- (a) has any knowledge of the Tender Price of any other Tenderer prior to submitting its Tender nor has the Tenderer disclosed to any rival Tenderer the Tender Price;
- (b) has prior to the submission of the Tenderer's Tender, met with another Tenderer to discuss either person's Tender other than in the presence of, or with the consent of Council;
- (c) has prior to the submission of the Tenderer's Tender, exchanged information with other Tenderers regarding either person's Tender;

22.1.2 neither the Tenderer nor any of its servants or agents nor any other party on its behalf have entered into any contract, arrangement or understanding having the result that on having its Tender accepted and/or being awarded the Agreement, the Tenderer will pay to any unsuccessful Tenderer any moneys or other reward in respect of or in relation to the Tender or any Agreement; and

22.1.3 the Tender is a genuine competitive tender.

23. Other Considerations

23.1 Tenderer to identify conflicts

Tenderers must clearly identify in the Volume 4, Schedule C6 if they have any actual or perceived Conflict of Interest in responding to this Tender, and if so, the manner in which they intend to deal with that conflict.

23.2 Tenderer to notify if conflict arises

If, at any time, an actual or potential Conflict of Interest arises for any Tenderer, that Tenderer must immediately notify Council in writing of that Conflict of Interest.

23.3 Council's rights

If a Tenderer notifies Council of an actual or potential Conflict of Interest or Council becomes aware of the existence of an actual or potential Conflict of Interest, Council may, in its absolute discretion:

23.3.1 enter into discussions to seek to resolve such Conflict of Interest;

23.3.2 cease further consideration of and disregard the Tender lodged by that Tenderer; and/or

23.3.3 take any other action, as it considers appropriate.

23.4 Tenderer must not canvas support

Any Tenderer who directly or indirectly canvasses support from an elected member, employee or agent of Council will be disqualified and any Tender submitted will not be considered.

23.5 Probity Considerations

23.5.1 Council may conduct or procure independent research regarding the Tenderer, Tenderer's Associates and/or the Tenderer's joint venturers, partners, guarantors or shareholders and the information contained in the Tender. Council reserves the right to take into account any matters revealed as a result of its probity investigations in evaluating Tenders.

23.5.2 The Tenderers consents to such probity investigations being conducted.

23.5.3 Council will be under no obligation to provide Tenderers with details of the results of its probity investigations. Council reserves the right to reject an Tender or take such other action as it considers appropriate in light of any information that it receives as a result of conducting its probity investigations.

24. Costs of tendering

24.1.1 Participation in any stage of the Tender Process or any subsequent stage, or in relation to any matter concerning this RFT, will be at the Tenderer's sole risk, cost and expense.

24.1.2 Council has no liability for any costs or expenses of or associated with the preparation of a Tender or its submission to Council.

24.1.3 All costs and expenses incurred in connection with or in any way associated with:

(a) the Tender Process, including in any negotiation process (regardless of whether the Agreement is ultimately entered into); or

(b) any subsequent process,

by a Tenderer or any person or organisation associated with the Tenderer (including each Tenderer's Associate) will be borne solely by the Tenderer or that person or organisation. Council will not be liable for or reimburse any such costs or expenses, or for any costs or losses flowing from that Tenderer's or such person's or organisation's acts or omissions in any way associated with this RFT, or from the Tenderer not progressing further in any subsequent process following this RFT.

24.1.4 This clause 24 applies whether or not the Tenderer is successful, whether or not Council terminates, varies or suspends the Tender Process and whether or not Council takes any other action available to it.

24.1.5 Council will not be liable for any costs, losses, expenses or damages suffered or incurred by Tenderers arising out of or in any way in connection with:

(a) the Tender Process generally, including in connection with any negotiation process (regardless of whether the Agreement is ultimately entered into); or

(b) any subsequent process,

including in connection with changes to the timing of the Tender Process and any subsequent processes.

25. Notification of probity breach

Should any Tenderer consider that it is not being accorded fairness in the evaluation process, immediate notice of its complaint must be given in writing to the Probity Advisor and Waverley Council's Manager Procurement, Fleet & Stores.

The Probity Advisor can be contacted using the following details:

Jason Masters, Managing Director
APAC Probity
Level 11, 66 Clarence Street
Sydney NSW 2000
Telephone: 1300 776 248
Email: info@apacprobity.com

Waverley Council's Manager Procurement, Fleet & Stores can be contacted using the following details:

Email: Tanya.Ryvchin@waverley.nsw.gov.au

The notification will set out the alleged failure, the impact upon the Tenderer's interests, any relevant background information and the outcome desired.

In lodging its Tender, the Tenderer agrees that delay in notification of an alleged probity breach, or notification after the announcement of the preferred Tenderer or the Contractor will operate as a waiver of any such breach, and will preclude a Tenderer from relying upon or taking action based upon such breach.

26. Use of information

26.1 Tenders are council property

All Tenders submitted by a Tenderer become the property of Council and will not be returned to the Tenderers.

26.2 Tender documents are council property

The Tender Documents and all documents, information, Drawings, specifications, technical information and other material and information provided to a Tenderer (whether before or after the issue of these Conditions of Tender):

- 26.2.1 remain the property of Council;
- 26.2.2 must only be used for the purpose of preparing a Tender and for no other purpose;
- 26.2.3 must not be disclosed to any person other than to a person who is assisting the Tenderer in preparing its Tender; and
- 26.2.4 must be returned by an unsuccessful Tenderer to Council within seven (7) Days of being requested to do so by Council.

26.3 Intellectual property in Tender Documents

As between Council and each Tenderer, all Intellectual Property Rights which exist in information contained in these Tender Documents or any related material will remain the property of Council but the Tenderer is permitted to use that information and material for the purpose only of compiling its Tender.

26.4 Tenderer licenses Council

26.4.1 The Tenderer grants to Council and each Council's Associate a licence to:

- (a) use the documents, concepts, ideas, designs, information and materials included in a Tender, including for all Intellectual Property Rights in the Tender; and
- (b) copy, adapt, modify, amend, disclose or do anything else necessary (in Council's absolute discretion) to the documents, concepts, designs, ideas, information and materials included in a Tender, including all Intellectual Property Rights in the Tender,

for the purpose of:

- (c) Council's evaluation and assessment of the Tender;
- (d) seeking clarification of the Tender or any other Tender;
- (e) other matters relating to the evaluation and assessment of Tenders, including audit or governmental or statutory reporting requirements; and
- (f) the delivery and performance of the Services (whether by the Tenderer or otherwise).

26.4.2 The Tenderer warrants that it has secured all requisite consents, licences and authorisations that are required to grant the foregoing licence to Council and each Council's Associate, including any licences and consents from contractors or consultants that have assisted in preparing the Tender or responding to the RFT.

26.4.3 Without limitation, the Tenderer must obtain from each Tenderer's Associate all necessary unconditional and irrevocable:

- (a) consents permitted by applicable laws to any act or omission that would otherwise infringe any of their respective moral rights in the Tender whether occurring before or after a consent is given; and
- (b) waivers of their respective moral rights in the Tender that are permitted by applicable laws,

for the benefit of Council and each Council's Associate and anyone authorised by any of them, including consents and waivers permitting:

- (c) any non-attribution or false attribution of artistic work; and
- (d) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, relocation, destruction or replacement of the whole or any part of the artistic work or works forming part of the Services.

In this clause 26.4(c), the term 'artistic work' has the meaning given in the *Copyright Act 1968* (Cth).

27. Privacy Act compliance

In relation to any 'personal information' (as defined in the Privacy Act) provided by a Tenderer in connection with its Tender, the Tenderer warrants to Council:

- 27.1.1 the Tenderer has obtained the consent of each individual about which any 'sensitive information' (as defined in the Privacy Act) is provided;
- 27.1.2 the Tenderer has ensured or will ensure, within the time required by the Privacy Act, that each individual about whom any 'personal information' is provided has received a written statement setting out all of the matters required by the National Privacy Principles:
 - (a) in relation to the disclosure of the 'personal information' to Council, any related body corporate of Council and any of their advisers, agents or employees requiring the information for the purposes set out below; and
 - (b) disclosing that the entities referred to above will use the 'personal information' for the purpose of reviewing and assessing the Tenderer's Tender; and
- 27.1.3 the Tenderer will comply with the provisions of the Privacy Act in relation to any 'personal information' provided to the Tenderer by Council, any related body corporate of Council and any of their advisers, agents or employees.

28. Governing law and jurisdiction

The Conditions of Tender and the Tender Documents are governed by the laws in force in New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

29. Precedence of Tender Documents

If there is any conflict or inconsistency between provisions in different parts of the Tender Documents, the following order of precedence applies to the extent of any conflict or inconsistency:

- 29.1.1 the Agreement;
- 29.1.2 the Services Specification;
- 29.1.3 the Conditions of Tender.

30. Defects

Should a Tenderer find or reasonably believe it has found any discrepancy, error, ambiguity, inconsistency or omission (**Defect**) in this RFT or any other information given or made available by Council (including the Disclosed Information), the Tenderer must notify the Contact Person promptly, setting out in sufficient detail the Defect so that Council may take whatever corrective action, if any, it deems appropriate. If Council (in its absolute discretion) decides to correct an alleged Defect or issue different or additional information in response to such notice, any correction of a Defect will be notified (or the proper information will be made available) to all Tenderers, on a non-attributed basis in the form of an Addendum.

31. Confidentiality

31.1 Confidential information

- 31.1.1 Tenderers identified for participation or involved in the Tender process or subsequent processes must not advertise, promote or publish their participation or involvement, in any form, without the written consent of Council through the Contact Person.
- 31.1.2 The Tenderer acknowledges that it will be given access to information in the RFT and throughout the Tender process in connection with the Services and/or in connection with Council's consideration of Tenders submitted in response to the RFT (**Confidential Information**).
- 31.1.3 The Tenderer acknowledges and agrees that the Confidential Information includes:
- (a) the Tender Documents and any Disclosed Information; and
 - (b) information provided by or on behalf of Council, accessed from Council, or given by or on behalf of Council in response to a request for information.
- 31.1.4 The Tenderer must, subject to paragraph 31.1.5:
- (a) not use the Confidential Information for any purpose other than for the purpose of considering, formulating or submitting a Tender pursuant to the RFT (**Permitted Purpose**);
 - (b) keep the Confidential Information confidential and secure from unauthorised access, modification and disclosure; and
 - (c) limit the disclosure of the Confidential Information to any of the Tenderer's Associates for the Permitted Purpose only.
- 31.1.5 Notwithstanding paragraph 31.1.4:
- (a) the Tenderer is not obliged to keep confidential any information which is otherwise in the public domain through no fault of the Tenderer or a Tenderer's Associate; and
 - (b) the disclosure of Confidential Information is permitted where the Tenderer is compelled by a requirement of law to disclose the information to a government agency, provided that the Tenderer has first genuinely sought to avail themselves of any relevant exception to or defence against the requirement.

31.2 GIPA Act and governmental reporting obligations

- 31.2.1 Each Tenderer should note that Council is subject to statutory and governmental reporting obligations.
- 31.2.2 The attention of Tenderers is drawn to the GIPA Act, which gives to members of the public rights of access to official documents in the possession of Council. The GIPA Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of Council, limited only by exceptions and exemptions necessary for the protection of essential public interests and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

- 31.2.3 In its Tender, a Tenderer may indicate which information, if any, contained in its Tender or any supporting information it considers should not be disclosed without its prior consent. Any information that is commercially sensitive or confidential must be marked 'commercial and confidential'. This special notation must not be used unless the information is genuinely confidential. Marking information as 'commercial and confidential' will not necessarily prevent disclosure of the information in accordance with the GIPA Act.
- 31.2.4 Council does not give any commitment as to whether or not the information in a Tender will or will not be released.
- 31.2.5 Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the GIPA Act and all other relevant legislation, and on Council's statutory and governmental reporting obligations, on their participation in the Tender process.

Attachment 1 Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING – Tender for processing and disposal services for general solid waste (non-putrescible)

Memorandum of Understanding (MOU) between the following two parties:

1. Woollahra Council (ABN 32 218 483 245) – as “Woollahra”
2. Waverley Council (ABN 125 025 836 08) – as “Waverley”

Date: December 2017 to May 2018

Purpose:

To provide a Memo of Understanding (MoU) to record that participating councils are committed to the Tender (RFT) process for Processing and disposal services for general solid waste (non-putrescible).

Reference:

The RFT documents include a statement that “a Memo of Understanding has been signed by each Council that commits the Councils to collaborate to undertake this Request for Tender (RFT) process.”

Scope:

This MoU is intended to be effective through to the completion of the Selective Tender process and represents an intent to enter into a contract or contracts with the Successful Tenderer.

Understandings, agreements, support and resource needs:

General Managers of Councils agree:

- To identify their Council as a participant in the Tender process
- To participate in the Tender process on a shared-cost basis
- To provide data on their waste stream for inclusion in the RFT documents
- To liaise with the Tender process through their Authorised Council Officers
- That this is the Council’s sole approach to the market for general solid waste (non-putrescible) processing and disposal services.


Main contacts

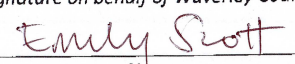
Waverley Council:

Lucas Atkinson
Senior Project Manager
Level 6, 55 Grafton Street, Bondi Junction NSW
2022
P: 02 9083 8242
E: lucas.atkinson@waverley.nsw.gov.au

Woollahra Council:

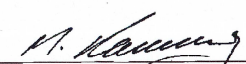
Mark Ramsey
Manager Civil Operations
536 New South Head Road, Double Bay NSW
2028
P: 02 9392 7961
E: mark.ramsey@woollahra.nsw.gov.au




Signature on behalf of Waverley Council


Name
21/12/2018

Date



Signature on behalf of Woollahra Council


Name
21/12/2017

Date

1



Processing and disposal services for general solid waste (non-putrescible) agreement Contract No. A17/0666

Volume 2 - Draft Conditions of Contract

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Draft Processing and disposal services for general solid waste (non-putrescible) agreement

Dated

Parties

Name	[Waverley/Woollahra Municipal] Council ABN [12 502 583 608 / 32 218 483 245]
Address	
Facsimile	
Email	##
Contact	##
Short name	Council

Name	##
Address	##
Facsimile	##
Email	##
Contact	##
Short name	##

Operative Provisions

1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement:

Agreement means this document, including the schedules, annexures and any other document or materials incorporated by reference from time to time.

Alternative Facility means a facility other than a Nominated Facility, which is approved by Council under clause 5.4 for either or both of receiving and Processing Clean-up Waste under this Agreement.

Application means any application for an Approval relating to the Services including, for the avoidance of doubt, applications specifically defined in this Agreement such as an Application for a Planning Approval.

Approval means any approval, authorisation, consent, exemption, filing, licence, notarisation, permit or waiver, however described, and any renewal or any variation to any of them by any Authority.

Authority means any:

- (a) government department;
- (b) local government;
- (c) governmental or statutory authority; or
- (d) other person or entity which, under a Law, has a right to impose a requirement or whose consent is required in relation to the Services,

including Council when performing its regulatory functions but in that capacity only.

Business Day means, unless the parties agree otherwise, any day that is not a Saturday, Sunday or public holiday in New South Wales.

Carbon Credit Scheme means any legislated or administrative arrangement or scheme under which a person is entitled to receive any valuable right, credit, certificate, cost abatement, payment or other interest in connection with the abatement of Greenhouse Gas emissions.

Carbon Price means a tax, duty, charge, levy, excise, impost, fee, expense or other financial requirement relating to the existence or abatement of Greenhouse Gas emissions, or fuel or energy use, and includes any financial requirement arising from the *National Greenhouse and Energy Reporting Act 2007* (Cth).

Change in Control means any act, event or circumstance that results in or causes any variation, amendment or modification of the Control of the Contractor, where **Control** has the meaning in section 50AA(1) of the Corporations Act.

Characteristic means in respect of any waste the type, classification, character, nature, content, quality, consistency, degree of homogeneity or heterogeneity, volume, or weight of waste or any combination of these and the manner in which the waste may break down or

react in any circumstance and any consequential effects or bi-products of any such breakdown or reaction (and in other respects it has its plain English meaning).

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit however arising, including under, arising out of, or in any way in connection with:

- (a) this Agreement, or the Services;
- (b) any other contract, deed or agreement; or
- (c) either party's conduct under this Agreement whether before or after it came into force,

whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence) or for restitution.

Clean-up Waste means the following categories of waste delivered to the Receiving Facility by a Collection Vehicle during the Term of this Agreement:

- (a) general solid waste (non-putrescible) which cannot be placed in residential kerbside bins or is not otherwise recycled through separate single waste stream collection and disposal services contracted for separately by the Council, including furniture, Mattresses, toys, carpet, metals, large green waste, floor coverings, baths, laundry tubs, stoves, television sets, washing machines, clothes dryers, refrigerators, small household appliances, guttering, timber and fence palings;
- (b) general waste picked up from the roadside including leaves, litter, straws, bottle tops, dirt and debris; and
- (c) illegally dumped material.

Clean-up Waste Facility means the facility (or facilities) that is required to be made available by the Contractor for the Processing of Clean-up Waste (excluding Mattresses) under this Agreement. From the Commencement Date until otherwise approved by Council's Representative under clause 5.4.2, the location of the Clean-up Waste Facility is set out in Item 4 of Schedule 1.

Clean-up Waste Fee means an amount of money calculated in accordance with clause 3 or Schedule 2.

Clean-up Waste Processing Services means the provision of all of the operations, maintenance and management services related to the acceptance and Processing of Clean-up Waste at the Nominated Facilities, including as set out in the Services Specification.

Collection Vehicle means a vehicle used by or on behalf of Council for the delivery of Clean-up Waste to the Receiving Facility during the Services Term.

Commencement Date means the date identified in Item 1 of Schedule 1.

Complaint means a complaint from a customer in connection with the Services.

Conflict of Interest means any actual or potential:

- (a) obligation, direct or indirect financial or other interest;
- (b) connection to immediate relatives or close friends with a direct or indirect financial or other interest; or

(c) personal bias, personal obligation, alliance, loyalty,

which may in any way affect decisions in connection with the Services or create a conflict with the Contractor's obligations under this Agreement.

Contamination (of land) means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present on, in or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment. For the purpose of this definition a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance or aspect of the land, structure or other matter (and **Contaminated** and **Contaminant** have corresponding meanings).

Contract Prices or **Agreement Prices** means for each of the Services the rates and prices which are stated in or calculated in accordance with Schedule 2, as adjusted under this Agreement.

Contract Program means the Contractor's program, to be prepared in accordance with clause 2.4, for mobilisation and service implementation.

Contractor means the person named in this Agreement as the Contractor.

Contractor's Plant means each Nominated Facility and any other plant, implements, appliances and equipment used, or to be used, by the Contractor or its contractors of any tier to undertake the Services.

Contractor's Representative has the meaning given in clause 3.2, as changed from time to time under clause 3.2.3, and includes any delegate of that person.

Contractor's Staff means each and every employee, agent or Subcontractor of the Contractor who is used by the Contractor to supply, provide, deliver or perform any part of the Services.

Corporations Act means the *Corporations Act 2001* (Cth).

Council means [Woollahra Municipal / Waverley] Council ABN [32 218 483 245 / 12 502 583 608].

Council's Representative means each of the representatives of Council referred to in clause 3.1, as applicable in the context, as changed from time to time by written notice from Council to the Contractor under clause 3.1.4, and includes any delegate of that person.

Directions include an approval, authorisation, certification, decision, demand, determination, instruction, notice, order, permission, rejection, request or requirement.

Disclosed Information means all of the information disclosed to the Contractor by or on behalf of Council and includes all of the information listed or referred to in this Agreement including in Attachment 1.

Dispute is defined in clause 29.1.

Disputed Service means a Service the subject of a Monthly Statement that is disputed in a Monthly Certificate issued by Council in respect of that Monthly Statement under clause 12.3.1(b).

Diverted Material means resources Recovered from the Clean-up Waste Processing Services.

Documentation means any document, record, system, program or other material which the Contractor is required by this Agreement (including the Services Specification) to produce or contribute to in the provision of the Services.

Emergency means a circumstance where, in the opinion of Council or Council's Representative, there is a potential or immediate threat:

- (a) to public interest, health or safety; or
- (b) of harm to the Environment.

Endorse means acknowledge – it does not mean approve or adopt. The consequences of Endorsement are set out in clause 1.3.

Environment means land, air, water, organisms and ecosystems and includes the built and cultural environment.

Environmental Law means any legislation which regulates or has as its purpose, objective or effect the regulation, protection or enhancement of:

- (a) the Environment; or
- (b) the interaction of any activity on land, or of land itself, with the Environment,

including the *Protection of the Environment Operations Act 1997 (NSW)*.

EPA means the NSW Environment Protection Authority constituted under the *Protection of the Environment Administration Act 1991 (NSW)*.

Expiry Date means the date stated in Item 2 of Schedule 1.

Fee or Fees means the total payments or periodic payments payable by Council under clause 12, as calculated from the Contract Prices.

Force Majeure means any of the following, except where caused or contributed to by the Contractor or any subcontractor to the Contractor (of any tier):

- (a) an act of war (whether declared or not) or terrorism, civil commotion or riot, earthquake, tsunami or flood; or
- (b) national or state wide industrial action,

but only to the extent these render it impossible for the Contractor to perform the Services or any other of its other obligations under this Agreement.

Greenhouse Gas means one or more of the gases listed in Annex A to the Protocol of the United Nations Framework Convention on Climate Change adopted at the meeting of the parties in Kyoto, Japan on 10 December 1997 as amended or implemented by the conference of the parties to the Protocol.

Gross Negligence means a negligent act or omission that arises as a result of a significant departure from the standard of care that would ordinarily be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances as the negligent person.

GST Laws means the GST law (as defined by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*) together with all associated legislation and any additional or substituted legislation.

Insolvency Event, in relation to a person, means any of the following events:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council;
- (d) the person is or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim that is the subject of a dispute in good faith), or stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (e) a receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the person is appointed;
- (f) a resolution is passed by the person to appoint an administrator, or an administrator of the person is appointed;
- (g) an order is made to appoint a liquidator or a provisional liquidator of the person;
- (h) the person resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council, or is otherwise wound up or dissolved;
- (i) an order is made that the person be wound up;
- (j) the person is, or makes a statement from which it may be reasonably inferred by Council that the person is, the subject of an event described in section 459C(2) of the Corporations Act;
- (k) the person assigns any of its property for the benefit of creditors or any class of them;
- (l) an order is made or a resolution is passed for the person to enter into any arrangement, compromise or composition with, or assignment for the benefit of, its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council;
- (m) any Security Interest becomes enforceable or is enforced against that person;
- (n) the person's interest in or under this Agreement or in the subject matter of this Agreement becomes attached or is taken, in execution or under any legal process;
- (o) a distress, attachment or other execution is levied or enforced against that person in excess of \$10,000;
- (p) the person has a judgment or order given against it in an amount exceeding \$10,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given;
- (q) any power of sale is exercised or steps are taken to take possession of any assets of the person subject to a Security Interest;

- (r) any step is taken to do anything listed in the above paragraphs; and
- (s) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

Intellectual Property Right means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

Key Performance Indicator means one of the measures of Contractor performance in the Performance Management System.

Law includes:

- (a) Commonwealth and State legislation including regulations, by laws or other subordinate legislation;
- (b) principles of common law and equity;
- (c) requirements of Authorities and Approvals; and
- (d) guidelines, policies and codes of the Commonwealth, State and local governments and Authorities with which the Contractor is legally required to comply.

Loss includes any damage, expense, loss, cost (including legal costs on a solicitor/own client basis), duty, obligation or liability, either direct or indirect.

Management Systems means the management systems for management of quality, safety and environmental outcomes in performance of the Services, as identified in Item 3 of Schedule 1, which are to be developed and maintained by the Contractor under clause 7.

Mattress means a mattress delivered to the Receiving Facility by a Collection Vehicle during the Term of this Agreement.

Mattress Facility means the facility (or facilities) that is required to be made available by the Contractor for the Processing of Mattresses under this Agreement. From the Commencement Date until otherwise approved by Council's Representative under clause 5.4.2, the location of the Mattress Facility is set out in Item 4 of Schedule 1.

Mattress Fee means an amount of money calculated in accordance with clause 4 or Schedule 2.

Mobilisation Period means the period commencing on the later of the Commencement Date and the date that is 10 Business Days after the date of this Agreement, and ending the day before the Services Commencement Date.

Monthly Certificate means a monthly certificate issued by Council under clause 12.3.1.

Monthly Statement means a monthly statement submitted by the Contractor under clause 12.2.

Moral Rights means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being 'droit moral' or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth)) or any other Law (including any Law outside Australia), that exist, or that may come to exist, anywhere in the world.

Nominated Facility means each:

- (a) Receiving Facility; and
- (b) Processing Facility.

Operating Hours means the times when the Receiving Facility must be open to receive and accept Clean-up Waste in accordance with clause 5.6.

Operative Terms means clauses 1 to 30 of this Agreement.

Performance Management System means the system for measuring and benchmarking performance referred to in clause 8 and further described in Schedule 3.

Planning Approval means any of:

- (a) a development consent granted under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW);
- (b) an environmental assessment required by a determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW); or
- (c) an approval under Part 5.1 of the *Environmental Planning and Assessment Act 1979* (NSW).

Pollution means a release, emission or discharge into the Environment (including of a substance) which causes or has the potential to cause (directly or indirectly) damage or harm to any aspect of the Environment, for example:

- (a) pollution of air
- (b) pollution of waters
- (c) noise; and
- (d) pollution of land,

which is not authorised by a licence obtained under the *Protection of the Environment Operations Act 1997* (NSW) or other Environmental Law.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

PPS Law means:

- (a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time;
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a);
- (c) any provision of the PPS Act or regulations referred to in paragraph (a);
- (d) any amendment to any of the above, made at any time; or
- (e) any amendment made at any time to the Corporations Act or any other legislation in connection with the implementation or as a consequence of the PPS Act.

PPS Register has the meaning given under section 147 of the PPS Act.

Process or **Processing** means the activities associated with the processing of Clean-up Waste to produce:

- (a) a Product that is Diverted Material; and
- (b) Residue, including waste for disposal and other by-products.

Processing Facility means the facility (or facilities) that is required to be made available by the Contractor for the Processing of Clean-up Waste under this Agreement. From the Commencement Date until otherwise approved by Council's Representative under clause 5.4.2, the location of each Processing Facility is set out in Item 4 of Schedule 1

Product means the material produced from the provision of the Clean-up Waste Processing Services that is lawfully capable of beneficial use, and is not merely disposed of or Residue.

Product Market means the market to which the Product is sold or placed, and **Product Marketing** has a corresponding meaning.

Receival Facility means the facility (or facilities) that is required to be made available by the Contractor for the receipt of Clean-up Waste under this Agreement. From the Commencement Date until otherwise approved by Council's Representative under clause 5.4.2, the location of the Receival Facility is set out in Item 4 of Schedule 1. **[Note to Tenderers: the Receival Facility may be the same as the Processing Facility]**

Recover means to divert waste from landfill. To avoid doubt, any Residue from Processing is not considered to be 'diverted from landfill' for the purposes of this definition (and **Recovery** and **Recovered** have a corresponding meaning).

Recovery % means for the Clean-up Waste Facility over a period of time, the percentage of Clean-up Waste that is Recovered by the Clean-up Waste Facility during that period of time, calculated in accordance with clause 6.2. **[Note to Tenderers: Recovery % (and the contractual recovery requirements) are not calculated for the Mattress Facility]**

Recovery Target means for the Clean-up Waste Facility, in each Service Period the percentage of Clean-up Waste that is required under this Agreement to be Recovered by the Services at the Clean-up Waste Facility, as specified in Item 17 of Schedule 1. **[Note to Tenderers: the Recovery Target is calculated only in respect of recovery at the Clean-up Facility]**

Residue means material remaining following the Processing of Clean-up Waste at a Processing Facility, which is, or is intended to be, disposed of (whether indirectly or directly) or on which a Waste Levy is otherwise levied.

RFT means Request for Tender Number A17/0666 – Processing and disposal services for general solid waste (non-putrescible).

Security means the performance security identified in clause 14.1.

Security Interest means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Service Period means each of the following periods following the Services Commencement Date until the Expiry Date:

- (a) initially, a one-year period commencing on the Services Commencement Date and ending on the day immediately prior to the first anniversary of the Services Commencement Date; and
- (b) each subsequent one-year period commencing on the day immediately following the end of the preceding one-year period.

Services means the whole of the tasks, activities and services to be provided or performed by the Contractor under this Agreement, as described in this Agreement (including the Services Specification) and as may be varied in accordance with this Agreement, including any Documentation required to be created, provided or produced by the Contractor and any other services necessary to achieve the performance objectives of this Agreement, including:

- (a) the Clean-up Waste Processing Services;
- (b) any other works or activities described in the Services Specification or forming part of the Services; and
- (c) anything incidental or ancillary thereto.

Services Commencement Date means the date identified in Item 5 of Schedule 1.

Services Management Plans means the plans for the direct management and performance of the Services, as identified in Item 6 of Schedule 1, which are to be developed and maintained by the Contractor under clause 7.2. To avoid doubt, the Services Management Plans may take the form of a single plan.

Services Specification means the specification for the provision of the Services by the Contractor under this Agreement, which is contained in Schedule 5.

Services Term means the period from the Services Commencement Date until the Expiry Date.

Subcontract means an agreement between the Contractor and a Subcontractor, or a Subcontractor and another Subcontractor, under which a Subcontractor is engaged to deliver or perform any part of the Services.

Subcontractor means a contractor (or sub-contractor of any tier) that is used to supply, provide, deliver or perform any part of the Services.

Tax means a tax, levy, contribution requirement, duty, charge, deduction or withholding, however it is described, that is imposed by law (including by an Authority), together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

Tender means the Contractor's proposal submitted in respect of the RFT.

Tender Closing Date means [Tender Closing Date to be inserted].

Tender Documents means the RFT and the Tender.

Term means the period from the Commencement Date until the Expiry Date.

Unscheduled Opening Request means a request issued by the Council to the Contractor under clause 5.6.2.

Unscheduled Opening Fee means an amount of money calculated in accordance with clause 5 or Schedule 2.

Variation is defined in clause 11.1.

Waste Levy means the dollar amount levied under s88 of the *Protection of the Environment Operations Act 1997* (NSW) or any other levy or charge payable for the storage, processing or disposal of waste.

Wilful Default means a wanton or reckless act or omission which amounts to a wilful and utter disregard for the harmful and avoidable consequences of a person's action, but does not include errors of judgement, mistake, act or omission made in good faith.

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

WHS Law means the WHS Act, the WHS Regulation, and any other work health and safety law, regulation, by-law standards and codes of practice that applies to work being carried out as part of the Services.

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW).

Workplace Health and Safety Management System means the Contractor's workplace health and safety management system, maintained by the Contractor and Endorsed under clause 7 as part of the Management Systems

1.2 Rules for interpreting this Agreement

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

1.2.1 A reference to:

- (a) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a party to this Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars; and
- (f) any thing (including a right, obligation or concept) includes each part of it.

1.2.2 A singular word includes the plural, and vice versa.

1.2.3 A word which suggests one gender includes the other genders.

1.2.4 If a word is defined, another part of speech has a corresponding meaning.

- 1.2.5 The word 'includes' in any form is not a word of limitation.
- 1.2.6 The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- 1.2.7 The words **subsidiary, holding company** and **related body corporate** have the same meanings as in the Corporations Act.
- 1.2.8 Unless otherwise indicated, all financial amounts stated in this Agreement are exclusive of GST.
- 1.2.9 A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- 1.2.10 A reference to a party is a reference to a party to this Agreement.
- 1.2.11 This Agreement or any part of it will not be interpreted against the interest of a party on the basis that the party drafted it or seeks to rely on it.
- 1.2.12 References to terms not defined in this clause 1 which are defined in the Services Specification have the meanings given to those terms in the Services Specification.
- 1.2.13 References in the Services Specification to terms not defined in the Services Specification but which are defined in this clause 1 have the meanings given to those terms in this clause 1.
- 1.2.14 Where the same term is defined in the Services Specification and also in the Operative Terms, the definition used in the Services Specification shall apply in the Services Specification and the definition used in the Operative Terms shall otherwise apply in this Agreement (including in the Operative Terms).

1.3 Endorsement

- 1.3.1 If a document, plan or system is "Endorsed" by Council:
 - (a) Council is merely acknowledging that that document, plan or system will be used by the Contractor under this Agreement;
 - (b) the Contractor must not amend the document, plan or system without further Endorsement from Council; and
 - (c) the parties may use the document, plan or system as Endorsed as one basis for auditing and monitoring performance by the Contractor under this Agreement subject to any other requirements of this Agreement and any conditions of the Endorsement.
- 1.3.2 Council has no liability for, arising from, or in connection with, the Endorsement of a document, plan or system and anything the Contractor does or does not do under or in accordance with that document, plan or system is entirely at the risk of the Contractor.
- 1.3.3 The Endorsement of a document:
 - (a) is not a representation or admission that the document, plan or system is adequate, complete, correct, reliable or that it has any other characteristic;
 - (b) does not impose or create any duty, liability or obligation on Council or the Council's Representative;

- (c) does not waive, prejudice or limit the Council's or Council's Representative's rights, powers or privileges; and
- (d) does not affect, limit, alter, release or reduce the obligations, duties, liabilities or responsibilities of the Contractor under this Agreement in any way.

1.3.4 An Endorsed document does not form part of this Agreement.

1.3.5 Council may:

- (a) Endorse a document subject to conditions;
- (b) refuse to Endorse a document; or
- (c) vary or withdraw its Endorsement of a document.

1.4 Business Days

If the day on or by which a person must do something under this Agreement is not a Business Day:

- 1.4.1 if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- 1.4.2 in any other case, the person must do it on or by the previous Business Day.

1.5 Multiple parties

If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party:

- 1.5.1 an obligation of those persons is joint and several;
- 1.5.2 a right of those persons is held by each of them severally; and
- 1.5.3 any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.6 Priority of documents

- 1.6.1 The documents forming this Agreement are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents an interpretation that imposes the higher standard, quality of service or level of performance shall prevail.
- 1.6.2 Subject to clause 1.6.1 any ambiguity, discrepancy or inconsistency between documents forming part of this Agreement shall be resolved by giving precedence to documents in the following order of priority:
 - (a) the Operative Terms;
 - (b) Schedule 1 and Schedule 2 to this Agreement;
 - (c) the Services Specification;
 - (d) each other schedule to this Agreement; and

(e) the annexures to this Agreement.

1.6.3 This Agreement sets out the legal rights and obligations of the parties and prevails over Management Systems and Services Management Plans. In particular:

- (a) if there is a conflict or inconsistency between Management Systems and Services Management Plans, an interpretation that gives effect to this Agreement shall be preferred;
- (b) if a Management System or Services Management Plan specifies a less stringent or less complete requirement than the Services Specification or other requirement of this Agreement then the more stringent or complete requirement shall prevail;
- (c) the provisions and requirements of the Management Systems and Services Management Plans do not limit the role or power of Council or any Authority; and
- (d) once a Management System or Services Management Plan is Endorsed, then unless expressed to the contrary a reference to that Management System or Services Management Plan in this Agreement is to the Endorsed Management System or Endorsed Services Management Plan.

2. Commencement and Term

2.1 Commencement

Subject to the terms of this Agreement, the rights and obligations of the Contractor and Council under this Agreement begin on the Commencement Date and expire on the Expiry Date.

2.2 Extended Term

- 2.2.1 Subject to clause 2.2.3, Council may, at its sole discretion, provide the Contractor with a written notice, no less than three months prior to the end of the Term, exercising its option to extend the Term by any period of up to 1 year.
- 2.2.2 If Council provides a notice to the Contractor under clause 2.2.1 then upon receipt by the Contractor of that notice, the Expiry Date shall be extended by the period of up to one year specified in the notice, on the same terms as this Agreement, unless the parties otherwise agree to variations to this Agreement that will apply during the extended period of the Term.
- 2.2.3 Council may not exercise its option under clause 2.2.1 more than two times.

2.3 Pre-Start meeting

- 2.3.1 Prior to commencing the Services, the Contractor must attend a pre-start meeting to be held in Sydney at a time and date nominated by Council.
- 2.3.2 At the pre-start meeting the Contractor must present to Council to Council's satisfaction:
 - (a) evidence of insurance cover in accordance with clause 16.7;
 - (b) the Security required to be provided in accordance with clause 14;

- (c) evidence of payment of any fees required under any Law in connection with the Services;
- (d) evidence that the Contractor's Staff are duly accredited in accordance with clause 4.11.1;
- (e) confidentiality undertakings as required by Council, in the form set out in Schedule 4;
- (f) any other information requested by Council.

2.3.3 The meeting may also address the following matters:

- (a) lines of communication and authority levels;
- (b) frequency and venue of monthly and other meetings, including under clause 10.1;
- (c) the requirements and particulars required in reports to be provided by the Contractor under clause 10.2;
- (d) invoicing procedures; and
- (e) any site induction/accreditation of the Contractor's personnel.

2.3.4 Until each of the issues in clause 2.3.2 has been satisfactorily addressed and resolved to Council's satisfaction, the Contractor will have no right to submit an invoice under clause 12 or otherwise to seek payment of the Fees and has no other Claim.

2.4 Contract Program

2.4.1 On or before the Commencement Date, the Contractor must prepare and submit to Council the Contract Program.

2.4.2 Council must either:

- (a) give written notice to the Contractor Endorsing the Contract Program submitted to it under clause 2.4.1; or
- (b) if Council reasonably considers that any aspect of the Contract Program does not comply with the requirements of this Agreement, give notice to the Contractor within 15 Business Days of receipt of the Contract Program specifying the areas of non-compliance.

2.4.3 If Council gives a notice under clause 2.4.2(b), the Contractor must:

- (a) amend the Contract Program to address the matters identified in that notice; and
- (b) within 10 Business Days of the notice re-submit the amended Contract Program to Council.

2.4.4 The provisions of clauses 2.4.2 and 2.4.3 will apply to any re-submitted Contract Program as if it was the Contract Program originally submitted under clause 2.4.1.

2.5 Mobilisation Period

- 2.5.1 The Contractor must develop and submit to Council a Contract Program in accordance with clause 7 as part of the Services Management Plans.
- 2.5.2 During the Mobilisation Period the Contractor must carry out:
- (a) all work required for mobilisation and service implementation in accordance with the Contract Program; and
 - (b) all other work specifically required under this Agreement to be carried out prior to the Services Commencement Date.
- 2.5.3 The Contractor must update the Contract Program at least monthly during the mobilisation period and must review the updated Contract Program with Council's Representative.

3. Representatives

3.1 Council's Representative

- 3.1.1 Council shall ensure that at all times there is a Council's Representative.
- 3.1.2 Council has appointed a Council's Representative in relation to the Services, as identified in Item 7 of Schedule 1, to perform the function of Council's Representative under this Agreement.
- 3.1.3 A person who is a Council's Representative is, in respect to the Services in relation to which they are appointed, and subject to the provisions in clause 11:
- (a) authorised as the agent of Council to perform the functions of Council's Representative under this Agreement;
 - (b) to give and receive notices and make Directions under this Agreement; and
 - (c) to monitor the performance of the Contractor and its compliance with the requirements of this Agreement,
- provided always that the limits of the appointment of a Council's Representative are always to be construed as being limited to the powers and functions that can lawfully be delegated to a person in the position of a Council's Representative under the *Local Government Act 1993* (NSW).
- 3.1.4 Council may by written notice to the Contractor appoint a replacement Council's Representative.
- 3.1.5 The Council's Representative may delegate some or all of the Council's Representative's functions and powers under this Agreement to one or more persons, and vary or terminate, in whole or part, such delegations from time to time.
- 3.1.6 Any instructions, decisions, consents, notices, documents or other communications given to Council's Representative are taken to have been given to Council, and if given verbally must be confirmed in writing as soon as practicable.

- 3.1.7 The Contractor must at its cost comply with all lawful Directions and reasonable instructions given by Council's Representative in respect of the performance of the Services.
- 3.1.8 If the Contractor considers that any action or Direction of the Council's Representative is outside of the powers of the Council's Representative or is in breach of this Agreement, the Contractor must within 5 Business Days inform the Council's Representative in writing, giving details of the action or Direction and the reasons why the Contractor has formed that opinion. The Contractor must continue to perform in accordance with this Agreement.
- 3.1.9 The Contractor is not entitled to make any Claim against Council in respect of any Loss in connection with any action or Direction of the Council's Representative that is outside of the powers of the Council's Representative or is in breach of this Agreement that has not been notified to the Council's Representative under clause 3.1.8 and the Contractor releases Council from any such Claim and the Contractor releases Council and the Council's Representative accordingly.

3.2 Contractor's Representative

- 3.2.1 The Contractor must appoint a person to be the Contractor's Representative for the purposes of this Agreement.
- 3.2.2 The Contractor has appointed the Contractor's Representative as the agent of the Contractor who has authority to act for and on behalf of the Contractor in all matters relating to this Agreement. The Contractor's Representative is identified in Item 8 of Schedule 1.
- 3.2.3 The Contractor may appoint a replacement Representative with the prior written consent of Council.
- 3.2.4 Any instructions, decisions, consents, documents, notices or other communications given to the Contractor's Representative are taken to have been given to the Contractor, and if given verbally must be confirmed in writing as soon as practicable.
- 3.2.5 Matters within the Contractor's Representative's knowledge (including Directions received from the Council's Representative) shall be deemed to be within the Contractor's knowledge.

4. Services

4.1 Performance of the Services

From the Services Commencement Date, the Contractor must:

- 4.1.1 perform the Services for Council in accordance with this Agreement;
- 4.1.2 perform the Services at all times during the Services Term;
- 4.1.3 ensure that the Services comply with the Services Specification; and
- 4.1.4 ensure that there is no disruption to the Services except where expressly permitted by this Agreement.

4.2 Representation

The Contractor agrees and represents to Council that:

- 4.2.1 it has carefully reviewed the description of the Services prior to entering into this Agreement; and
- 4.2.2 the Contractor is satisfied as to the adequacy of the Contract Prices and Services Specification having cognisance of the matters referred to in clause 4.2.1.

4.3 Standard of Services

- 4.3.1 The Contractor must ensure that the Services:
 - (a) are carried out in a proper and workmanlike manner with due skill, care and diligence;
 - (b) are carried out in a manner that does not offend reasonable members of the public, including ensuring that all Contractor's Staff do not behave in an offensive manner;
 - (c) are executed and completed in accordance with Law;
 - (d) are carried out in a safe, timely and efficient manner; and
 - (e) strictly comply with Council's reasonable instructions and Directions relating to the Services.
- 4.3.2 The Contractor must do all things necessary to comply with and meet the requirements of the Services Specification and the Contractor's obligations under this Agreement.
- 4.3.3 The Contractor must not do or permit to be done (whether by deliberate act or omission or by negligence) anything to harm the interests of Council or which may jeopardise Council's rights in relation to the provision of the Services.
- 4.3.4 Council is not required to make any payment whatsoever in connection with the Services except for the performance of the Services and then only in accordance with this Agreement.

4.4 Acceptance of risks

- 4.4.1 Subject to this Agreement, the Contractor accepts all risks of and associated with the Services, Clean-up Waste, Residue, Product or Product Market including:
 - (a) the demand for or revenue generated from the Services or Product being less than estimated;
 - (b) liability for Taxes and the creation or imposition of Taxes or imposts, whether or not existing at the date of this Agreement; and
 - (c) in connection with any Law (as at the date of this Agreement or in the future) including any Change of Law or any new Law, including any requirement to obtain or modify any Approval or the conditions of, delay in obtaining, modifying or refusal of any Approval or the challenge to the validity of any Approval.

4.4.2 The Contractor:

- (a) is solely responsible for the cost and conduct of the Services and Product Marketing and assumes the risk of all delay, increased costs and any Loss it suffers or incurs in relation to the Services or Product Marketing;
- (b) acknowledges that the Disclosed Information may not be comprehensive. To the extent permitted by Law, the Contractor is not entitled to and must not make any Claim under this Agreement (including a Claim for an adjustment of part or all of the Contract Prices) against Council (or any person acting on Council's behalf) arising out of or in connection with any actual or alleged error, omission, defect or incompleteness in any of the Disclosed Information;
- (c) acknowledges that Council makes no warranty or representation as to whether any waste, Clean-up Waste, Product or Product Market has or does not have any or any particular Characteristic; and
- (d) is not entitled to and must not make any Claim under this Agreement (including a Claim for an adjustment of part of all of the Contract Prices) against Council (or any person acting on Council's behalf) arising out of or in connection with any such risk, cost or expense having eventuated or been incurred.

4.5 Contractor supplied plant, equipment and infrastructure

The Contractor must at its cost provide all management systems, management and technical support services, supervision, employees, materials and equipment and other services, consumables and all other things whether of a temporary or permanent nature which are necessary to provide the Services, unless otherwise excluded under this Agreement.

4.6 Compliance with Law

4.6.1 The Contractor must at its cost at all times during the Term comply with:

- (a) all Law (including any change in Law) applicable to its obligations under this Agreement, its performance of the Services and Product Marketing, including:
 - (i) obtaining and maintaining all requisite Approvals other than the Approvals that are expressed under this Agreement to be obtained and maintained by Council;
 - (ii) giving all notices and pay all fees, charges and other amounts payable in respect of the carrying out of its obligations under this Agreement (including long service levies payable in respect of the Services under the *Building and Construction Industry Long Service Payments Act 1986* (NSW)); and
 - (iii) if contractors (or sub-contractors of any tier) are used to deliver or perform any part of the Services, ensure that the contractors (or sub-contractors of any tier) have obtained all necessary Approvals to perform that part of the Services;
- (b) relevant Australian standards; and
- (c) applicable industry codes.

- 4.6.2 The Contractor must at its cost at all times during the Term ensure that when transporting materials and waste (including Residue or Product where applicable), the waste is transported in suitably licensed vehicles and comprehensive waste tracking methodology is used to the satisfaction of Council's Representative.
- 4.6.3 The Contractor accepts all risks of, and associated with the transport of Residue or Product.

4.7 Approvals

Without limiting the generality of clause 4.6, the Contractor must at its cost in connection with the Services and in connection with Product Marketing:

- 4.7.1 make (and use reasonable endeavours to progress) in sufficient time to comply with its obligations under this Agreement, every Application for every necessary Approval and ensure that each such Approval has been obtained, and is maintained and complied with and where necessary renewed;
- 4.7.2 pay all lodgement or other fees in relation to any Application;
- 4.7.3 promptly fully and accurately respond to any requests for further information made by any Authority in respect of any Application;
- 4.7.4 in sufficient time to comply with its obligations under this Agreement, provide to any relevant Authority and other relevant person all information, assurances, bonds, payments and securities necessary or required by the Authority or that person to evaluate, process, determine, grant, obtain or comply with any necessary Approval;
- 4.7.5 upon written request by the Council's Representative, give the Council's Representative copies of all documents (including Approvals and other notices):
 - (a) an Authority issues to it; or
 - (b) it issues to an Authority;
- 4.7.6 comply with:
 - (a) the lawful requirements of each Authority to enable proper consideration by the Authority of any Applications for Approvals made;
 - (b) the proper requirements of any relevant person (other than an Authority) to enable proper consideration by that person of Applications made;
 - (c) all lawful terms and conditions of the Approvals issued (whether or not obtained by and issued to the Contractor) and with all lawful Directions given by an Authority; and
 - (d) all applicable orders, decisions, findings or rulings made by a court, commission or tribunal.

4.8 Environment

Without limiting clause 4.6 or 4.7, the Contractor must at its cost:

- 4.8.1 ensure that in carrying out the Services or Product Marketing it complies with all Environmental Law, including in respect of Contamination (of land) or Pollution caused or contributed to by the Contractor or Contractor's Staff;

- 4.8.2 ensure that there is no risk of harm to the Environment arising out of, or in any way in connection with, the carrying out of Services or Product Marketing;
- 4.8.3 not cause or permit any nuisance or hazard to any member of the public;
- 4.8.4 suppress odours to minimise impacts on people;
- 4.8.5 contain and lawfully dispose of leachates and other Residue products and by-products of the Clean-up Waste Processing Services;
- 4.8.6 keep secure all Residue and Product during transport and storage;
- 4.8.7 ensure that each Nominated Facility is properly constructed, operated and maintained to prevent harm to the Environment;
- 4.8.8 remediate any Pollution, Contamination (of land) or damage to the Environment arising out of, or in any way in connection with, the carrying out of Services;
- 4.8.9 without limiting clauses 4.8.1 to 4.8.8, ensure that:
 - (a) it does not Pollute, Contaminate or damage the Environment;
 - (b) there is no leakage, spillage or other escape of any waste, Pollution or Contaminant to the Environment;
 - (c) its Subcontractors comply with the requirements of this clause 4.8; and
- 4.8.10 indemnify Council against any Loss suffered or incurred by Council arising out of, or in any way in connection with, any breach by the Contractor of its obligations under this clause 4.8.

4.9 Cartage

Without limiting clause 4.6, 4.7 or 4.8:

- 4.9.1 all cartage of any kind or actions of the Contractor's Staff in connection with the execution of this Agreement must be carried out in compliance with the requirements of any Law controlling the use of vehicles on roads;
- 4.9.2 the Contractor must ensure that trucks entering or leaving each Nominated Facility carrying loads are covered at all times, except during loading and unloading;
- 4.9.3 when any vehicle carrying waste, Diverted Material, Residue or other material is passing along roads or left standing in any public place, it must be secured so as to prevent the escape of any matter from the vehicle; and
- 4.9.4 no vehicle may, in the conduct of the Services, be left standing or idling in such a manner as to cause offence or present a hazard or unreasonable inconvenience to a member of the public.

4.10 Cooperation with other Council staff and other contractors

- 4.10.1 In the performance of this Agreement, the Contractor will need to interact daily with Council's staff and contractors who provide the operation of transfer stations and any other waste management services. It is essential for the efficient operation of the entire integrated waste management service and effective and efficient provision of services to Council's customers that the Contractor cooperate with Council's staff and Council's other contractors.

- 4.10.2 The Contractor undertakes to make all reasonable endeavours to ensure cooperation at both operation and management levels with Council's staff and Council's other contractors, in relation to the performance of the Services.
- 4.10.3 Council undertakes to require similar cooperation of Council's other contractors.
- 4.10.4 The Contractor acknowledges that:
 - (a) Council, in ensuring the efficient operation of the entire integrated waste management service and effective and efficient provision of services to Council's customers, may intervene in resolving any inefficiency between Council's contractors, using its powers under this Agreement; but
 - (b) at all times the primary responsibility for ensuring cooperation between Council's contractors, including the Contractor, in the efficient operation of the entire integrated waste management service and effective and efficient provision of services to Council's customers, rests as between Council and the Contractor, with the Contractor.

4.11 Contractor's Staff

- 4.11.1 The Contractor warrants and represents to Council that each Contractor's Staff engaged to perform any portion of the services, works or other activities or obligations under this Agreement will:
 - (a) have the appropriate skills and experience required to provide the Services in accordance with this Agreement;
 - (b) hold all necessary current Approvals, certificates and accreditations required by Law in order to provide the Services; and
 - (c) have a standard of experience, workmanship and behaviour that is entirely suitable for the performance of the Services and the requirements of this Agreement.
- 4.11.2 The Contractor must only replace personnel or refill a position with replacement personnel who are properly qualified and competent.
- 4.11.3 The obligations, duties and liabilities of the Contractor under this Agreement are unaffected by the fact that the Contractor contracts for the performance of any service, work or other activity by a subcontractor and the Contractor is at all times fully responsible to Council for the provision of the Services and all other services, works or other activities or obligations under this Agreement irrespective of whether the Services or other works, activities or obligations under this Agreement are provided by the Contractor's Staff and must ensure that the Contractor's Staff fully comply with the Contractor's obligations under this Agreement and do not (by act or omission) cause the Contractor to be in breach of this Agreement.
- 4.11.4 Except where this Agreement otherwise provides, the Contractor shall be liable to Council for the acts, defaults, omissions and negligence of any employees of the Contractor, any employees of any of the Contractor's Subcontractors, and any agents of the Contractor's Staff as if they were those of the Contractor.
- 4.11.5 Where Council's Representative is of the opinion that a member of the Contractor's Staff, whether as a result of repeated Complaints or otherwise, fails to meet the requirements of this Agreement, Council's Representative may request the Contractor to commence warning, counselling and training in accordance, where applicable, with the Contractor's Workplace Health and Safety Management System . If the person's performance continues not to meet the requirements of

this Agreement Council's Representative may request the removal of that person. Upon receipt of this request, the Contractor must immediately remove that person at no cost to Council and must replace that person with a suitably qualified person. This clause 4.11.4 does not limit Council's other rights under this Agreement, including under clause 19 and clause 20.

4.12 Subcontracting

- 4.12.1 The Contractor must not subcontract or delegate the performance of the whole or any part of its obligations under this Agreement without the prior written consent of Council which consent (if provided) may be given subject to such conditions as Council considers appropriate in its discretion. The conditions of approval may include the provision of collateral warranties and acknowledgments of Council's rights under this Agreement sufficient to ensure that Council's rights are in no way affected or limited by the proposed contracting arrangement.
- 4.12.2 The Contractor acknowledges that any consent given by Council under clause 4.12.1 does not release the Contractor from any of its obligations under this Agreement and that the Contractor will be liable to Council for the acts, defaults, negligence or omissions of its Subcontractors as if they were acts or omissions of the Contractor.

4.13 Access to Council premises and systems

- 4.13.1 The Contractor must fully comply with (and ensure the Contractor's Staff fully comply with) all requirements or Directions, as provided from time to time in writing by Council's Representative to the Contractor, relating to:
- (a) access to, behaviour on or access from any buildings, land, structural assets and other facility owned, occupied, leased or controlled by or on behalf of Council at which Services are to be carried out (including, but not limited to, security and health and safety requirements in relation to such premises); and
 - (b) where arranged and permitted by Council, access to and use of Council's computer systems, programs and/or any arrangement Council has in place to access the Internet.
- 4.13.2 The Contractor must advise Council's Representative of any unauthorised access and/or use.

4.14 Ownership of Clean-up Waste

- 4.14.1 The ownership and property in all Clean-up Waste under this Agreement will transfer from Council to the Contractor once the Clean-up Waste is unloaded from the Collection Vehicle at the Receiving Facility.

4.15 Making good damage

- 4.15.1 The Contractor must immediately remedy or make good all breakages of or damage to any building, structure, street or property of any description caused by or as a result of the neglect, default or misconduct of the Contractor or the Contractor's Staff whilst engaged in the performance of the Services.
- 4.15.2 If the Contractor fails to remedy or make good the breakage or damage immediately, Council's Representative may direct the Contractor to do such things as Council's Representative considers necessary to remedy or make good the breakage or damage.

- 4.15.3 The provisions of clause 17 will apply to any Claim incurred or suffered by Council in relation to:
- (a) such breakage or damage; and/or
 - (b) any action taken by the Contractor to remedy or make good such breakage or damage irrespective of whether such action was taken at the direction of Council's Representative.
- 4.15.4 If the Contractor fails to comply with Council's Representative's Direction, Council's Representative may have the breakage or damage rectified and the cost of rectification will be a debt due to Council from the Contractor.

4.16 Urgent action

If urgent action is necessary to perform the Services or to protect people, property or the Environment, Council may take the necessary action but will, when reasonably possible, direct the Contractor to take the necessary action. If the action taken by Council was action that the Contractor should have taken at the Contractor's cost, the cost incurred by Council will be a debt due to Council from the Contractor.

4.17 Work health and safety

- 4.17.1 The Contractor and the Contractor's Staff must at all times identify and exercise all necessary precautions for work health and safety of all persons who may be affected by the Services.
- 4.17.2 The Workplace Health and Safety Management System must at a minimum demonstrate compliance with all duties of an employer under the WHS Law.
- 4.17.3 The Contractor must comply with any Direction, manuals, policies or rules formulated from time to time by Council relating to work health and safety insofar as they relate to the Services and are notified to the Contractor. Council is not liable to the Contractor for the completeness, adequacy or correctness of any such Direction, manual, policy or rule and releases Council accordingly from any liability therefrom.
- 4.17.4 The Contractor must:
- (a) perform the Services and carry out all its obligations under this Agreement in compliance with WHS Law and the Contractor's Workplace Health and Safety Management System;
 - (b) ensure that each of the Contractor's Staff comply with all WHS Law in connection with the Services;
 - (c) in performing the Services take all possible and reasonably practicable steps and measures to eliminate risk to health and safety and to avoid and minimise the consequences of work health and safety issues;
 - (d) ensure that it carries out the Services in a manner which ensures that, and otherwise provide all required assistance to Council to ensure that, Council satisfies its obligations under the WHS Law in connection with the Services;
 - (e) ensure that there is no unreasonable risk to health, safety and welfare of any persons employed in connection with the Services (whether by the Contractor, any of the Contractor's Staff or otherwise);

- (f) manage risks associated with the carrying out of the Services in accordance with Part 3.1 of the WHS Regulation;
- (g) ensure that if any Law requires that:
 - (i) a person:
 - (A) be authorised or licenced (in accordance with the WHS Act and WHS Regulation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - (B) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Act or WHS Regulation), that person has the required qualifications or experience or is so supervised; or
 - (ii) a workplace, plant, substance, design, or work (or class of work) be authorised, registered or licensed, that workplace, plant, substance, design, or work is so authorised, registered or licensed;
- (h) not direct or allow a person to carry out or use plant or substances at a workplace unless the requirements of clause 4.17.4(g) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (i) if requested by the Council's Representative or required by the WHS Law, produce evidence of any Approvals, registration, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Council's Representative.

4.17.5 The Contractor must report any serious bodily injuries or dangerous events to the relevant Authority within the time frame required by Law. In addition, the Contractor must immediately notify Council's Representative in writing of:

- (a) any accident or injury which occurs during the performance of the Services;
or
- (b) any act, fact or circumstances associated with the Services, Contractor's Plant or Product Marketing relevant to the ability of the Contractor to comply with the requirements of this clause 4.17 and 4.18.

4.17.6 All lost time incidents must be immediately notified to Council. The Contractor must within three days of any such incident provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the future prevention of such incidents.

4.18 Principal Contractor

In respect of any works commissioned by, or carried out by or on behalf of, the Contractor in connection with each Nominated Facility or the Services, without limiting or otherwise affecting the obligations of the Contractor under any other provision of this Agreement, Council and the Contractor agree that, if the works are a construction project to which Chapter 6 of the WHS Regulation applies:

4.18.1 the Contractor must carry out such works in accordance with the requirements of the WHS Law;

- 4.18.2 Council engages the Contractor as principal contractor in respect of such works;
- 4.18.3 Council authorises the Contractor to:
 - (a) have management and control of such works; and
 - (b) discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the WHS Regulation in connection with such works;
- 4.18.4 the Contractor accepts the engagement as principal contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a principal contractor by the WHS Law;
- 4.18.5 to the extent that the Contractor is for any reason, taken or otherwise found not to be the principal contractor for such works, the Contractor nonetheless must discharge, exercise and fulfil the functions, duties and obligations of a principal contractor in respect of such works as if the Contractor was the principal contractor for those works;
- 4.18.6 the Contractor is aware of its obligations as principal contractor, or its obligations that may otherwise arise under clause 4.18.5; and
- 4.18.7 the Contractor shall comply with the WHS Law, including to the extent that the Contractor is a person conducting a business or undertaking (including to whom any of sections 22, 23, 24, 25 or 26 of the WHS Act applies).

4.19 WHS Law definitions

Except as otherwise provided in clause 1.1, all terms used in clause 4.17 and 4.18 have the meanings given to them in the WHS Act and the WHS Regulation.

4.20 Incidents

Without limiting clause 4.17.5 or 4.17.6, the Contractor must:

- 4.20.1 immediately notify the Council's Representative:
 - (a) of any Contamination (of land) or Pollution which is caused; or
 - (b) of any accident, notifiable incident (being an incident which is notifiable under any WHS Law), injury or property damage which occurs,in connection with the Services;
- 4.20.2 do everything necessary to minimise harm to humans and the Environment; and
- 4.20.3 within 24 hours of any such matter notified under clause 4.20.1, provide a written report to the Council's Representative giving complete details of the matter, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

4.21 Transition of existing workforce, plant, equipment and property

The Contractor must comply with the obligations (if any) set out in Schedule 8.

5. Contractor Facilities and plant

5.1 Nominated Facilities

During the Services Term:

- 5.1.1 at all times each Nominated Facility must be available and capable of performing the Services;
- 5.1.2 the Contractor must accept all Clean-up Waste at the Receiving Facility; and
- 5.1.3 the Contractor must Process Clean-up Waste at the Processing Facility.

5.2 Risk of Nominated Facilities

Subject to this Agreement, the Contractor:

- 5.2.1 assumes the risk of all delay, increased costs and any Loss it suffers or incurs in relation to the conditions and characteristics of each Nominated Facility;
- 5.2.2 acknowledges and agrees that:
 - (a) access to any land or facility including any Nominated Facility which is required for the purposes of carrying out the Services and other obligations under this Agreement is at the sole risk, cost and responsibility of the Contractor;
 - (b) the Contractor may not Claim, and Council has no liability in respect of, any delay, additional costs or other effects on the Services related to:
 - (i) the ability of the Contractor or its contractors or any other person to obtain access to any land or facility including any Nominated Facility; or
 - (ii) the condition or suitability of any land or facility including any Nominated Facility; and
 - (c) Council is not required to obtain, construct or provide to any person formal or informal access to any land or facility (including any Nominated Facility);
- 5.2.3 acknowledges and agrees that:
 - (a) the Contractor must at the Contractor's cost make arrangements for access to and use of each Nominated Facility and obtain and comply with all necessary Approvals to use each Nominated Facility; and
 - (b) the Contractor must at its cost ensure that there is insurance in place covering the operation of each Nominated Facility at least at the same level as required by clause 16; and
 - (c) if following the Commencement Date a Nominated Facility is not available and operational to perform the Services to the standard required by this Agreement, then:
 - (i) the Contractor must nominate an Alternative Facility and obtain Council's consent to use that Alternative Facility under clause 5.4;

- (ii) indemnify Council in relation to all costs, Claims, charges or expenses in relation to the use of an Alternative Facility (including any increased or additional storage or transportation costs over and above transport to the Receiving Facility), over and above the amount that would have been required to be paid under this Agreement by Council to the Contractor had the Nominated Facility been used to perform the Services rather than the Alternative Facility; and
- (iii) Council is not required to pay the Contractor until the Services are performed in accordance with this Agreement, provided always that the performance of the Services at an Alternative Facility will be taken to be the performance of the Services at a Nominated Facility under clause 5.4.

5.3 Nominated Facility must be available

The Contractor must ensure that each Nominated Facility is constructed and capable of operation to provide the relevant Services and provide the necessary documentation that demonstrates to the satisfaction of Council's Representative that:

- 5.3.1 it owns or otherwise has access to and can use:
 - (a) each Nominated Facility;
 - (b) any proprietary technology proposed to be utilised in undertaking the Services; and
 - (c) any land necessary to undertake the Services at each Nominated Facility,
 - (d) from the Services Commencement Date until the Expiry Date; and
- 5.3.2 all necessary Approvals are held for the construction and operation of each Nominated Facility.

5.4 Use of each Nominated Facility

- 5.4.1 In performing the Services the Contractor must not without the prior written consent of Council use any facilities or work areas other than a Nominated Facility.
- 5.4.2 The Contractor may only use a different Nominated Facility to the facilities listed in Item 4 of Schedule 1 with the prior written consent of Council.
- 5.4.3 Council will not unreasonably withhold its consent under clause 5.4.1 or 5.4.2 provided that the proposed facility or work area:
 - (a) is demonstrated to the satisfaction of Council's Representative to be lawful, suitable and safe for the proposed use;
 - (b) is conveniently located so as not to cause additional costs;
 - (c) is the subject of insurances as required by clause 16;
 - (d) will not have any adverse impact on any of:
 - (i) the Contract Prices;
 - (ii) the ability of the Contractor to perform the Services; or

- (iii) the achievement of the Recovery Target; and
 - (e) meets the requirements of the Services Specification.
- 5.4.4 Such consent (if provided under clause 5.4.1 or 5.4.2) may be given subject to such conditions as Council considers appropriate in its discretion, including (for example) a condition that the performance of the Services at the Alternative Facility must cease in full or in part after a particular time period or event.

5.5 Use of Contractor's Plant

- 5.5.1 The Contractor must ensure that all of the Contractor's Plant:
- (a) is in safe working condition at the Commencement Date and throughout the Term;
 - (b) complies with all applicable Law;
 - (c) is suitable for the purpose for which it is to be used; and
 - (d) is maintained in safe working condition.
- 5.5.2 The Contractor must prepare, sign and deliver to the Council's Representative at its request an inventory of the Contractor's Plant and a certification as to the matters set out in clause 5.5.1:
- (a) on or before the Commencement Date; and
 - (b) within 5 Business Days after each anniversary of the Commencement Date during the Term.
- 5.5.3 In using a Nominated Facility or any Contractor's Plant, the Contractor must at its cost ensure that:
- (a) the Receiving Facility is a place that can lawfully be used to receive the Clean-up Waste that is delivered to that Nominated Facility;
 - (b) the Processing Facility is a place that can lawfully be used to receive and Process the Clean-up Waste that is delivered to that Nominated Facility;
 - (c) the Nominated Facility and Contractor's Plant are operated in accordance with all necessary Approvals to store and receive (and in respect of the Processing Facility, Process) the Clean-up Waste that is delivered to that Nominated Facility;
 - (d) appropriate, proper and efficient environmental controls are properly installed and properly maintained for the duration of Processing so as to comply with all Laws and this Agreement;
 - (e) the Nominated Facility and Contractor's Plant are, and are demonstrated to be, lawful, suitable and safe for the proposed use;
 - (f) any waste is safely and lawfully handled, stored and Processed; and
 - (g) proper and efficient environmental controls are properly installed and properly maintained at the Nominated Facility so as to comply with all Laws and this Agreement.

5.6 Reveal Facility opening times

5.6.1 During the Services Term:

- (a) the Reveal Facility must be open to receive and accept Clean-up Waste at least during between the hours of:
 - (i) 5:00am – 4:00pm on Business Days and NSW public holidays (except for NSW public holidays occurring on weekends); and
 - (ii) 6:00am – 1:00pm on weekends,and at such other times as are agreed between the parties from time to time;
- (b) the Contractor must:
 - (i) not change those hours without the prior written agreement of the Council's Representative; and
 - (ii) without limiting paragraph (a), immediately notify the Council's Representative if it is aware of any proposal by an Authority to change the conditions of any relevant Approval to change those opening times and days; and
- (c) the Contractor must ensure that sufficient numbers of appropriately qualified and trained personnel are present on site at the Reveal Facility during its operating hours set out in clause 5.6.1(a), as required to provide the Services in accordance with this Agreement.

5.6.2 From time to time, the Council's Representative may with at least 24-hours written notice, request the Reveal Facility to be available to receive Clean-up Waste outside of the standard operating hours set out in clause 5.6.1(a), such notice to specify: (**Unscheduled Opening Request**)

- (a) the date on which the Reveal Facility is requested to be opened outside of the standard operating hours; and
- (b) the requested opening times that are outside the standard operating hours.

5.6.3 If the Contractor receives an Unscheduled Opening Request, the Contractor must ensure that the Reveal Facility is open on the date and during the times specified in the Unscheduled Opening Request to receive and accept Clean-up Waste in accordance with this Agreement.

5.6.4 If the Contractor opens the Reveal Facility in accordance with an Unscheduled Opening Request, the Contractor will be entitled to claim an Unscheduled Opening Fee in accordance with clause 12 and Schedule 2.

6. Clean-up Waste Processing Services

6.1 Obligation to Process

- 6.1.1 The Contractor must in each Service Period, Process the Clean-up Waste at the Processing Facility to:
 - (a) maximise the amount of material Recovered and minimise the amount of Residue, on a best value for money basis; and

(b) achieve the Recovery Target for that Service Period.

6.1.2 The Recovery Target will be deemed to have been achieved in respect of the Clean-up Waste that was Processed at the Clean-up Waste Facility in that Service Period, if:

(a) all of the Clean-up Waste (excluding Mattresses) delivered to the Receiving Facility in that Service Period has been Processed at the Clean-up Waste Facility; and

(b) the Recovery % for the Clean-up Waste Facility is greater than or equal to the Recovery Target for that Service Period.

6.1.3 The Contractor must at its cost lawfully dispose of all Residue.

6.1.4 The Contractor accepts all risks of, and associated with, the storage, transport and disposal of Residue, including the payment of any Waste Levy in respect of Residue.

6.2 Calculating Recovery %

6.2.1 For a particular period of time, the Recovery % for the Clean-up Waste Facility is calculated as:

$$\text{Recovery \%} = [1 - (\text{T Residue} / \text{T Received})] \times 100$$

Where:

T Residue = total weight of material remaining following the processing of material at the Clean-up Waste Facility in the specified period of time, which is, or is intended to be, disposed of (whether indirectly or directly) or on which a Waste Levy is otherwise levied; and

T Received = total weight of all material received at the Clean-up Waste Facility in the specified period of time.

6.2.2 The Recovery % for the Clean-up Waste Facility for:

(a) a month during the Services Term, must be calculated in each month by the Council's Representative (and the Contractor notified in writing); and

(b) a Service Period, must be calculated prior to the end of the first calendar month of the subsequent Service Period by the Council's Representative (and the Contractor notified in writing).

6.2.3 For the purposes of the calculation in clause 6.2.1, the percentage must be determined from reports provided to Council by the Contractor under clause 10.2.

6.2.4 The Recovery % determined by the Council's Representative under clause 6.2.2 shall be final and binding except, in respect of the Recovery % only:

(a) if the Contractor or Council disputes the calculation by written notice of Dispute within 20 Business Days of the date on which the calculation is notified in writing to the Contractor, in which case clause 29 applies; or

(b) if the calculation contains a manifest error.

- 6.2.5 In each monthly report required to be prepared by the Contractor under the Services Specification, the Contractor must specify the Recovery % achieved during that month at the Clean-up Waste Facility, including sufficient information to enable the Council's Representative to verify the specified Recovery %. The requirements of this clause do not limit any other reporting requirements under this Agreement.

6.3 Recovery improvement plans

- 6.3.1 If the average Recovery % achieved by the Contractor at the Clean-up Waste Facility over two consecutive calendar months is less than the Recovery Target that is required to be achieved for the Service Period, then:
- (a) the Council's Representative may give the Contractor a notice which:
 - (i) must state that it is an improvement notice; and
 - (ii) requires that the Contractor submit an improvement plan to the reasonable satisfaction of the Council's Representative, within such reasonable period of time as is specified in the notice, which plan contains a description of the steps that the Contractor will take to ensure that at the end of the Service Period the Recovery % for the Service Period will be equal to or greater than the Recovery Target; and
 - (b) if the Council's Representative gives the Contractor an improvement notice then the Contractor must comply with it.
- 6.3.2 If the Council's Representative notifies the Contractor that it is satisfied with the improvement plan submitted under clause 6.3.1(b) then the Contractor must fully implement and comply with that improvement plan.
- 6.3.3 If the Council's Representative notifies the Contractor that it is not satisfied with the rectification plan submitted under clause 6.3.1(b) then the Contractor must promptly and in accordance with any directions of the Council's Representative, review and correct the improvement plan and resubmit it to the Council's Representative and clauses 6.3.1(a)(ii), 6.3.1(b) and 6.3.2 shall reapply.

7. Management Systems and Services Management Plans

7.1 Contractor's Management Systems

- 7.1.1 The Contractor must prepare, implement and comply with the Management Systems in relation to provision of the Services.
- 7.1.2 Each Management System must:
- (a) comply with the requirements of the relevant ISO or Australian Standard;
 - (b) demonstrate how the Contractor will comply with all Laws;
 - (c) adopt a planned and systematic approach to minimise risks created in the performance of the Services; and
 - (d) comply with the requirements set out in the Services Specification.

- 7.1.3 For the Management Systems pertaining to quality, environment and safety; the Contractor must be and remain accredited for compliance with the relevant ISO or Australian Standard for the duration of the Term.
- 7.1.4 Each Management System must contain at least the following components:
- (a) a method of identifying and recording risks or processes related to the provision of the Services and subsequent procedures to manage those risks;
 - (b) a documented review process;
 - (c) a process of continual improvement;
 - (d) a process to identify and monitor relevant Law as it relates to this Agreement;
 - (e) identified targets and objectives to be achieved;
 - (f) the keeping of relevant records and monitoring of the system;
 - (g) periodic auditing of the system; and
 - (h) any other items required by Council.

7.2 Contractor's Services Management Plans

- 7.2.1 The Contractor must prepare, implement and comply with its Services Management Plans for the provision of the Services.
- 7.2.2 The Services Management Plans must at least address the matters required by the Services Specification.
- 7.2.3 The Contractor must throughout the Term in the performance of the Services implement continuous improvements, adopt systems, invest in technology and introduce efficiency measures consistent with good industry practice, to at least the standard common to providers of similar services in Australia.

7.3 Endorsement of Management Systems and Services Management Plans

- 7.3.1 Prior to the Services Commencement Date, the Contractor must prepare (if required) and submit to Council the Management Systems and Services Management Plans.
- 7.3.2 Council must either:
- (a) give written notice to the Contractor Endorsing the Management Systems and Services Management Plans submitted to it under clause 7.3.1; or
 - (b) if Council reasonably considers that any of the Management Systems or Services Management Plans do not comply with the requirements of this Agreement, give notice to the Contractor within 15 Business Days of receipt of the relevant Management System or Services Management Plan specifying the areas of non-compliance.
- 7.3.3 If Council gives a notice under clause 7.3.2(b), the Contractor must:
- (a) amend the relevant Management System or Services Management Plan to address the matters identified in that notice; and

- (b) within 10 Business Days of the notice re-submit the amended Management System or Services Management Plan to Council.

7.3.4 The provisions of clauses 7.3.2 and 7.3.3 will apply to any re-submitted Management Systems or Services Management Plans as if they were the Management Systems or Services Management Plans originally submitted under clause 7.3.1.

7.4 Updating Management Systems

7.4.1 The Contractor must review and, if necessary, update the Management Systems and Services Management Plans at least every second year during the Term to take into account:

- (a) Changes in Law;
- (b) deficiencies or omissions in the Management Systems or Services Management Plans of which the Contractor or Council becomes aware;
- (c) improvements in the Management Systems or Services Management Plans; and
- (d) Variations.

7.4.2 The Contractor must submit a copy of the updated Management Systems and Services Management Plans to Council for Endorsement in accordance with clause 7.2. The Contractor must submit a copy of each Endorsed updated Management System and Services Management Plan to Council by 30 November each year or within 20 Business Days from Endorsement, whichever is the earlier.

7.5 Application and Audit

7.5.1 The Contractor must comply with each Endorsed Management System and Services Management Plan from the Services Commencement Date until the Expiry Date.

7.5.2 The Contractor acknowledges and agrees that its compliance with the Management Systems and Services Management Plans will not release or discharge it from compliance with its obligations under this Agreement.

7.5.3 To enable Council to monitor and audit the Contractor's compliance with its obligations under this Agreement, the Contractor will at all times during the Term, allow Council reasonable access to the Contractor's systems and records used by the Contractor (including the Contractor's Staff) in the provision of the Services.

7.5.4 The provision of comments or Endorsement by Council or Council's Representative, or any of those persons not providing comments or refusing to provide Endorsement in relation to:

- (a) a Management System or Services Management Plan under clause 7.3 or the Contract Program under clause 2.4; or
- (b) an update to an Endorsed Management System or an Endorsed Services Management Plan under clause 7.4 or an the Contract Program under clause 2.5.3,

does not limit the obligations or potential liability of the Contractor or rights of Council or Council's Representative.

8. Performance Management System

8.1 Key Performance Indicators

The Performance Management System set out in Schedule 3 comprises a range of Key Performance Indicators to measure the Contractor's performance throughout the Term. The intent of the Performance Management System is to have a fair and equitable manner of measuring performance and encouraging continuous improvement of the Services under this Agreement.

8.2 Change to Key Performance Indicators

Council's Representative and the Contractor's Representative will periodically review the Key Performance Indicators, and may by written agreement subsequently amend them in any way, including creating new Key Performance Indicators. In reviewing the Key Performance Indicators, the parties must consider to what extent the Key Performance Indicators will be used to encourage performance by:

8.2.1 taking account of the disbenefit to Council of declining performances through:

- (a) Fee adjustments under clause 12.8; or
- (b) requiring the Contractor to address particular areas of non-performance within a stated time frame; and

8.2.2 where required by Council, defining consistently poor performance over an extended time frame as constituting a default for the purposes of clause 20.

8.3 Measuring performance

Council will review the performance of the Contractor against the agreed Key Performance Indicators and determine the Contractor's performance against the benchmark. Where applicable, the Fees payable under clause 12.1 may be adjusted in accordance with clause 12.8.

8.4 Council's rights not affected

The application of the Performance Management System, including any adjustment to Fees payable, in relation to poor performance or non-performance by the Contractor will not limit or waive Council's rights under clause 20 or any other provisions of this Agreement in relation to such poor performance or non-performance.

8.5 Acknowledgement

The parties acknowledge and agree that the amount of each reduction in the Fee specified in Schedule 3 is an agreed, genuine pre-estimate of the minimum damages of Council if the circumstances described in respect of each Fee reduction occur, and is not a penalty.

9. Complaints and Disputed Services

9.1 General

The Contractor acknowledges that it is an objective of Council to minimise complaints from customers of its waste management systems and agrees to use all reasonable endeavours to achieve continuous improvement in the delivery of the Services.

9.2 Failure to rectify complaint

9.2.1 If a customer makes a Complaint, the Contractor must:

- (a) rectify the complaint in accordance with the Services Specification; and
- (b) review and update the Management Systems and Services Management Plans in accordance with clause 7.4.1(b).

9.2.2 If the Contractor fails to rectify a Complaint in accordance with this Agreement and the Services Specification, Council reserves the right, after giving written notice to the Contractor of its intention to do so, to rectify the Complaint. The cost of rectification will be a debt due to Council from the Contractor.

9.3 Disputed Services

Without limiting any other right of the Council, Council's Representative may in its absolute discretion elect to serve a written notice to the Contractor:

- 9.3.1 asserting that a Service has not been properly performed in accordance with this Agreement;
 - 9.3.2 directing that the Service be re-delivered or re-performed in accordance with this Agreement; and
 - 9.3.3 specifying a reasonable period for compliance with that direction,
- and the Contractor must comply with that notice.

10. Meetings, Reporting and Records

10.1 Meetings

Council and the Contractor must meet at the frequency specified in the Services Specification or as otherwise reasonably required by Council to discuss:

- 10.1.1 the performance of the Services; and
- 10.1.2 any other matters which Council may wish to raise at a meeting concerning the Services and this Agreement.

10.2 Reporting

The Contractor must, at the times and in the format specified in the Services Specification or as otherwise reasonably requested by Council, provide Council with detailed written reports on the performance of the Services in sufficient detail to allow Council to ascertain whether the Services are being performed in accordance with this Agreement.

10.3 Accounts

The Contractor must maintain all those financial and financial planning records that would be expected of a prudent, efficient contractor performing services the nature of the Services.

10.4 Records

- 10.4.1 The Contractor must maintain true, up to date and complete records as required by the Services Specification and otherwise as relates to the resources engaged and assets utilised in the performance of the Services.
- 10.4.2 The Contractor must, on reasonable notice, make available for inspection the records referred to in clause 10.4.1 to Council and must allow Council to take copies of such records free of charge.
- 10.4.3 All records required to be maintained in accordance with clause 10.4.1 must be held by the Contractor until twelve months after the expiry or termination of this Agreement.

10.5 Compatibility of information systems

Any information, data and records required to be provided to Council under this Agreement must be provided, if so requested by Council, in a form which is compatible with Council's electronic data and records systems as modified and notified from time to time.

11. Variations

11.1 Definitions

In this clause 11:

- 11.1.1 **'Permitted Variation'** means any of the following kinds of variations to this agreement:
- (a) a Council directed Variation as described in clause 11.2;
 - (b) an agreed Variation as described in clause 11.3; or
 - (c) a variation to the Fees to account for a Qualifying Increase in Costs arising as a direct result of a Qualifying Change as described in clause 11.4;
- 11.1.2 **'Variation Amount'** means an amount of money assessed, agreed or determined as payable for a Permitted Variation in accordance with this clause 11;
- 11.1.3 **'Qualifying Change'** means:
- (a) a change in an Act of Parliament or Regulation made under an Act of Parliament that directly regulates the manner of conducting the Services (to avoid doubt, a change affecting Product or a Product Market is not a Qualifying Change in this definition), which change:
 - (i) directly and naturally results in an increase in the costs of the Contractor's delivery of the Services over and above the Contractor's operating costs immediately prior to the Qualifying Change;
 - (ii) was not reasonably able to be foreseen by a competent contractor in the position of the Contractor at the Commencement Date;
 - (iii) was not in fact foreseen by the Contractor on or before the Commencement Date; and

- (iv) was not caused or contributed to by the conduct of the Contractor after the Commencement Date;
- (b) the introduction in legislation of a Carbon Price, which change directly and naturally results in an increase in the Contractor's operating costs in performing the Services under this Agreement over and above the Contractor's operating costs immediately prior to the Qualifying Change; or
- (c) a change in an Act of Parliament or a Regulation that prohibits absolutely the reuse of the Product and which was not caused or contributed to by the conduct of the Contractor or any of the Contractor's Staff after the Commencement Date;

11.1.4 **'Qualifying Increase in Costs'** means an actual increase in actual cost (over and above the greater of the costs that applied at the date of this Agreement and the date immediately before the Qualifying Change) that is the direct and natural consequence of a Qualifying Change and which increase in costs:

- (a) was not reasonably able to be foreseen by a competent contractor in the position of the Contractor at the Commencement Date;
- (b) was not in fact foreseen or allowed for by the Contractor on or before the Commencement Date; and
- (c) is no more than the increase that would be incurred by a competent and efficient contractor having taken all reasonable and feasible steps to mitigate the impact of the Qualifying Change,

and deducting any savings, reductions in costs or increases in efficiency or income as a consequence of or relating to the Qualifying Change; and

11.1.5 **'Variation'** may include additions, omissions, substitutions, alterations, changes in quality or character, kind or position and changes in specific sequence, method, timing or technology.

11.2 Variation directed by Council

Prior to the Expiry Date, Council may at any time by written notice:

- 11.2.1 order any Variation to any part of the Services that may reasonably be necessary for the performance of the Services; or
- 11.2.2 order any Variation considered by Council's Representative to be desirable for the satisfactory performance and function of the Services.

11.3 Agreed variation

11.3.1 The parties may by exchange of letters signed by Council's Representative and the Contractor's Representative, agree:

- (a) a Permitted Variation;
- (b) the Variation Amount for that Permitted Variation; and
- (c) a period of time for implementation and operation of the Permitted Variation.

11.3.2 At any time prior to the Expiry Date, Council may issue a notice to the Contractor regarding the:

- (a) implementation of an improvement, enhancement or innovation in relation to the performance of the Services that would reduce the cost of the Services or otherwise enhance the ability of the parties to achieve any objectives specified in this Agreement; or
- (b) ability of the Contractor to Process a greater amount of Clean-up Waste under this Agreement,

and upon receipt of such notice the Contractor and Council agree to negotiate in good faith regarding agreed variations to this Agreement to implement the improvements, enhancements or innovations.

11.4 Qualifying Change

11.4.1 The Contractor may, subject to and in accordance with this clause 11.4, claim a variation to the Contract Prices to account for a Qualifying Increase in Costs arising as a direct result of a Qualifying Change.

11.4.2 Within 30 Business Days after the occurrence of the Qualifying Change, the Contractor must give to the Council's Representative a written notice setting out:

- (a) sufficient evidence to demonstrate to the reasonable satisfaction of the Council's Representative that a Qualifying Change occurred;
- (b) the amount the Contractor proposes as payable by Council to the Contractor by way of Qualifying Increase in Costs, with details of:
 - (i) how such amount has been calculated and why the various components of that amount are in each case a Qualifying Increase in Costs, in sufficient detail (and supported by sufficient evidence) to enable the Council's Representative to substantiate that amount and the extent to which its various components are in each case a Qualifying Increase in Costs; and
 - (ii) the proportion of such amounts that the Contractor would expect to be paid (whether by Council to the Contractor, or by the Contractor to Council) by way of an adjustment to the Contract Prices;
- (c) in respect of amounts referred to in paragraph 11.4.2(b)(ii):
 - (i) whether the Contractor proposes that such amounts be payable (whether by Council to the Contractor, or by the Contractor to Council) as a lump sum or as an adjustment to the Contract Prices (or combination of those); and
 - (ii) the dates on which each such change is to take effect together with the Contractor's estimation of the total cost increase and increase in Fees for the remainder of the Term and for each month over the remainder of the Term;
- (d) a written statement setting out any proposals the Contractor may have for reducing the impact of the increase in costs;
- (e) a certification that any cost savings, reductions in costs or increases in efficiency to the benefit of the Contractor by reason of the Qualifying Change have been taken into account by the Contractor to the amount referred to in

- paragraph 11.4.2(b), and details of those cost savings, reductions in costs or increases in efficiency;
- (f) a certification that the Contractor has taken all reasonable and feasible steps to mitigate the impact of the Qualifying Change and details of those steps taken; and
 - (g) a certification that there are not at that time any further Claims for any Qualifying Change (or if there are, specifying these).
- 11.4.3 The Contractor must provide such additional or supplementary information as Council may require to enable the Council's Representative to assess the validity of the claim made.
- 11.4.4 The Contractor must take all reasonable and feasible steps to mitigate the impact of the Qualifying Change and to reduce any associated Qualifying Increase in Costs.
- 11.4.5 Subject to clause 11.4.8, within 60 Business Days of receipt of all of the information required under clauses 11.4.2 and 11.4.3, the Council's Representative may by written notice to the Contractor notify the Contractor that Council:
- (a) accepts that there has been a Qualifying Change, and agrees with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b), in which case the amount set out in the Contractor's notice under clause 11.4.2(b) shall be the Variation Amount; or
 - (b) accepts in whole or in part that there has been a Qualifying Change (identifying the extent to which it accepts that there has been a Qualifying Change), but does not agree with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b) (but identifying the extent to which such value is agreed, and is not agreed) in which case:
 - (i) to the extent Council accepts there has been a Qualifying Change:
 - (A) to the extent Council also agrees with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b), the amount set out in the Contractor's notice under clause 11.4.2(b) shall be the Variation Amount; and
 - (B) to the extent Council does not agree with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b), either party may refer the matter for dispute resolution under clause 29 to determine the value of the relevant Qualifying Increase in Costs for the purposes of determining the Variation Amount;
 - (ii) Council is taken to reject any other aspect of the claim that there has been a Qualifying Change or that there has been, or will be, a Qualifying Increase in Costs – in which case either party may refer the matter for resolution under clause 29 in relation to whether or not there has been a Qualifying Change or to determine the value of the relevant Qualifying Increase in Costs for the purposes of determining the Variation Amount; or

- (c) accepts that there has been a Qualifying Change, but rejects that there has been, or will be, any Qualifying Increase in Costs, in which case either party may refer the matter for resolution under clause 29; or
- (d) rejects that there has been a Qualifying Change and Qualifying Increase in Costs, in which case either party may refer the matter for resolution under clause 29 in relation to whether or not there has been a Qualifying Change or to determine the value of the relevant Qualifying Increase in Costs for the purposes of determining the Variation Amount.

- 11.4.6 If the Contractor gives the Council's Representative a notice under clause 11.4.2, the Council's Representative may within 60 Business Days of receipt of all information required under clauses 11.4.2 and 11.4.3 elect on behalf of Council to terminate this Agreement, if:
- (a) that notice claims or purports to claim an increase in the Contract Prices and the increase is in the opinion of the Council's Representative acting reasonably having regard to the current market information available to the Council's Representative, excessive;
 - (b) there are alternative contractors able to deliver substantially the same level of service available in the market at a lower cost; and
 - (c) that notice is not withdrawn by the Contractor within 5 Business Days of receiving notice from the Council's Representative of the Council's intention to terminate this Agreement under this clause 11.4.6.
- 11.4.7 If the Council elects to terminate this Agreement under clause 11.4.6 then clause 20 shall apply and the Council's Representative must serve a termination notice under clause 20.2.
- 11.4.8 A notice from Council under clause 11.4.5 must be evidenced by written certification by or on behalf of the Council Representative.

11.5 Payment of Variation Amount

- 11.5.1 If there is a Permitted Variation to this Agreement, then the Variation Amount, will be paid as one or both of:
- (a) a payment in accordance with clause 11.5.4; and
 - (b) an adjustment to the Contract Prices in accordance with clause 11.5.5,
- as agreed between the parties or, failing agreement, as determined by Council's Representative.
- 11.5.2 A variation under this clause 11 will only be valid and a variation to this Agreement will only take effect if the variation is a Permitted Variation and a notice directing or certifying the Permitted Variation is provided to the Contractor in writing and signed by or on behalf of the Council Representative, following:
- (a) for a Variation directed under clause 11.2, a determination or agreement of the Variation Amount under clause 11.6 or 11.7;
 - (b) exchange of letters under clause 11.3; or
 - (c) a notice from Council under clause 11.4.5(a) or 11.4.5(b)(i)(A).

- 11.5.3 The notice referred to in clause 11.5.2 must include:
- (a) a description of the Permitted Variation;
 - (b) a certification of the Variation Amount (if any) assessed by the Council's Representative as payable, comprising one or more of:
 - (i) any adjustment to the Contract Prices;
 - (ii) any additional payment based on the Contract Prices; and
 - (iii) any payment calculated otherwise than by reference to the Contract Prices.
- 11.5.4 Where, and to the extent that, the notice referred to in clause 11.5.2 includes a certificate in accordance with clause 11.5.3 that the Variation Amount comprises a payment calculated otherwise than by reference to the Contract Prices or is an additional payment based on the Contract Prices, then the Contractor may issue the Council's Representative with a claim for that amount as part of the next Monthly Statement, when that payment is payable, for that amount in accordance with clause 12.
- 11.5.5 Where, and to the extent that, the notice referred to in clause 11.5.2 includes a certificate in accordance with clause 11.5.3 that all or part of the Variation Amount is to be paid by way of an adjustment to the Contract Prices then the adjustment amount is to be included in the applicable Contract Prices on the next date that the applicable Contract Prices are adjusted in accordance with part 2 of Schedule 2.
- 11.5.6 A notice issued by Council under clause 11.4.5(a) or 11.4.5(b)(i)(A) may include a requirement that at a date specified in the notice:
- (a) the Contractor must provide to the Council's Representative evidence demonstrating the actual Qualifying Increase in Costs incurred by the Contractor at that date in respect of the Qualifying Change, along with such additional information as the Council's Representative may reasonably require to validate and reconcile that amount against the Variation Amount; and
 - (b) the Council's Representative is to validate and reconcile the actual Qualifying Increase in Costs incurred at that date by the Contractor against the Variation Amount,
- and the parties must comply with that requirement.
- 11.5.7 If the Council's Representative determines under clause 11.5.6(b) that the Variation Amount is greater than the actual Qualifying Increase in Costs incurred by the Contractor at the reconciliation date, then:
- (a) Council's Representative may issue a written notice to the Contractor specifying the difference between the two amounts and including a tax invoice for that amount; and
 - (b) the Contractor must pay the Council that amount within 20 Business Days of its receipt of that notice.

- 11.5.8 If the Council's Representative determines under clause 11.5.6(b) that the Variation Amount is less than the actual Qualifying Increase in Costs incurred by the Contractor at the reconciliation date, then:
- (a) Council's Representative may issue a written notice to the Contractor specifying the difference between the two amounts; and
 - (b) Council must pay the Contractor that amount within 20 Business Days of its receipt of a tax invoice for that amount.

11.6 Variation Amount for directed Variation - Services covered by schedule of rates

Where a variation has been directed under clause 11.2 in respect of any services for which a unit rate is contained within Schedule 2, the Contractor is bound to provide those Services that are the subject of the variation at the Contract Prices, provided that the total sum payable under this Agreement remains within the range of 80% to 150% of the originally estimated total contract value after allowing any adjustment for rise and fall.

11.7 Variation Amount for directed Variation - Services not covered by schedule of rates

Where a variation has been directed under clause 11.2 and the variation:

- 11.7.1 is in respect of any services for which a rate is not contained within Schedule 2; and
 - 11.7.2 would result in the total sum payable under this Agreement being outside the range of 80% to 150% of the originally estimated total contract value after allowing any adjustment for rise and fall,
- then:
- 11.7.3 Council's Representative may request a detailed quotation for the Contractor to perform varied services as a Variation;
 - 11.7.4 the Contractor must provide the quotation requested and advise the effect the Variation will have on the provision and/or delivery of the Services under this Agreement. Council will pay a reasonable amount for the provision of the quotation;
 - 11.7.5 the parties agree to make all reasonable attempts to agree a price for the Variation;
 - 11.7.6 the parties agree that an independent person, agreed upon by the parties, who is expert in the waste services that are the subject of the variation, may be used to provide an opinion as to the reasonableness of the Variation Amount;
 - 11.7.7 Council's Representative may instruct the Contractor in accordance with clause 11.2 and 11.5.2 to perform the Variation following agreement of the price of the Variation;
 - 11.7.8 Council's Representative may instruct the Contractor in accordance with clause 11.2 and 11.5.2 to perform the Variation without agreement on the price;
 - 11.7.9 the Contractor must perform the Variation if so instructed; and
 - 11.7.10 if agreement on the price for the Variation is not reached, then the matter is to be resolved in accordance with clause 29 as a Dispute.

11.8 Contractor claim of a directed variation

11.8.1 If the Contractor considers that a Direction has been made by Council or Council's Representative that constitutes a variation under this clause 11 (where not expressly so stated):

- (a) the Contractor must give written notice to the Council's Representative to that effect immediately upon receipt of the Direction and again prior to the start of the work or activity which is the subject of the Direction; and
- (b) despite any other provision in this Agreement, the giving of the notices under clause 11.8.1(a) by the Contractor will be a condition precedent to the Contractor's entitlement to Claim in relation to the Direction or to maintain in any manner that the Direction was or ought to involve a variation under this clause 11.

11.8.2 For the avoidance of doubt, this clause 11.8 does not permit a variation independently of the procedures in clause 11.

11.9 Limited application of clause

11.9.1 For the avoidance of doubt, an entitlement to additional payment under this clause 11 only applies to:

- (a) variations directed by the Council's Representative or agreed between the parties which require additional work, activities or services over and above that required by this Agreement; or
- (b) variations under clause 11.4,
and which are a Permitted Variation.

11.9.2 For the avoidance of doubt:

- (a) a requirement of Council or Council's Representative or a comment or a Direction of Council or Council's Representative:
 - (i) to require compliance with this Agreement, the requirements of the EPA or of any Law applicable from time to time;
 - (ii) which Council or Council's Representative is otherwise entitled to make under this Agreement or any other document;
- (b) any error, omission, defect or incompleteness in any Disclosed Information;
or
- (c) a requirement of any Authority,

will not be or permit a variation under this clause 11 or otherwise entitle the Contractor to any costs, payment, extension of time or other claim, compensation or relief, these matters being matters that the Contractor has accepted the risk of or is required to comply with under this Agreement.

11.9.3 For the avoidance of doubt the Contractor will only be entitled to payment for a Permitted Variation:

- (a) for which a notice has been issued by or on behalf of Council Representative in accordance with clause 11.5; and

- (b) that has been carried out in accordance with that notice.

11.10 Beneficial variations

11.10.1 Where:

- (a) there is a Qualifying Change that would directly reduce the actual cost of performing the Services or provide an additional benefit (including a credit or income) to the Contractor, which has the effect of offsetting the cost of performing the Services; or
- (b) the Contractor identifies an option for improvement or innovation in relation to the performance of the Services that would reduce the cost of the Services,

the Council's Representative may by written notice to the Contractor, request that the parties negotiate in good faith to determine and agree a reduction in the Contract Prices to equitably and reasonably share between the parties that offset, reduction or benefit that is enjoyed in connection with the Services, and the parties must comply with that notice by negotiating in good faith in an attempt to determine and agree a reduction in the Contract Prices to equitably and reasonably share between the parties that offset, reduction or benefit.

11.10.2 If agreement on a reduction in the Contract Prices to equitably and reasonably share an offset, reduction or benefit referred to in clause 11.10.1 cannot be or has not been reached within 30 Business Days after a notice is served on the Contractor under clause 11.10.1, then clause 29 will apply to the questions of:

- (a) if a reduction; and
- (b) if so, what reduction,

in the Contract Prices should apply to equitably and reasonably share between the parties the offset, reduction or benefit.

11.11 Fee exclusive of Carbon Price

11.11.1 The Contractor warrants that all rates and prices specified in this Agreement are exclusive of:

- (a) any Carbon Price applicable directly or indirectly to the Services or any input costs of the Services such that in paying the Fee, Council is not making any payment whatsoever that is attributable to any Carbon Price; and
- (b) any benefit (including a credit or income) under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) or under any other Carbon Credit Scheme.

11.11.2 The Council's Representative may at any time during the Term request that the Contractor repeat the warranty provided at clause 11.11.1 remains true, and the Contractor must comply with that request.

12. Prices and Payment

12.1 Fees

12.1.1 Subject to clause 11, for a Service performed under this Agreement:

- (a) the Contractor is only entitled to be paid the Fee duly claimed and calculated in accordance with this clause 12; and
- (b) the Contractor is not entitled to and must not claim, any amounts other than in accordance with this clause 12.

12.1.2 All claims for payment of the Fee must be made in accordance with this clause 12 and Council has no liability to pay a Fee unless:

- (a) the preconditions for payment under this clause 12 and Schedule 2 have been satisfied;
- (b) a valid Monthly Statement has been issued to Council together with all supporting documentation required by this Agreement;
- (c) an invoice properly prepared and rendered in accordance with this clause 12.4 has been served on Council;
- (d) the Monthly Statement has not been disputed, provided that payment of the Fee claimed in a Monthly Statement will be made by or on behalf of Council in accordance with this clause 12 to the extent it is not disputed; and
- (e) the amount claimed has been properly calculated in accordance with this Agreement.

12.1.3 The Fee payable in respect of any Services, being any or all of the Clean-up Waste Fee, Mattress Fee and Unscheduled Opening Fee, must be calculated in accordance with Schedule 2 and for the avoidance of doubt the Contractor cannot charge Council and Council is under no obligation whatsoever to pay any amounts calculated using any change to the formulae, amounts, factors, indices or other matters specified in Schedule 2 unless the Contractor has obtained Council's written consent to such change prior to the Contractor providing the Services to which the change relates.

12.2 Monthly Statement

12.2.1 Within 10 Business Days after the end of each calendar month the Contractor must submit to Council's Representative a monthly statement (**Monthly Statement**).

12.2.2 Each Monthly Statement must:

- (a) for each Service provided in the month and for which a Fee is claimed, set out the full detailed calculation in accordance with Schedule 2 of the Fee for each Service and in total, including:
 - (i) any Clean-up Waste Fee payable to Council in accordance with Schedule 2 in relation to the Processing of Clean-up Waste delivered to the Clean-up Waste Facility in the month, and the full detailed calculation in accordance with Schedule 2;
 - (ii) any Mattress Fee payable to Council in accordance with Schedule 2 in relation to the Processing of any Mattresses delivered to the Mattress

- Facility in the month, and the full detailed calculation in accordance with Schedule 2; and
- (iii) any Unscheduled Opening Hours Fee in accordance with Schedule 2 in relation to the opening of the Receiving Facility outside of the standard opening hours set out in clause 5.6.1(a) pursuant to an Unscheduled Opening Request in the month, and the full detailed calculation in accordance with Schedule 2;
 - (b) include deductions, set offs and rebates as calculated in accordance with clause 12.7, 12.8, 12.9 or 12.10;
 - (c) include any amount that was previously disputed and for which the dispute has been resolved in accordance with clause 12.6.3;
 - (d) include a summary report clearly setting out:
 - (i) the calendar month to which the Monthly Statement relates;
 - (ii) each of the Services to which the Monthly Statement relates;
 - (iii) any Contract Prices applicable to each of those Services;
 - (iv) the calculation of the amount claimed for each Service the subject of the Monthly Statement;
 - (v) the calculation of any amount payable to Council for Clean-up Waste delivered to each Processing Facility in the month the subject of the Monthly Statement;
 - (vi) the calculation of any other amounts payable to Council by the Contractor for that month (including deductions, set offs and rebates);
 - (vii) the calculation of any Unscheduled Opening Fee for that month;
 - (viii) the total amount claimed or payable by the Contractor;
 - (ix) GST; and
 - (x) such other information as is required by clause 12;
 - (e) provide such additional details as Council's Representative may require;
 - (f) be accompanied by all necessary information to demonstrate the calculated amounts, including:
 - (i) in respect of any amount claimed for the Processing of Clean-up Waste (excluding Mattresses), a certification from the Clean-up Waste Facility, that:
 - (A) any Clean-up Waste to which the invoice relates has in fact been properly (in accordance with the requirements of this Agreement) and lawfully Processed; and
 - (B) confirms the weight and kind of Clean-up Waste that has been properly and lawfully Processed at the Clean-up Waste Facility; and

- (ii) in respect of any amount claimed for the Processing of Mattresses, a certification from the Mattress Facility, that:
 - (A) any Mattresses to which the invoice relates have in fact been properly (in accordance with the requirements of this Agreement) and lawfully Processed; and
 - (B) confirms the number of Mattresses that have been properly and lawfully Processed at the Mattress Facility.
- (g) include a statutory declaration that:
 - (i) all its Subcontractors and employees have been paid all amounts due and payable to them as at the date of the statement for work performed by them in respect of the Contractor's obligations under this Agreement;
 - (ii) it has made any payments that it is required to make in respect of the Contractor's Plant and the Nominated Facilities used to undertake the Services, up to the end of the period to which the invoice applies;
 - (iii) it has paid all superannuation components payable; and
 - (iv) it has made all other payments for costs which were expended in delivering Services under this Agreement.

12.3 Monthly Certificate

12.3.1 Council's Representative must issue a written certificate (**Monthly Certificate**) to the Contractor within 10 Business Days of receipt of a properly rendered Monthly Statement. The Monthly Certificate must identify the Monthly Statement to which it relates and state:

- (a) the amount assessed by the Council's Representative as payable:
 - (i) by Council to the Contractor;
 - (ii) by the Contractor to Council,
- (b) any amount or Service disputed and the reasons for the dispute;
- (c) if the amount assessed differs from the amount set out in the Monthly Statement, the reasons for the difference; and
- (d) the net amount payable either to Council or the Contractor.

12.3.2 A Service may be disputed because:

- (a) the Council's Representative considers that a Service has not been properly performed in accordance with this Agreement;
- (b) a notice has been issued under clause 9.3 in respect of any of the Services and those Services have not been properly re-delivered or re-performed in accordance with that notice; or
- (c) Council's records of the performance of the Service or the number of Services performed disagrees with the Contractor's Monthly Statement.

12.3.3 The Council's Representative may issue a Monthly Certificate at any time (and may issue multiple Monthly Certificates in one calendar month) even if the Contractor has not lodged a properly rendered Monthly Statement. The Council's Representative is not obliged to exercise its discretion under this clause for the benefit of the Contractor.

12.3.4 At any time, the Council's Representative may by a further Monthly Certificate correct any error which has been discovered in any previous Monthly Certificate.

12.4 Provision of tax invoice

12.4.1 If the Monthly Certificate shows that the net amount is an amount that Council must pay to the Contractor, the Contractor must, within 10 Business Days after receipt of the Monthly Certificate issued by the Council's Representative give the Council's Representative a tax invoice in compliance with the GST Laws showing the Fee for each Service and in total for all Services for the relevant month in the amounts specified in the Monthly Certificate as the net amount payable. The tax invoice must:

- (a) specify the title of this Agreement, the contract number of this Agreement (or any other reference number as Council's Representative may, from time to time, specify in writing to the Contractor as being required to be inserted on any invoice to which this Agreement relates); and
- (b) be addressed to the General Manager of Council for the attention of Council's Representative.

12.4.2 If the Monthly Certificate shows that the net amount is an amount that the Contractor must pay to Council then Council must, within 10 Business Days after issuing the Monthly Certificate give the Contractor's Representative a tax invoice in compliance with the GST Law showing the amounts specified in the Monthly Certificate as the net amount payable.

12.5 Payment

12.5.1 A party must pay the other party the amount specified in the Monthly Certificate no later than 30 Business Days following receipt of a tax invoice in accordance with clause 12.4. For payments made by Council to the Contractor, payment will be made by electronic funds transfer to an account nominated by the Contractor.

12.5.2 The Contractor acknowledges that payments made by Council to the Contractor are on account only and are not evidence that the Contractor's obligations under this Agreement have been performed satisfactorily.

12.6 Disputed Services

If a Monthly Certificate disputes an amount or a Service the subject of a Monthly Statement:

12.6.1 any amount in the Monthly Statement that is not disputed must be paid in accordance with clause 12.5;

12.6.2 Council will only be required to pay the Fee for any amount disputed or Disputed Services if:

- (a) Council's Representative is satisfied that the Disputed Service has been satisfactorily performed (or re-delivered or re-performed in accordance with clause 9.3) to meet the requirements of this Agreement; or

- (b) in accordance with the resolution of the Dispute under clause 29 – in accordance with that resolution;

12.6.3 the Fee comprising the disputed amount or for the Disputed Service must be included in the Monthly Statement submitted following:

- (a) the date on which the Service was properly performed, re-delivered or re-performed under this Agreement; or
- (b) a resolution of the Dispute under clause 29 – in accordance with that resolution;

12.6.4 any disputed amount in the Monthly Statement that is payable to Council must be paid in accordance with clause 12.5, but must be reimbursed by Council to the extent that Council was not entitled to that amount if it is so resolved under clause 29; and

12.6.5 the Contractor will not be entitled to any interest or charge for extending credit or allowing time for the payment of the Fee.

12.7 Set-off

12.7.1 Without limiting Council's rights under any other part of this Agreement or at law, Council may deduct from any moneys due to the Contractor, any sum which is agreed to be payable or which is determined by Council or pursuant to clause 29 to have become payable by the Contractor to Council whether or not Council's right to payment arises pursuant to an indemnity or by way of damages, debt, restitution or otherwise including:

- (a) any costs or expenses incurred by Council in the rectification of breakage or damage in accordance with clause 4.15.4;
- (b) any costs or expenses incurred by Council in taking action in accordance with clause 4.16;
- (c) any costs or expenses incurred by Council in the rectification of Complaints in accordance with clause 9.2;
- (d) any costs or expenses incurred by Council in taking action under clause 15;
- (e) any costs or expenses incurred by Council in performing the obligations of the Contractor or obtaining the services of a third party pursuant to clause 20.1 or clause 21; or
- (f) any costs or expenses incurred by Council as a result of or arising from any breach of this Agreement by the Contractor.

12.7.2 Nothing in this clause will affect Council's right to recover from the Contractor the whole of such moneys, or any balance that remains owing, by other means.

12.8 Fee adjustment

12.8.1 The Contractor's entitlement to payment of the Fees under clause 12.1 is subject to the Contractor's continuing compliance with the requirements of the Services Specification.

12.8.2 In each monthly report required to be prepared by the Contractor and submitted to the Council's Representative under the Services Specification, the Contractor must specify:

- (a) each non-performance (if any) as measured through the Performance Management System, that occurred in the calendar month that is the subject of the report;
- (b) in reasonable detail the cause and calculation of the applicable Fee reduction, having regard to the calculations referred to in Schedule 3; and
- (c) if applicable, any extenuating circumstances that led to the non-performance, including information to substantiate the extenuating circumstances.

The requirements of this clause do not limit any other reporting requirements under this Agreement.

12.8.3 For each non-performance as measured through the Performance Management System that occurs in a calendar month:

- (a) in Council's discretion, either:
 - (i) the Fees payable to the Contractor for that calendar month under clause 12 must be reduced in accordance with Schedule 3 to reflect the non-performance; or
 - (ii) the amounts payable by the Contractor to Council for that calendar month under clause 12 must be increased in accordance with Schedule 3 to reflect the non-performance; and
- (b) any Monthly Statement or invoice submitted by the Contractor for Fees or Council for payment amounts in respect of the calendar month in which the non-performance occurred must reflect the adjusted Fee or payment amount.

12.8.4 The Contractor acknowledges and agrees that:

- (a) the reductions or increases provided for in this clause 12.8 and Schedule 3 reflect a genuine pre-estimate by the parties of part of Council's overheads and administrative costs arising from, and part of Council's costs of responding to, the non-performance of the requirements of or obligations under this Agreement; and
- (b) nothing in this clause 12.8 and Schedule 3 waives, limits or alters any other right of the Council or obligation, requirement or liability of the Contractor under or in connection with this Agreement, except to the extent of the amount actually paid to Council or deducted from the Fees in accordance with this clause 12.8.

12.8.5 In any calendar month in which a non-performance as measured through the Performance Management System occurs, Council may in its absolute discretion by written notice to the Contractor prior to the issue by the Contractor or Council of an invoice for that calendar month under clause 12.4, waive its entitlement to a Fee reduction or payment increase for the non-performance.

12.9 Failure to provide Services

If at any time during the Services Term, the Contractor fails to provide any or all of the Services in accordance with this Agreement for any reason whatsoever, (including due to Force Majeure) without the approval of Council's Representative, Council will not be liable (either at law or in equity) to pay any amount for the Services not delivered.

12.10 Reconciliation amount

12.10.1 At any time between 20 and 40 Business Days after the end of each Service Period, the Council's Representative will carry out a reconciliation of the Fees and other amounts paid against the Services provided, the Clean-up Waste delivered to the Processing Facility and the Contract Prices.

12.10.2 If the Council's Representative determines that adjustment of the Fee or other payment amount is necessary following a reconciliation under this clause 12.10, the Council's Representative must notify the Contractor and if the reconciliation amount indicates that:

- (a) the Contractor has been overpaid, the Contractor must pay the reconciliation amount to Council; and
- (b) the Contractor has been underpaid, Council must pay the reconciliation amount to the Contractor,

within 30 Business Days following receipt of a tax invoice for the reconciliation amount.

13. GST

13.1 Definitions

Words in this Agreement have the same meaning as in the GST Laws unless the context makes it clear that a different meaning is intended.

13.2 Interpretation

If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

13.3 Payment of GST

A recipient of a taxable supply under or in connection with this Agreement:

13.3.1 must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply; and

13.3.2 must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

13.4 Reimbursements

Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another party under this Agreement, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient under clause 13.3.

13.5 Indemnities and Claims

13.5.1 If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

13.5.2 A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

13.5.3 If a party has a Claim under or in connection with this Agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

13.6 Other taxes

13.6.1 Unless otherwise required by Law, the parties agree that Council is not liable to compensate the Contractor in respect of any other Taxes levied in connection with the provision of Services under this Agreement or any payment by Council under this Agreement.

13.6.2 Without limiting clause 13.6.1, as between Council and the Contractor, the Contractor must pay all:

- (a) water, sewerage and drainage fees and charges;
- (b) electricity and other utilities consumption charges;
- (c) waste disposal charges and levies (including a Waste Levy);
- (d) charges for the connection, management or use of utilities; and
- (e) all other Taxes, if payable or outgoings,

levied in connection with the Services, each Nominated Facility or Contractor's Plant.

14. Security

14.1 General

14.1.1 On the earlier of 15 Business Days after the Commencement Date or the date of the pre-start meeting referred to in clause 2.3, the Contractor must provide security in the amount set out in Item 9 of Schedule 1 (**Security**), for the purpose of ensuring the due and proper performance of the Contractor's obligations under this Agreement, including an obligation to pay money.

- 14.1.2 Subject to clause 14.6 Council's entitlement to the Security will be reduced to zero on the Expiry Date and all obligations under the Transition Plan have performed to Council's satisfaction.

14.2 Form of Security

The Security must be:

- 14.2.1 an irrevocable and unconditional undertaking to pay on demand on terms approved in writing by Council (for the purposes of which the parties acknowledge and agree that the form set out in Schedule 6 is approved) with no expiry date; and
- 14.2.2 provided by the [Waverley/Woollahra] or Sydney office of an Australian bank or financial institution approved in writing by Council.

14.3 Failure to lodge Security

Failure by the Contractor to lodge the Security in accordance with clause 14.1 will entitle Council to terminate this Agreement under clause 20.2.

14.4 Recourse to Security

- 14.4.1 Council may through the Council's Representative call on, or otherwise have recourse to, any or all of the Security at any time, without notice to the Contractor, including in respect of any money for which the Contractor is or may be liable to Council whether under this Agreement or otherwise.
- 14.4.2 The Contractor is not entitled to, and must not seek, an injunction against either Council or the issuer of any Security (if applicable) preventing a demand or payment under the security (whether the demand extends to the whole of the security or part thereof) or the use to which the proceeds of such a demand can be put.
- 14.4.3 The exercise by Council of any of its powers and rights under this clause will not prejudice or affect any other right or entitlement which Council is entitled to claim under this Agreement or at law.

14.5 Reinstatement of Security

If Council demands and has recourse to the Security, then no later than 10 Business Days after Council gives the Contractor a notice asking for it, the Contractor must deliver to Council a replacement or additional security so that the total held by Council equals the amount stated in clause 14.1.1.

14.6 Release of Security

Within 30 days after the Expiry Date and provided the Contractor has duly and punctually performed all of its obligations under this Agreement, Council will release any unused portion of the Security to the Contractor, provided that where this Agreement has been terminated, Council is not required to release any part of the Security under this clause until payment has been made under clause 20.6.

14.7 Trusts and interest

Council:

14.7.1 shall not be obliged to pay the Contractor interest on:

- (a) the amount of the Security; or
- (b) the proceeds of the Security if it is converted to cash; and

14.7.2 does not hold the proceeds or the Security on trust for the Contractor.

14.8 Survival

This clause 14 survives the termination or expiry of this Agreement.

15. Emergency

15.1 Exercise of powers

The powers given to Council and its authorised representatives under this clause 15 may be exercised:

- 15.1.1 at any time where Council in its discretion determines that an Emergency exists; or
- 15.1.2 if the Contractor requests Council to exercise the powers under this clause.

15.2 Emergency

In an Emergency, or any situation which poses a real risk of an Emergency, the Contractor must:

- 15.2.1 take immediate action to stop or prevent the Emergency in accordance with any applicable emergency management plan; and
- 15.2.2 immediately advise Council of the Emergency or potential Emergency.

15.3 Step-in rights

15.3.1 In an Emergency, if Council reasonably believes that the Contractor is not adequately providing a response to the Emergency:

- (a) Council may, in its unfettered discretion, step in and provide the Services; and
- (b) Council's Representative and any persons authorised by them may at any time, without giving notice and unaccompanied by the Contractor, enter any of the Contractor's facilities or use any of the Contractor's plant & equipment ordinarily used in the provision of the Services for the purposes of remedying the Emergency.

15.3.2 When the Emergency has been remedied Council and its authorised representatives must leave the Contractor's facilities (or that part of it assumed by Council and its authorised representatives) and return control to the Contractor.

15.4 Contractor's obligations

The Contractor must cooperate with Council and its authorised representatives during an Emergency, including ensuring compliance by the Contractor's Staff with all reasonable Directions given by Council and its authorised representatives.

15.5 Suspension of obligations

15.5.1 If at any time during this Agreement Council exercises its powers under this clause 15, the obligations of the Contractor are suspended to the extent that the Contractor's ability to perform those obligations is adversely affected by the assumption of control and delivery of the Services by Council or its authorised representatives.

15.5.2 Nothing in this clause 15 prevents Council from exercising any rights and remedies available to it in respect of:

- (a) any breach or default by the Contractor which occurs before the exercise of the powers under this clause 15; or
- (b) any breach or default by the Contractor while the powers under this clause 15 are being exercised, to the extent that the Contractor's obligations are not suspended.

15.5.3 The Contractor will continue to be paid under this Agreement in accordance with clause 12 and Schedule 2 to the extent that the Contractor continues to provide the Services in accordance with this Agreement, but will not be paid to the extent that the Services are performed by Council exercising its rights under this clause 15.

15.6 Council's costs

The Contractor must pay to Council the direct costs incurred by Council in remedying the Emergency, where the Emergency has been caused by the acts or omissions of the Contractor. Those costs will be due and payable to Council by the Contractor as a debt.

15.7 Council's obligations

15.7.1 Nothing in this clause 15 obliges Council to exercise the powers given under this clause or to remedy the Emergency.

15.7.2 Nothing in this clause 15 makes Council or its authorised representatives liable for any accident, damage or defect to or in the Contractor's facilities or the Contractor's plant & equipment during an Emergency, which was unavoidable as a result of the actions required to address the Emergency.

16. Risk and Insurance

16.1 Care of assets

16.1.1 The Contractor is responsible for the care of all assets used in provision of the Services, from the Services Commencement Date until the Expiry Date, and must, subject to any instructions from Council's Representative, make good any loss or damage that may occur to those assets from any cause whatsoever prior to the Expiry Date.

16.1.2 The Contractor must make every effort to mitigate the effects of any loss or damage occurring to the assets from any cause whatsoever.

- 16.1.3 The Contractor is responsible for any loss of or damage to any equipment or other property of the Contractor used or intended to be used for the purposes of providing the Services.

16.2 Obligation to maintain insurances

Without limiting the respective obligations or liabilities of the parties, the Contractor must, at its cost, effect and maintain the insurances referred to in this clause 16 with reputable insurers from the Commencement Date until the Expiry Date.

16.3 Public and Products Liability Insurance

The Contractor must maintain broadform public and products liability insurance:

- 16.3.1 for not less than the amount stated in Item 10 of Schedule 1 for any one occurrence and unlimited in the annual aggregate;
- 16.3.2 which covers liability (including to Council) in respect of:
- (a) loss of, or damage to or loss of use of, any real or personal property; and
 - (b) personal injury to, disease or illness or death of, any person;
- arising out of or in connection with the performance of the Services or the generation or Product Marketing of the Product;
- 16.3.3 which contains in respect of the Services:
- (a) a clause to the effect that a breach of a policy condition or requirement by one party does not affect the rights and ability of other insured parties to claim under the policy;
 - (b) a provision under which the insurer waives all or any rights of recovery which may be exercised against the named insureds by way of subrogation; and
 - (c) a cross-liability provision;
- 16.3.4 which covers the Contractor for its liabilities under this Agreement and its liabilities to third parties; and
- 16.3.5 which in respect of the Services extends to indemnify Council as "Principal" for Council's liability arising out of any act, error or omission of the Contractor in the performance of Services.

16.4 Workers' Compensation Insurance

The Contractor must maintain workers' compensation insurance in accordance with the relevant Laws in respect of any person deemed to be an employee of the Contractor for not less than the amount stated in Item 11 of Schedule 1.

16.5 Plant and equipment insurance

The Contractor must maintain, and must ensure that any Subcontractor that supplies plant and equipment for the Services maintains, insurance in respect of all plant and equipment used for or in connection with the Services for not less than the amount stated in Item 12 of Schedule 1.

16.6 Motor Vehicle Insurance

The Contractor must maintain:

- 16.6.1 compulsory motor vehicle third party insurance (bodily injury) in accordance with the relevant Laws; and
- 16.6.2 motor vehicle third party property insurance for any motor vehicle or any plant or mechanically propelled vehicle (registered or unregistered) to be used by the Contractor in the performance of the Services, for not less than the amount stated in Item 14 of Schedule 1.

16.7 Evidence of insurance

The Contractor must, in respect of each insurance required by this clause 16, give Council prior to the commencement of the Contractor's obligations under this Agreement and on the renewal of each policy copies of the certificates of currency which detail the period and cover effected.

16.8 Management of insurances

- 16.8.1 In relation to the insurances to be maintained by the Contractor under this clause 16 the Contractor must:
 - (a) pay each premium on or before the due date or under agreed terms with the relevant insurance brokers and, when asked by Council, produce proof of payment;
 - (b) immediately rectify anything which might prejudice any insurance and reinstate the insurance if it lapses;
 - (c) notify Council immediately when an event occurs in relation to the Services which could prejudice a policy of insurance; and
 - (d) notify Council immediately if any policy of insurance is or is proposed to be cancelled, amended, not renewed or renewed on terms different to those in force at the date of this Agreement or previously advised to Council, or of any proposed change in insurer.
- 16.8.2 The Contractor must, subject to confidentiality obligations to insurers, within ten Business Days of the occurrence of a relevant incident in relation to the Services, give notice to Council of each insurance claim and of the circumstances surrounding the incident giving rise to the insurance claim.

16.9 No cancellation or avoidance

Council and the Contractor must not do anything that would entitle the insurer under any of the insurances effected in compliance with this clause 16 to cancel or avoid the policy of insurance, or reduce the amount payable on a claim under the policy.

16.10 Subcontractors

Without limiting the respective obligations or liabilities of the parties, the Contractor must ensure that its Subcontractors take out and maintain insurance policies similar to those required to be effected by the Contractor under this clause 16 for the Subcontractor's services as appropriate (in the opinion of Council's Representative acting reasonably) given the nature of the work to be performed by the Subcontractor.

17. Liability

17.1 Indemnity

17.1.1 The Contractor indemnifies Council, Council's Representative and Council's employees against, and must pay Council, Council's Representative and Council's employees on demand, all Claims, Losses and charges suffered or incurred in respect of:

(a) any:

- (i) loss of, or damage to, or loss of use of, any real or personal property;
- (ii) personal injury, disease or illness (including mental illness) to, or death of, any person;
- (iii) harm to the Environment; or
- (iv) fines, cost orders, orders requiring the performance of work, orders requiring the posting of a bond or other form of security or similar sanctions,

arising out of any act or omission by the Contractor or the Contractor's Staff in the performance of the Services;

- (b) Wilful Default of the Contractor or the Contractor's Staff;
- (c) any infringement or alleged infringement of any Intellectual Property Right in respect of the performance of the Services or anything used or supplied by the Contractor in connection with the Services;
- (d) any breach of the Contractor's duty of confidentiality under clause 24;
- (e) fraudulent or criminal conduct by the Contractor or the Contractor's Staff;
- (f) abandonment of the performance of the Services or repudiation of this Agreement; or
- (g) liability which cannot be limited at Law or arises out of or in connection with a breach of a statutory duty by the Contractor or the Contractor's Staff.

17.1.2 The Contractor's liability under clause 17.1.1 is reduced to the extent that the Claims, expenses, losses, damages, costs or charges are caused or contributed to by any wrongful or negligent act or omission of Council or its employees or agents.

17.2 Other Liability

The liability of the Contractor for any error, omission, negligence or breach of contract of the Contractor or the Contractor's Staff, which is not covered by clause 17.1 will be limited to the greater of:

17.2.1 all insurance proceeds received under any policy of insurance referred to in this Agreement, including the insurance required to be maintained by Subcontractors; and

17.2.2 **###. [Note to Tenderers: this will be inserted as an amount calculated by Council equal to 100% of the estimated cost to Council for the acceptance of its Clean Up Waste during the Services Term. This calculation will be based**

on an estimated delivery in each Service Period of 2,350 tonnes of Clean-up Waste, and 2,100 mattresses from Waverley Council, and 1,700 tonnes and 1,800 mattresses from Woollahra Municipal Council and the Tendered rates and prices].

17.3 Release

- 17.3.1 Subject to this Agreement (including clause 17.3.2), the Contractor releases Council and the Council's Representative and their respective officers, employees and agents, from any Loss, Claim, obligation or duty to the Contractor whatsoever in respect of or in connection with any or all of:
- (a) the suitability of any Nominated Facility for any use;
 - (b) the Services, their design or conduct;
 - (c) the suitability, location, adequacy, availability or capacity or any other aspect of each Nominated Facility or Contractor's Plant;
 - (d) any death, illness or injury of any person to the extent arising as a result of the performance, or lack of performance, of the Services;
 - (e) any error, misdescription or omission in any of the Disclosed Information; and
 - (f) any other risk accepted by the Contractor under clause 4.4.
- 17.3.2 For the avoidance of doubt, without limiting clause 17.3.1, the release applies to any Loss, Claim, obligation or duty in respect of the negligence of any person (including Council or Council's Representative) in respect of the matters the subject of the release prior to the date of this Agreement.

18. Force Majeure

18.1 Contractor must not suspend

The Contractor must not interrupt or suspend the Services for any reason whatsoever other than under and in accordance with clause 18.

18.2 Notice of Force Majeure

If a party (**Affected Party**) is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by an event of Force Majeure:

- 18.2.1 the Affected Party must immediately notify the other party in writing of the occurrence of that event including:
- (a) full particulars of the event of Force Majeure;
 - (b) an estimate of its likely duration;
 - (c) the obligations affected by it and the extent of its effect on those obligations; and
 - (d) the steps taken to avoid, plan for, minimise the impact of and rectify it; and

- 18.2.2 if a Force Majeure event is notified in accordance with clause 18.2.1:
- (a) the parties must promptly meet to determine what action is necessary to ensure the continuation of the Services;
 - (b) the obligations under this Agreement of the Affected Party are suspended to the extent to which they are rendered impossible to be performed by the relevant Force Majeure event for as long as the Force Majeure event continues.

18.3 Mitigation

If any obligations are rendered impossible to be performed by the Force Majeure event notified in accordance with clause 18.2.1:

- 18.3.1 the Affected Party must use its best endeavours to remove, overcome or minimise the effects of the Force Majeure event as quickly as possible, including the reasonable expenditure of funds; and
- 18.3.2 if the Affected Party is the Contractor, the Contractor must:
- (a) promptly identify alternative viable means of performing the obligations affected and to mitigate the effect of the Force Majeure event; and
 - (b) do everything necessary to ensure that as far as possible the Services are not interrupted.

18.4 Alternate arrangements

- 18.4.1 Subject to clause 18.4.2, during any period in which an Affected Party is not performing obligations because of a claimed Force Majeure event, the other party may (but need not) make alternative arrangements for the performance of any such obligation, whether by another person or otherwise. Those alternate arrangements may extend beyond the duration of the Force Majeure event to the extent required to allow for completion of obligations reasonably entered into during the occurrence of the Force Majeure event. Any party making alternative arrangements as contemplated by this clause 18.4 must notify the other party of those arrangements.
- 18.4.2 If the Services are suspended or interrupted by a Force Majeure event:
- (a) the Contractor may elect to appoint a sub-contractor in accordance with clause 4.12 to perform so much of the Services as the Contractor has suspended, provided that there is no additional cost to Council in doing so; and
 - (b) if despite clause 18.4.2(a) Services continue to be suspended or interrupted for a period of more than 5 Business Days, the Council's Representative may (without limiting any other right Council may have) either itself or through an alternative contractor perform so much of the Services as the Contractor has suspended or interrupted and the reasonable increase in costs of doing so, over and above the cost that would have been required to be paid under this Agreement by Council to the Contractor had the Services not been suspended or interrupted, must be paid by the Contractor.

18.5 Continued payment

The Contractor is only entitled to be paid the Fees during a Force Majeure event to the extent that the Services continue to be supplied, and otherwise in accordance with clause 12.

18.6 End of period of Force Majeure

Subject to the clause 18.7, the suspension of the obligations of the parties due to a Force Majeure event ends when the Affected Party is no longer prevented from being able to recommence fulfilment of the obligation by the Force Majeure event. At which time the Affected Party must issue a written notice to the other party to that effect and immediately recommence the performance of the obligation.

18.7 Termination

18.7.1 Subject to clause 18.7.2, if a Force Majeure event (or a series of Force Majeure events) continues for a period of 9 calendar months affecting the provision of the Services in a material way, either party may terminate this Agreement by giving at least 6 months' notice to the other party.

18.7.2 If there is a substantial interference to the Services by reason of a Force Majeure event, and the Council's Representative considers that:

- (a) in the interests of the community, including the health and amenity of the community, the Services that have been interfered with must be performed; and
- (b) those Services could be performed by another entity other than the Contractor,

then the Council's Representative may by written notice to the Contractor elect to:

- (c) exercise rights under clause 15.3;
- (d) terminate this Agreement immediately by written notice under this clause (in which case clause 20 shall apply); or
- (e) take either or both of these actions.

18.7.3 The Council's Representative may make more than one such election under clause 18.7.2 and may make elections sequentially as it sees fit.

18.7.4 In clause 18.7.2, a substantial interference includes but is not limited to suspension for a period of one week.

19. Suspension

19.1 Suspension notice

19.1.1 Council may, for any reason, direct the Contractor by notice in writing to suspend all or some of the Services until such time as Council thinks fit, and the Contractor must comply with that direction.

19.1.2 A notice under clause 19.1.1 must specify each of the Services to be suspended and the effective date of suspension of each of those Services.

- 19.1.3 While any Service is suspended, this Agreement will continue to apply, with necessary adjustments, to the Services that are not suspended.

19.2 Suspension of Services

Upon receipt of a suspension notice under clause 19.1.1, the Contractor must:

- 19.2.1 suspend performance of each relevant Service as specified in the suspension notice until directed in writing by Council to resume performance;
- 19.2.2 take all available steps to minimise Loss resulting from the suspension; and
- 19.2.3 continue to provide all other Services.

19.3 Payment on suspension

- 19.3.1 For each Service that is suspended, the Contractor shall not after the date of suspension be entitled to make any Claim in connection with the provision of the Service that has been suspended during the period of the suspension provided always that the Contractor may claim:
- (a) payments for the Services (or any part) performed in accordance with this Agreement before the effective date of suspension; and
 - (b) except where and to the extent that a suspension has occurred due to a breach by the Contractor, any reasonable and unavoidable costs incurred by the Contractor and directly attributable to the suspension or partial suspension of Services, subject to the Contractor fully complying with its obligations under clause 19.2.
- 19.3.2 If the reason for the suspension is a breach of this Agreement by the Contractor, the Contractor shall not be entitled to any payment, and must not make any Claim, whatsoever in connection with the suspension.

19.4 Recommencement of Services

Upon Council giving notice, the Contractor must recommence performance of the suspended Services and the Contractor shall be entitled to claim payment for those Services, in accordance with this Agreement, performed after the date of that notice.

20. Default and Termination

20.1 Contractor default

- 20.1.1 If the Contractor is in default under this Agreement through its failure to perform or observe any obligation or undertaking under this Agreement, Council may give the Contractor a written default notice:
- (a) specifying which provision of this Agreement has been breached; and
 - (b) if the default is capable of being remedied, directing the Contractor to remedy that default to Council's reasonable satisfaction within the period specified in the default notice (which is to be not less than 14 days after receipt of the default notice by the Contractor).
- 20.1.2 If the default is capable of being remedied and the Contractor fails to remedy the default within the time period specified, Council may (but is not obliged to) itself or

by a third party employed or engaged by Council perform the obligation. The Contractor must pay all reasonable costs and expenses incurred by Council in doing so. All costs and expenses incurred by Council in performing the obligation or engaging any such third party may be recovered or set-off by Council in accordance with clause 12.7.

- 20.1.3 For the purposes of carrying out the Services under clause 20.1.2, Council or any such third party may enter upon the Contractor's premises and use all the Contractor's plant, equipment and materials necessary for the carrying out and performance of those Services.
- 20.1.4 Council must cease to exercise its rights under clause 20.1.2 and 20.1.3 as soon as reasonably practicable after the default has been remedied.
- 20.1.5 If Council has issued a default notice under clause 20.1.1 and the Contractor has not rectified that default within the time period specified, Council may exercise its rights under clause 20.2.

20.2 Termination by Council for cause

- 20.2.1 At any time during the Term, Council may terminate this Agreement immediately and without prior notice to the Contractor if:
 - (a) the Contractor is subject to an Insolvency Event;
 - (b) the Contractor (or any member of the Contractor's Staff) has breached any Laws applicable to the provision of the Services or has infringed the Intellectual Property Rights of any third party;
 - (c) the Contractor has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of Council;
 - (d) the Contractor has failed to perform as required by clause 12.6;
 - (e) at the end of a Service Period the Contractor has failed to achieve the Recovery Target for Clean-up Waste in that Service Period;
 - (f) where an improvement plan is required under clause 6.3 and the Contractor has failed to comply with that plan;
 - (g) the Contractor has failed to perform a Service as required by a notice under clause 9.3;
 - (h) the Contractor has failure to comply with the requirements of clause 4.6;
 - (i) the Contractor has failure to comply with the requirements of clause 4.7;
 - (j) the Contractor has failed to comply with the requirements of clause 14.1;
 - (k) the Contractor has failed to rectify a default within the time period specified in a default notice issued under clause 20.1; or
 - (l) the Contractor is found to have offered or given any gratuity, bonus, discount or bribe of any sort to any member of or any officer, Councillor, employee or agent of Council.
- 20.2.2 Termination will be effected by Council giving the Contractor a written termination notice specifying the date of termination.

20.2.3 Clause 29 does not apply to a dispute or difference between the Contractor and Council as to whether Council has validly terminated this Agreement under this clause 20.2.

20.3 Contractor's obligations upon receipt of termination notice

Upon receipt of a termination notice under clause 20.2, the Contractor must:

- 20.3.1 stop work as specified in the termination notice;
- 20.3.2 take all available steps to minimise Loss resulting from that termination; and
- 20.3.3 continue to provide any other Services not affected by the termination notice.

20.4 Council's liability on termination

Upon the termination of this Agreement under clause 20.2 the Contractor will not be entitled to any compensation for loss of prospective profits and Council's liability to the Contractor (if any) will be limited to payments for the Services (or any part) performed in accordance with this Agreement before the date of termination.

20.5 Effect of termination

The service of a termination notice or the termination of this Agreement under this clause 20 is without prejudice to the accrued rights of Council at the time of such termination notice or termination including rights as to indemnification, payment or set off.

20.6 Reconciliation of payments following termination

- 20.6.1 Within six months of Council exercising any right of termination under this clause 20:
 - (a) Council will pay to the Contractor; or
 - (b) the Contractor will pay to Council,

(as the case requires) the difference between all sums accrued and unpaid in favour of the Contractor under this Agreement and all Claims of Council for damages, loss, cost or expense or other sums owing by the Contractor to Council.
- 20.6.2 Determination of the sums and Claims referred to in clause 20.6.1 will be made by Council's Representative, who will certify:
 - (a) by whom payment (if any) will be made; and
 - (b) the amount payable.
- 20.6.3 Certification in accordance with clause 20.6.2 must be undertaken either:
 - (a) prior to the expiration of six months from Council's exercise of any right of termination under this clause 20; or
 - (b) within 14 days of a written request so to do made by either party, which request may not be made until the expiration of the six (6) month period.
- 20.6.4 Council's Representative must forward a copy of the certificate to both parties and the amount payable will be due and payable within 14 days of the date of the

receipt of the copy of the certificate by the party required to make the payment referred to in that certificate.

- 20.6.5 The parties acknowledge and agree that until payment is due in accordance with this clause 20.6, Council will not be obliged to make any further payment to the Contractor.

21. Council's rights on Termination

21.1 Right to carry out Services

- 21.1.1 If Council terminates this Agreement under clause 20, Council may respectively itself or by a third party employed or engaged by Council carry out the Services until Council appoints a replacement contractor.
- 21.1.2 For the purposes of carrying out the Services under clause 21.1.1, Council or any such third party may enter upon the Contractor's premises and use all the Contractor's plant, equipment and materials necessary for the carrying out and performance of those Services.
- 21.1.3 The Contractor must pay on demand all reasonable costs and expenses incurred by Council in engaging any such third party. All costs and expenses incurred by Council in engaging any such third party may be recovered or set-off by Council in accordance with clause 12.7.

21.2 Assignment of agreements

- 21.2.1 If Council terminates this Agreement under clause 20:
- (a) the Contractor must, if so required by written notice from Council, assign to Council the benefit of any agreement for the provision of services including sub-contract services or for the supply of all plant, equipment and materials necessary for the provision of the Services under this Agreement. That assignment must be undertaken by the Contractor:
 - (i) within 20 days of the date of Council giving written notice in accordance with this clause 21.2; and
 - (ii) without any obligation (whether legal or equitable) for Council to make any payment to the Contractor (whether by means of compensation, consideration or any other form of reimbursement or payment) for that assignment;
 - (b) Council may pay any provider for any services, materials or plans used for the purposes of this Agreement insofar as the prices, fees and/or charges for those services, materials or plans have not already been paid by the Contractor. Any such payments by Council will be a debt due and payable to Council from the Contractor.
- 21.2.2 The parties acknowledge and agree that nothing in this clause 21.2:
- (a) releases the Contractor from; or
 - (b) assigns to Council;
- any cost, losses, damages or any liability of any kind whatsoever that the Contractor owed to any person as at the time of assignment of the agreement to

Council (or which subsequently becomes due and owing as a result of actions or inactions of the Contractor prior to the assignment).

- 21.2.3 For the purpose of effecting the assignment of any agreement under this clause 21.2, the Contractor hereby irrevocably appoints Council to be the attorney and agent of the Contractor with full power and authority to execute any such assignment on behalf of the Contractor and to bind the Contractor accordingly.]

22. Contractor's obligations on Expiration or Termination

22.1 Contractor's obligations

On the expiry of this Agreement or termination of this Agreement the Contractor must:

- 22.1.1 comply with any Directions by Council to bring about an immediate or prompt (as the case may be) winding down and cessation of the Services, including but not limited to:

- (a) giving to Council all records relating to the Services;
- (b) giving to Council the originals of any documents which were provided to the Contractor by Council; and
- (c) doing all other acts and things reasonably requested by Council which are necessary to effect an orderly handover of the Services with minimum disruption to Council; and

- 22.1.2 at the date of termination cease performing all Services.

22.2 Specific performance

The parties acknowledge that damages may not be an adequate remedy in respect of a breach of this Agreement and a party is entitled to seek specific performance or pursue any other equitable remedy, including injunction, which it considers appropriate in respect of any other breach.

23. Intellectual Property

23.1 Warranty

The Contractor warrants that the Documentation does not and will not infringe any copyright or other Intellectual Property Rights.

23.2 Intellectual Property Rights

- 23.2.1 Council retains the Intellectual Property Rights in all documentation supplied by Council to the Contractor in relation to the Services or this Agreement. Council grants the Contractor a non-exclusive, royalty free, non-transferable licence to reproduce and use that documentation as necessary for the purpose of this Agreement. The Contractor must not reproduce, use or otherwise deal with that documentation, or allow any other person to do the same, for any other purpose. Council has the right to revoke this licence at any time by notice in writing to the Contractor.

- 23.2.2 Where the provision of the Services requires the Contractor to create any Documentation for Council (either solely or in conjunction with others) the Intellectual Property Rights in that Documentation vest in Council upon creation and the Contractor must do all things necessary to perfect such vesting.
- 23.2.3 The Contractor grants to Council a permanent, irrevocable, royalty free, non-exclusive licence (including the right to sub-licence) to use, produce, adapt or exploit the Intellectual Property Rights owned by the Contractor or any third party and which are associated with the Services (together with any Documentation) provided that Council does not on-sell or on-licence such Intellectual Property Rights to third parties.
- 23.2.4 The obligations in this clause 23 continue after the expiry or termination of this Agreement.

24. Confidentiality

24.1 Contractor's obligations

The Contractor must treat as confidential all information provided by Council, and must not use that information for any purpose other than for the purposes of this Agreement, or disclose or make public that information or any information in relation to the Services, except where:

- 24.1.1 Council has given consent, which consent may be given or withheld in Council's absolute discretion;
- 24.1.2 the Contractor is required to do so by Law or by a stock exchange;
- 24.1.3 the Contractor is required to do so in connection with legal proceedings relating to this Agreement;
- 24.1.4 it is for the purpose of obtaining professional advice in respect of the Services and the Contractor obtains an appropriate confidentiality undertaking; or
- 24.1.5 the information is already in the public domain other than through a breach of this Agreement.

24.2 Contractor's acknowledgement

The Contractor acknowledges that:

- 24.2.1 the terms of this Agreement are not confidential; and
- 24.2.2 the provisions of this clause 24 survive the termination or expiry of this Agreement.

24.3 Moral rights

The Contractor:

- 24.3.1 must ensure that it does not, and its contractors and subcontractors do not, infringe any Moral Right in carrying out the Services;
- 24.3.2 without limiting clause 24.3.1, must hold, or obtain, consents from all authors of any material created by or on behalf of the Contractor for the purpose of the whole or any part of the Services, including documents, software and data stored by any

means, to use and adaptation by the Contractor, and Council, without restriction and without any requirement to attribute such material to its authors; and

- 24.3.3 indemnifies Council from and against any Claim or Loss brought against, suffered or incurred by Council arising out of, or in any way in connection with, any breach by the Contractor of its obligations under clause 24.3.1 or 24.3.2.

25. Personal Property Securities Act

25.1 Definitions

In this clause 25:

- 25.1.1 **Collateral** means any materials, equipment or plant used in performing the Services.
- 25.1.2 **Financing Statement** has the meaning given to it in the PPS Law.
- 25.1.3 **Financing Change Statement** has the meaning given to it in the PPS Law.
- 25.1.4 **Security Interest** has the meaning given to it in the PPS Law.

25.2 Contractor's obligations

For any invoice submitted by the Contractor to Council for any element of the Services which has:

- 25.2.1 been paid for by the Contractor prior to the submission of that invoice, the Contractor must ensure that prior to submitting that invoice no Subcontractor or other person has a Security Interest in respect of any Collateral the subject of the Monthly Statement, other than a Security Interest which will be extinguished upon payment to the Contractor; and
- 25.2.2 not been paid for by the Contractor, the Contractor must ensure that the Contractor pays the relevant Subcontractor or other person for those Services (including any Collateral) on or before the due date for payment and in accordance with the terms under which payments are to be made under the relevant agreement and, upon payment, must ensure that any Security Interest that the relevant Subcontractor or other person has in respect of those Services (including any Collateral) to which the relevant payment relates is extinguished.

25.3 Specific obligations

- 25.3.1 Council may elect to register any Security Interest Council acquires in relation to the Contractor performing the Services (including in the Collateral) immediately upon the title and the Security Interest arising.
- 25.3.2 The Contractor must assist Council to register or improve that Security Interest by:
- (a) removing any associated Security Interest from the PPS Register which the Contractor previously had; and
 - (b) ensuring that all Subcontractors or other persons remove any associated Security Interest from the PPS Register which they previously had.
- 25.3.3 The Contractor must not register, or permit to be registered by any third party, including a Subcontractor, a Financing Statement or a Financing Change

Statement in respect of any Collateral without the prior consent of Council, which consent may be given or withheld at Council's absolute and sole discretion.

26. Assignment and Change In Control

26.1 Assignment by Contractor

The Contractor must not assign or transfer any or all of its rights or obligations under this Agreement without the prior written consent of Council.

26.2 Change in Control

A Change in Control of the Contractor without the prior written consent of Council will be treated as an assignment or transfer of the Contractor's rights in breach of clause 26.1.

27. Conflict of Interest

27.1 Warranty

The Contractor warrants that no Conflict of Interest exists at the date of this Agreement.

27.2 Duty to inform

The Contractor must immediately inform Council upon becoming aware of the existence, or possibility, of a Conflict of Interest.

28. Notices

28.1 Method of giving notices

A formal notice or consent under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received six Business Days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.

28.2 Address for notices

A person's address and fax number are those set out in Item 15 (Council) and Item 16 (Contractor) of Schedule 1, or as the person notifies the other party.

29. Disputes

29.1 Dispute resolution

29.1.1 In this clause:

- (a) **claimant** means, in respect of a Dispute, a party serving a Dispute Notice in respect of that Dispute;

- (b) **Dispute** means a dispute or difference between the Contractor and Council arising out of or in connection with this Agreement, including any situation for which this Agreement provides that this clause 29 applies, but excluding a dispute or difference between the Contractor and Council as to whether Council has validly terminated this Agreement under clause 20.2;
- (c) **Dispute Notice** means a notice served under clause 29.1.2;
- (d) **Mediation Notice** means a notice under clause 29.2.1;
- (e) **Nominated Dispute** means a Dispute in respect of:
 - (i) a determination of the Recovery % under clause 6.2;
 - (ii) a determination of the value of the Qualifying Increase in Costs in respect of a Qualifying Change under clause 11.4;
 - (iii) the determination of a Variation Amount under clause 11.5, 11.6 or 11.7;
 - (iv) a dispute regarding the Fee payable for a Disputed Service under clause 12.6; and
 - (v) in respect of a Dispute referred to in paragraphs 29.1.1(e)(ii) or 29.1.1(e)(iii), the determination of how the Variation Amount so determined, shall be paid; and
- (f) **respondent** means, in respect of a Dispute, a party receiving a Dispute Notice in respect of that Dispute.

29.1.2 If a party considers that a Dispute exists they must promptly serve a written notice (**Dispute Notice**) on the other party, including or accompanied by full and proper particulars of the Dispute and the resolution of the Dispute suggested or required by the claimant.

29.1.3 The respondent:

- (a) may request reasonable further particulars regarding the Dispute the subject of the Dispute Notice; and
- (b) must, within 5 Business Days of the service of the Dispute Notice, provide a written response to the matters in the Dispute Notice.

29.1.4 If the parties have been unable to resolve the Dispute within 10 Business Days of the service of the Dispute Notice, the Dispute must be referred to the General Manager of Council and the chief executive officer or equivalent of the Contractor (**Senior Executives**) who must in good faith seek to resolve the Dispute within 20 Business Days of the date that the Dispute Notice was served.

29.1.5 Any resolution of the Dispute by the Senior Executives must:

- (a) take into account the material provided to each party in accordance with clause 29.1.1; and
- (b) be undertaken within 20 Business Days of the service of the Dispute Notice.

29.2 Mediation

- 29.2.1 If a Dispute that is the subject of a Dispute Notice is not resolved under clause 29.1 within the timeframe referred to in clause 29.1.5(b), either party may by written notice served on the other party within 40 Business Days of the service of the relevant Dispute Notice require that the Dispute be dealt with by mediation.
- 29.2.2 If a Mediation Notice is served on a party in respect of a Dispute:
- (a) the parties must, within 5 Business Days after service of the Mediation Notice, agree on a mediator for the purposes of this clause;
 - (b) if the parties cannot agree on a mediator within 5 Business Days after service of the Mediation Notice, the mediator must be nominated by the Resolution Institute, or any other person authorised by the President to make the appointment, on the application of either party;
 - (c) within 15 Business Days (or such other period agreed in writing between the parties) after the agreement or nomination of the mediator under paragraph 29.2.2(b), the parties must:
 - (i) arrange for the appointment of the mediator (on terms satisfactory to the mediator) for the purposes of this clause; and
 - (ii) attend in person a preliminary conference before the mediator.
- 29.2.3 The parties acknowledge and agree that:
- (a) the mediator must conduct a mediation in relation to the Dispute in accordance with Resolution Institute Mediation Rules (**Rules**);
 - (b) they must abide by the Rules;
 - (c) they may be represented by legal counsel at the mediation;
 - (d) they must use their reasonable endeavours to achieve the resolution of the Dispute at the mediation; and
 - (e) the place of any mediation will be Sydney, unless the parties otherwise agree.
- 29.2.4 Each party must:
- (a) bear its own costs in respect of the mediation; and
 - (b) share equally the costs of the mediator (including the cost of any expert assistance retained by the mediator).
- 29.2.5 Any mediation under this clause 29.2 will be conducted on a without prejudice basis.

29.3 Expert determination of Nominated Disputes

- 29.3.1 This clause 29.3 only applies in respect of a Nominated Dispute that:
- (a) is the subject of a Dispute Notice; and
 - (b) is not resolved within 20 Business Days of the service of the Dispute Notice.

- 29.3.2 Notwithstanding that a Mediation Notice may have been served in accordance with clause 29.2, a party may by written notice (**Expert Notice**) served on the other party require the Dispute to be the subject of a determination by an expert (**Expert**) in accordance with this clause 29.3.
- 29.3.3 An Expert Notice may not be served in respect of a Dispute after the date that is 40 Business Days after the service of a Dispute Notice in respect of that Dispute.
- 29.3.4 The Expert must:
- (a) be agreed between and jointly appointed by Council and the Contractor or in the absence of agreement, appointed by the Resolution Institute;
 - (b) at the outset confirm with the parties whether they have agreed that the determination of the Expert should be final and binding, and if they have so agreed provide a letter to each party stating that the determination will be final and binding;
 - (c) invite and receive, if made, submissions from Council and the Contractor;
 - (d) act as an expert and not as an arbitrator;
 - (e) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (f) not accept verbal submissions unless both parties are present;
 - (g) on receipt of a written submission from one party, ensure that a copy of such submission is given promptly to the other parties;
 - (h) take into consideration all documents, information and other material which the parties give the Expert and which the Expert, in its reasonable opinion, considers relevant;
 - (i) not be expected or required to obtain or refer to any other documents, information or materials (but may do so if the Expert so wishes); and
 - (j) act with expedition.
- 29.3.5 Council and the Contractor must enter into an agreement with the Expert setting out the terms of the Expert's fees, which unless otherwise agreed are to be shared equally between Council and the contractor.
- 29.3.6 The decision of the Expert is final and binding if:
- (a) the parties so agree;
 - (b) the amount claimed in the Dispute is less than \$500,000 (exclusive of GST and exclusive of legal costs and interest);
 - (c) within 10 Business Days after the Expert notifies the parties of its decision, neither party served a written notice on the other party objecting to the decision of the Expert and proposing to commence litigation and the Dispute remains unresolved; or
 - (d) a party has within 10 Business Days after the Expert notifies the parties of its decision, served a written notice on the other party objecting to the decision of the Expert and proposing to commence litigation, the party serving that

notice has not commenced proceedings within 30 Business Days of the date of that notice and the Dispute remains unresolved.

29.4 Proceedings

- 29.4.1 If a Dispute is not resolved under 29.2 or 29.3, either party may commence proceedings for the resolution of that Dispute, provided that no proceedings may be commenced:
- (a) in the period within 40 Business Days of the service of the relevant Dispute Notice; or
 - (b) if a Mediation Notice has been served in accordance with clause 29.2, within the period of 30 Business Days following the service of the Mediation Notice.
- 29.4.2 Nothing in this clause 29 will otherwise affect the right of a party to institute proceedings to enforce payment due under this Agreement or otherwise in respect of a Dispute.

29.5 Give effect to certain documents

Any mediation under clause 29.2 or expert determination under clause 29.3:

- 29.5.1 must as far as is reasonably practical give effect to this Agreement;
- 29.5.2 where the Dispute is in relation to the Services, have regard to the impact on the timing, feasibility and cost of the Services; and
- 29.5.3 may not determine to vary any Services in a manner that will not comply with any Approval or other Law, or in a manner that would not be a Permitted Variation under clause 11.

29.6 Urgent relief

Nothing in this clause 29 prejudices the right of a party to seek urgent injunctive or declaratory relief for any matter in connection with this Agreement.

29.7 Performance

- 29.7.1 Despite the existence of a Dispute, each party must continue to perform its obligations under this Agreement.
- 29.7.2 The existence of a Dispute will not prejudice either party's right to terminate this Agreement for any reason.

29.8 Law and jurisdiction

This Agreement will be governed by and construed according to the law in force for the time being in the State of NSW, Australia, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of NSW and any courts entitled to hear appeals from those courts.

30. General

30.1 Giving effect to this Agreement

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

30.2 Waiver of Rights

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

- 30.2.1 no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- 30.2.2 a waiver of a right on one or more occasion does not operate as a waiver of that right if it arises again; and
- 30.2.3 the exercise of a right does not prevent any further exercise of that right or of any other right.

30.3 Consents

Where in this Agreement Council is required to give agreement or consent then, except where otherwise expressly provided, Council's consent may be given or withheld or given with conditions in Council's unfettered discretion.

30.4 Operation of this Agreement

- 30.4.1 This Agreement contains the entire agreement between the parties about its subject matter and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- 30.4.2 If this Agreement is inconsistent with any other document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.
- 30.4.3 Unless expressly stated to the contrary, any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- 30.4.4 Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

30.5 Operation of indemnities

- 30.5.1 Each indemnity in this Agreement survives the expiry or termination of this Agreement.
- 30.5.2 A party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.
- 30.5.3 No indemnity given in this Agreement will derogate from a party's rights under this Agreement or at common law.

30.6 Relationship of the parties

- 30.6.1 In carrying out its obligations under this Agreement, the Contractor is and at all times will be an independent contractor and no relationship of employment or partnership arises between the parties or between Council and any employee, agent or consultant of the Contractor, as a consequence of this Agreement.
- 30.6.2 The Contractor is not an agent and does not have any authority to and must not purport to bind Council to any agreement or otherwise hold itself out as an agent of Council
- 30.6.3 The Contractor agrees that it is solely liable for all remuneration, claims and other entitlements payable to the Contractor's Staff.

30.7 Costs, expenses and stamp duty

- 30.7.1 Subject to clause 30.7.3, each party must pay its own legal costs and expenses in relation to the negotiating, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.
- 30.7.2 The Contractor must:
- (a) pay any stamp duty (including all fines and penalties except those arising from the default of another party) in respect of this Agreement and any transactions contemplated under this Agreement or otherwise arising out of, or incidental to, this Agreement; and
 - (b) in a timely manner attend to stamping of all documents in connection with this Agreement which require stamping and to pay all duty on or before the due date for payment.
- 30.7.3 The Contractor must indemnify Council against and must pay on demand the amount of any duty (together with any related fines, penalties or interest) that is payable on or in relation to this Agreement or any document, dealing or instrument contemplated by it.
- 30.7.4 A party which has an obligation to do anything under this Agreement must perform that obligation at its cost unless expressly stated otherwise. In particular, except as expressly provided in this Agreement, the Contractor is responsible for all costs and expenses of complying with its obligations, duties and responsibilities (express or implied) under this Agreement and:
- (a) unless a particular clause expressly states that Council shall pay the costs, losses and expenses of or incurred by the Contractor in respect of or arising from any process, action, inaction, document or instrument contemplated or required by that clause, the Contractor shall have no Claim against Council for any such costs, losses or expenses;
 - (b) the Contractor releases Council absolutely from any Claim by or liability to the Contractor for any such costs, losses or expenses; and
 - (c) this clause applies, without limitation, to the provision of documents, information or the taking of action at the request or direction of Council or Council's Representative.

30.8 Amendment

This Agreement may only be amended, supplemented or varied by another document signed by the parties.

30.9 Survival of termination

All clauses which are by their nature intended to operate or continue to operate after the termination or expiration of this Agreement will survive the termination or expiration of this Agreement including clauses 1, 4.4, 4.14, 4.14.1, 4.16, 5.2, 9.2, 13, 14, 15.6, 16, 17, 20, 21, 22, 23, 24, 25 and 30.

30.10 Attorneys

Each person who executes this Agreement 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.

30.11 No fetter of discretion

Nothing in this Agreement fetters or limits the statutory capacities or statutory discretions of Council acting as an Authority.

30.12 Acknowledgment

The Contractor acknowledges and agrees that:

- 30.12.1 receipt or review of, or consultation or comments regarding, or failure to review or comment on, any application, plan, instrument, document, specification or anything else, or participating in consultation forums and co-ordination groups, in respect of the Services by Council or the Council's Representative does not:
 - (a) impose or create any duty, liability or obligation on Council or the Council's Representative;
 - (b) release, limit, reduce, alter or affect the Contractor's duties, liabilities, obligations or responsibilities in any way; or
 - (c) waive, prejudice or limit Council or the Council's Representative's rights;
- 30.12.2 none of Council or the Council's Representative owe or incur any duty, liability or obligation to the Contractor to review any application, plan, document, specification or anything else in respect of the Services for completeness, errors, omissions or compliance with the requirements of this Agreement or otherwise;
- 30.12.3 no Direction of Council or the Council's Representative will operate to relieve the Contractor of its other obligations or liability under this Agreement or modify the Contractor's status as an independent contractor;
- 30.12.4 the liabilities, duties and obligations of the Contractor are not reduced because of any delay by any Authority;
- 30.12.5 Council is not liable, nor responsible, for the conduct of any Authority including any delay by an Authority; and
- 30.12.6 to avoid doubt, where this Agreement provides for Council or Council's Representative to issue a certification or an Endorsement, the issue of the certificate or Endorsement is not proof of performance.

30.13 Acknowledgments - representations

- 30.13.1 The Contractor acknowledges that except as expressly stated in this Agreement Council makes no warranty or representation as to whether any Clean-up Waste

has or does not have any or any particular Characteristic from time to time and the Contractor must make its own estimation for the purposes of this Agreement.

30.13.2 The Contractor acknowledges and agrees that:

- (a) no representation or warranty either express or implied is, has been or will be made by Council under or in respect of the Tender Documents;
- (b) statements by Council, the Contractor or any other person (whether contained within the Tender Documents or otherwise) prior to the date of this Agreement, or otherwise made in relation to the Services at any time:
 - (i) are not binding on Council;
 - (ii) do not commit Council to any action or position in respect of any matter; and
 - (iii) do not waive, fetter, limit or otherwise affect any right, discretion, power or privilege of Council;

30.13.3 any representation, communication and prior agreement in relation to the subject matter of the Tender Documents are merged in and superseded by this Agreement; and

30.13.4 the Tender Documents may not be used as an aid to the interpretation of any provision of this Agreement in a way which would limit, reduce or waive any right of Council.

30.14 Disclosed Information

30.14.1 This clause 30.14 only applies to Disclosed Information that was disclosed prior to the date of this Agreement.

30.14.2 The Contractor acknowledges and agrees that:

- (a) prior to the date of this Agreement and for the purposes of entering into this Agreement it has:
 - (i) carefully examined the terms of this Agreement and all Disclosed Information;
 - (ii) examined, and relied solely upon its own independent assessment, skill and expertise and made inquiries in respect of, all information (including Disclosed Information) available to a competent contractor or operator upon the making of all reasonable inquiries relevant to the risks, contingencies and other circumstances having an effect on their obligations under this Agreement; and
 - (iii) examined any land made available by Council for the performance of the Services, and its surroundings;
- (b) no representation, guarantee or warranty (either express or implied) is, has been or will be made by Council in relation to the Disclosed Information, and in particular and without limitation, no representation, guarantee or warranty is, has been or will be made by Council that the Disclosed Information:
 - (i) is reliable, complete, current, accurate, suitable, comprehensive, adequate or correct;

- (ii) represents the opinion of Council or any other person at any time;
- (iii) contains all information held by or available to Council or any other person at any time; or
- (iv) can be relied on by the Contractor or any other person;
- (c) the Disclosed Information:
 - (i) may be incomplete, inaccurate or incorrect; and
 - (ii) may not be relied upon by the Contractor or any other person,
 - (iii) and no recourse may be had against Council in respect of any Disclosed Information;
- (d) Council has not and is not obliged to:
 - (i) verify the currency, reliability, adequacy, accuracy, correctness, suitability, comprehensiveness or completeness of the Disclosed Information;
 - (ii) disclose any information to the Contractor even if that information materially affects or contradicts any information that the Contractor already has;
 - (iii) update any information disclosed to the Contractor; or
 - (iv) give the Contractor notice if it becomes aware of any inaccuracy, incompleteness or change in the information disclosed to the Contractor;
- (i) Disclosed Information may not have been prepared for the purpose of this Agreement or with the Contractor or any other person in the position of the Contractor in mind or for the purpose of the Services;
- (ii) any opinions expressed in any Disclosed Information are opinions given at the date that the opinion was formed and may have ceased, or may in the future cease, to be appropriate or correct in the light of subsequent facts, circumstances, knowledge or attitudes; and
- (iii) the Disclosed Information may not be used as an aid to the interpretation of any provision of this Agreement.

30.14.3 The Contractor warrants and represents that:

- (a) it has understood the limitations of the Disclosed Information and in particular acknowledges its understanding that:
 - (i) the Disclosed Information may not, and has not, been expressly or impliedly represented to provide comprehensive information, including in relation to the current, historical or future Characteristics of waste (including Clean-up Waste) in the [Waverley/Woollahra] local government area;
 - (ii) any assessment of or statement about any Characteristic of any waste (including Clean-up Waste) may or may not be correct and is not a representation or warranty made by Council; and

- (iii) the Disclosed Information may not, and has not, been expressly or impliedly represented to provide comprehensive information about Contamination (of land) or any risks from it or as to the suitability of any land made available by Council for the Services or any other land or matter for any particular use;
- (b) it has obtained its own independent and professional advice and opinions on all matters relating to the Services and the Disclosed Information including financial, accounting, tax, engineering, environmental, legal, technical advice and opinions and the Characteristics of the Clean-up Waste and the suitability of land that is made available by Council for the Services for any particular use;
- (c) it has satisfied itself as to:
 - (i) the suitability of any Nominated Facility for any particular use, including the carrying out of the Services;
 - (ii) the Characteristics of the Clean-up Waste;
 - (iii) the nature, extent, cost and timeframes for carrying out any part of the Services by it and or any other person; and
 - (iv) its ability to reuse or dispose of, and the costs and timeframes for the reuse or disposal of, any Residue or Diverted Material arising in connection with the Services; and
- (d) it has carried out independently all relevant tests, enquiries, investigations and analysis it regards as necessary to acquaint itself with and verify to its satisfaction:
 - (i) all aspects of the Services;
 - (ii) any Characteristics of the Clean-up Waste;
 - (iii) the contents, correctness and sufficiency of the Disclosed Information; and
 - (iv) all information which is relevant to the risks, contingencies and other circumstances related to the Services.

30.14.4 The Contractor releases Council from, and indemnifies Council against:

- (a) any Claim (whether at law or in equity) by the Contractor; or
- (b) any obligation, duty or liability to the Contractor in respect of any Loss or Claim whatsoever suffered or incurred by the Contractor,

arising out of or in any way in connection with the Disclosed Information, including in respect of:

- (c) the provision of, or the purported reliance upon, or use of the Disclosed Information, to or by the Contractor or any other person to whom the Disclosed Information is disclosed or a failure by Council to provide any information, data or documents to the Contractor;

- (d) any negligence by or on behalf of Council (the Contractor specifically acknowledges and agrees that any duty of care that Council may otherwise have owed to the Contractor is specifically excluded and released);
- (e) any misrepresentation, misleading conduct, omission, inaccuracy, incompleteness or other defect in any Disclosed Information; or
- (f) the Disclosed Information being relied upon or otherwise used in the preparation of any information or document, including (to the extent permitted by law) any information or document which is "misleading or deceptive" or "false or misleading" within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation.

30.15 GIPA

30.15.1 Notwithstanding any other provisions of this Agreement, the Contractor acknowledges and agrees that under the *Government Information (Public Access) Act 2009* (NSW) Council may be required to publicly disclose information about this Agreement. As at the date of this Agreement, none of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of a contract;
- (b) any matter that could reasonably be expected to affect public safety or security; or
- (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009* (NSW).

30.15.2 The Contractor may at any time nominate any items that it considers are confidential and why, so as to assist Council in determining what items to disclose.

30.16 Civil Liability Act

30.16.1 It is agreed that, to the extent permitted by law, the operation of any legislative proportionate liability regime (including Part 4 of the *Civil Liability Act 2002* (NSW)) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to this Agreement howsoever such rights, obligations or liabilities are sought to be enforced.

30.16.2 The Contractor further agrees that:

- (a) in each Subcontract into which it enters, it will include provisions that, to the extent permitted by law, effectively exclude the operation of any legislative proportionate liability regime (including Part 4 of the *Civil Liability Act 2002* (NSW)) in relation to all rights, obligations or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
- (b) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of the Services, provisions that, to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of any legislative proportionate liability regime (including Part 4 of the *Civil Liability Act 2002* (NSW)) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

30.17 Warranty regarding solvency

30.17.1 Each party represents and warrants that 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.

30.17.2 The representation and warranty in this clause will be deemed to be repeated by the Contractor and Council on each day from the date of this Agreement until the earlier of:

- (a) the end of the Term; and
- (b) the expiration or earlier termination of this Agreement,

with reference to the facts and circumstances subsisting at that date.

Schedule 1 Agreement Particulars

Item	Clause		Particulars
1.	1.1	Commencement Date	[insert date] or [The date of this Agreement]
2.	1.1, 2.2	Expiry Date	The date that is 3 years after the Services Commencement Date, or as extended under clause 2.2
3.	1.1	Management Systems	<ul style="list-style-type: none"> • Environmental Management System, to ISO14000 series compliance • Quality Assurance System, to ISO9000 series compliance • Workplace Health and Safety Management System • Risk Management System
4.	1.1	Nominated Facility	<p>(A) Receiving Facility</p> <p>In respect of the receipt and acceptance of Clean up Waste delivered by Collection Vehicles: (Receiving Facility) <i>[Note to Tenderers: it may be that this facility is the Clean-up Waste Facility]</i></p> <p>The facility provided by the Contractor, and located at [insert location of Nominated Facility] (further details of the facility are set out in Schedule 7).</p> <p>(B) Processing Facility</p> <p>In respect of the processing of Clean-up Waste excluding Mattresses: (Clean-up Waste Facility)</p> <p>The facility provided by the Contractor, and located at [insert location of Clean-up Waste Facility] (further details of the facility are set out in Schedule 7).</p> <p>In respect of the processing of Mattresses: (Mattress Facility)</p> <p>The facility provided by the Contractor, and located at [insert location of Mattress Facility] (further details of the facility are set out in Schedule 7).</p>
5.	1.1	Services Commencement Date	### 2018

Item	Clause		Particulars
6.	1.1	Services Management Plans	<ul style="list-style-type: none"> Services Management Plan Contract Governance and Compliance Plan <p>(Note: There is no requirement to have a separate plan for each of the above, i.e. they be included in a single plan).</p>
7.	3.1.2	Council's Representative	[insert details]
8.	3.2	Contractor's Representative	[insert details]
9.	14.1	Security	[Note to Tenderers: this will be inserted as an amount calculated by Council equal to twenty per cent (20%) of the estimated cost to Council for the acceptance of its Clean Up Waste in the initial Service Period. This calculation will be based on an estimated delivery in that Service Period of 2,350 tonnes of Clean-up Waste, and 2100 mattresses from Waverley Council, and 1700 tonnes and 1800 mattresses from Woollahra Municipal Council and the Tendered rates and prices.]
10.	16.3	Public and products liability insurance	\$20,000,000 for any one occurrence and unlimited in the annual aggregate
11.	16.4	Workers' compensation insurance	As required by Law
12.	16.5	Plant and equipment insurance	Full market value
13.	16.6.1	Compulsory motor vehicle third party insurance	As required by Law
14.	16.6.2	Motor vehicle third party property insurance	\$20,000,000
15.	28.2	Council's contact details for notices:	Attention: Mail/street address: Fax:
16.	28.2	Contractor's contact details for notices:	Attention: Mail/street address: Fax:
17.	6.1	Recovery Target	[insert]

Schedule 2 Contract Prices

[Note to Tenderers: to be populated from the Schedule of Prices (Response Schedule set out in Volume 4, Schedule C2).]

Part 1 Contract Prices

1. GST

All monetary amounts in this Schedule 2 must be exclusive of GST.

2. Definitions

2.1 In this Schedule 2, defined terms have the same meaning as in clause 1.1 of the Operative Terms, unless otherwise defined below:

2.1.1 **Adjustment Amount** means for each Service Period other than the first Service Period, an amount referred to in clause 6.1 of this Schedule 2 and added to the Clean-up Waste Rate or the Mattress Rate for that Service Period in accordance with clause 3.4 and 4.4 of this Schedule 2;

2.1.2 **Adjustment Date** means the date that is 20 Business Days after the end of each Service Period;

2.1.3 **Clean-up Waste Rate** means the rate specified in clause 3.3 of this Schedule 2, as adjusted in accordance with clause 3.4 of this Schedule 2;

2.1.4 **CPI** means the All Groups Consumer Price Index, Index numbers, quarterly, weighted average of eight capital cities most recently published by the Australian Bureau of Statistics (Cat 6401.0); and

2.1.5 **Mattress Rate** means the rate specified in clause 4.3 of this Schedule 2, as adjusted in accordance with clause 4.4 of this Schedule 2.

3. Clean-up Waste Fee

3.1 The Clean-up Waste Fee must be calculated for each calendar month of the Services Term by Council as follows:

$$\text{CWF} = \text{CWR} \times \text{CWA}$$

3.2 Where:

CWF = Clean-up Waste Fee (\$)

CWR = Clean-up Waste Rate (\$/tonnes)

CWA = the tonnes of Clean-up Waste delivered to the Clean-up Waste Facility in that month, and in respect of which the claim for payment is made under clause 12 of the Operative Terms.

3.3 For the first Service Period the Clean-up Waste Rate is \$##/tonne.

- 3.4 For each subsequent Service Period, the Clean-up Waste Rate is calculated on each Adjustment Date in accordance with the following formula and then rounded to the nearest whole cent:

$$\mathbf{CWR_x = CWR_1 + AA_x}$$

Where:

- CWR_x** = Clean-up Waste Rate for the relevant Service Period
- CWR₁** = Clean-up Waste Rate at the Commencement Date
- AA_x** = the sum of the Waste Levy Adjustment Amount and Other Adjustment Amount calculated for the relevant Service Period for the Clean-up Waste Rate in accordance with clause 6 of this Schedule 2.

4. **Mattress Fee**

- 4.1 The Mattress Fee must be calculated for each calendar month of the Services Term by Council as follows:

$$\mathbf{MF = MR \times MA}$$

- 4.2 Where:

- MF** = Mattress Fee (\$)
- MR** = Mattress Rate (\$/tonnes)
- MA** = number of Mattresses delivered to the Mattress Facility by the Contractor in that month in respect of which the claim for payment is made.

- 4.3 For the first Service Period the Mattress Rate is \$##/tonne.

- 4.4 For each subsequent Service Period, the Mattress Rate is calculated on each Adjustment Date in accordance with the following formula and then rounded to the nearest whole cent:

$$\mathbf{MR_x = MR_1 + AA_x}$$

Where:

- MR_x** = Mattress Rate for the relevant Service Period
- MR₁** = Mattress Rate at the Commencement Date
- AA_x** = the sum of the Waste Levy Adjustment Amount and Other Adjustment Amount calculated for the relevant Service Period for the Mattress Rate in accordance with clause 6 of this Schedule 2.

5. **Unscheduled Opening Fee**

- 5.1 The Unscheduled Opening Fee must be calculated for each calendar month of the Services Term by Council as follows:

$$\mathbf{UOF = UOR \times UOH}$$

5.2 Where:

- UOF** = Unscheduled Opening Fee (\$)
- UOR** = Unscheduled Opening Rate (\$/hour)
- UOH** = the total number of hours that the Receiving Facility was open in that month outside the standard opening hours specified in clause 5.6.1(a) of the Operative Terms, and in respect of which an Unscheduled Opening Request was made under clause 5.6.2 of the Operative Terms.

5.3 For the first Service Period the Unscheduled Opening Rate is \$##/hour.

5.4 For each subsequent Service Period, the of the Unscheduled Opening Rate is calculated on each Adjustment Date in accordance with the following formula and then rounded to the nearest whole cent:

$$\mathbf{UOR_x = UOR_1 + AA_x}$$

Where:

- UOR_x** = Unscheduled Opening Rate for the relevant Service Period
- UOR₁** = Unscheduled Opening Rate at the Commencement Date
- AA_x** = the Other Adjustment Amount calculated for the relevant Service Period for the Unscheduled Opening Rate in accordance with clause 6 of this Schedule 2.

6. Adjustments Amounts

6.1 After the initial Service Period, the following Adjustment Amounts may be added to the Clean-up Waste Rate, Mattress Rate and Unscheduled Opening Rate for each subsequent Service Period in accordance with clause 3.4, 4.4 and 5.4 of this Schedule 2:

6.1.1 'Other Adjustment Amount', calculated in accordance with clause 6.2 of this Schedule 2; and

6.1.2 'Waste Levy Adjustment Amount', calculated in accordance with clause 6.3 of this Schedule 2.

6.2 The Other Adjustment Amount must be calculated for each subsequent Service Period for each of the Clean Up Rate, Mattress Rate and Unscheduled Opening Rate as follows:

$$\mathbf{\text{Other Adjustment Amount} = R_1 \left(\frac{O_x - O_1}{O_1} \right) W_o}$$

Where:

- R₁** = respectively the Clean-up Waste Rate or Mattress Rate or Unscheduled Opening Rate at the Commencement Date
- O_x** = the CPI last published by the Australian Statistician on the Adjustment Date
- O₁** = the CPI last published by the Australian Statistician at the Commencement Date

- W_o = the '**Other Costs Weighting**', being:
- in respect of the Clean-up Waste Rate: ##%; and
 - in respect of the Mattress Rate: ##% [**Note to Tenderers: %s to be inserted from Tender**]
- as adjusted under clause 7 of this Schedule 2; and
- in respect of the Unscheduled Opening Rate: 100%

6.3 The Waste Levy Adjustment Amount must be calculated for each of the Clean-up Waste Rate and Mattress Rate as follows:

$$\text{Waste Levy Adjustment Amount} = R_1 \left(\frac{WL_x - WL_1}{WL_1} \right) W_{WL}$$

Where:

- R_1 = respectively the Clean-up Waste Rate or Mattress Rate at the Commencement Date
- WL_x = the Waste Levy applicable under the *Protection of the Environment Operations Act 1997* (NSW) on the Adjustment Date
- WL_1 = the Waste Levy applicable under the *Protection of the Environment Operations Act 1997* (NSW) at the Commencement Date
- W_{WL} = the '**Waste Levy Weighting**', being:
- in respect of the Clean-up Waste Rate: ##%; and
 - in respect of the Mattress Rate: ##%,
- as adjusted under clause 7 of this Schedule 2.

7. Changes to Weightings

7.1 Either or both of the Other Costs Weighting and Waste Levy Weighting referred to in clause 6.2 and 6.3 of this Schedule 2 respectively (**Weightings**) may be changed if:

- 7.1.1 at any time prior to an Adjustment Date, the Contractor issues a written notice to the Council's Representative (**Weightings Notice**) that:
- (a) requests that the Weightings be changed;
 - (b) states the requested adjustments to the Weightings; and
 - (c) includes all evidence on an open book basis reasonably necessary to fully substantiate and justify each change to the Weightings;
- 7.1.2 within 15 Business Days after the Council Representative's receipt of the Weightings Notice the Council Representative has made a reasonable request for further evidence to be provided by the Contractor to justify and substantiate any adjustment to the Weightings, such additional evidence has been provided to Council's reasonable satisfaction; and

- 7.1.3 a Dispute notice has not been issued by Council under clause 29 to dispute any aspect of the Weightings Notice, within 20 Business Days after Council's receipt of the Weightings Notice.

Schedule 3 Performance Management System

1. If the Contractor fails to meet the requirements of any of the Key Performance Indicators that are listed at items 2.1.1 to 2.1.6 inclusive in this Schedule, then Council may in accordance with clause 12.8:

- 1.1.1 reduce the Fees that are otherwise payable by Council to the Contractor under clause 12; or
- 1.1.2 increase the amounts that are otherwise payable by the Contractor to the Council under clause 12,

by the amounts as set out below.

2. If:

- 2.1.1 **(compliance to management plan)** the Contractor fails to comply with the Management Systems and or Management Plans (clause 7.1 and clause 7.2):

Amount of reduction in Fee:

- (a) if there are 5 or more breaches of the Key Performance Indicator in a month, \$2,000 for each such breach in that month; and
- (b) if there are 20 or more breaches of the Key Performance Indicator in a Service Period, \$2,000 for each such breach in that Service Period.

- 2.1.2 **(opening of Nominated Facility)** a Nominated Facility is not open for the acceptance of Clean-up Waste during the hours that it is required to be open under this Agreement:

Amount of reduction in Fee:

- (a) if there are 3 or more breaches of the Key Performance Indicator in a month, \$2,000 for each such breach in that month; and
- (b) if there are 20 or more breaches of the Key Performance Indicator in a Service Period, \$2,000 for each such breach in that Service Period.

- 2.1.3 **(Processing methodology)** the Contractor fails to Process Clean-up Waste in accordance with the methodology required by this Agreement:

Amount of reduction in Fee:

- (a) if there are 5 or more breaches of the Key Performance Indicator in a month, \$2,000 for each such breach in that month; and
- (b) if there are 20 or more breaches of the Key Performance Indicator in a Service Period, \$2,000 for each such breach in that Service Period.

- 2.1.4 **(Turn-around time)** the total time from the arrival by a Collection Vehicle at the entry gate to a Nominated Facility until the exit by the Collection Vehicle from a Nominated Facility (**Turn-around Time**) is no more than 10 minutes. For this purpose, a Collection Vehicle is taken to arrive at the entry gate to a Nominated Facility if it is queued to get to the entry gate, and the Turn-around Time includes the time that the Collection Vehicle is in that queue (clause 4.8 of the Services Specification):

Amount of reduction in Fee:

- (a) if there are 5 or more breaches of the Key Performance Indicator in a month, \$1,000 for each such breach in that month; and
- (b) if there are 20 or more breaches of the Key Performance Indicator in a Service Period, \$1,000 for each such breach in that Service Period.

2.1.5 **(Recovery Target)** the Contractor fails to achieve the Recovery Target:

Amount of reduction in Fee:

- (a) if there is a failure of the Key Performance Indicator in a month, \$1,000 for that month; and
- (b) if there is a failure of the Key Performance Indicator in a Service Period, \$1,000 for that Service Period.

2.1.6 **(failing to supply any information required under this Agreement)** fails to supply any information or provide a report required to be supplied to Council or the Council's Representative under this Agreement within the required time period specified in this Agreement:

Amount of reduction in Fee:

- (a) if there are 5 or more breaches of the Key Performance Indicator in a month, \$2,000 for each such breach in that month; and
- (b) if there are 20 or more breaches of the Key Performance Indicator in a Service Period, \$2,000 for each such breach in that Service Period.

Schedule 4 Form of Confidentiality Undertaking

Confidentiality undertaking

Dated:

By

Recipient: [Insert name of applicable Contractor's Staff]

Of: [C/o [Contractor] of [Insert address]]

BACKGROUND

- A. Under an agreement [Insert description, date, number etc.] (**Agreement**) made between [Waverley/Woollahra Municipal] Council (**Council**) and [Contractor name] (**Contractor**) the Contractor agreed to cause the Recipient to enter into this Undertaking.
- B. In consideration of Council entering into the Agreement with the Contractor, the Recipient agrees to the terms of this Confidentiality Undertaking for the benefit of Council and its successors and assigns.

NOW THIS DEED WITNESSES

- 1 The expressions used in this Undertaking have the same meaning as those used in the Agreement.
- 2 **Confidential Information** means all information about the Agreement, the Services or Council or otherwise provided by or on behalf of Council under or in relation to the Agreement.
- 3 The Recipient covenants and agrees to take all action necessary to maintain the confidential nature of the Confidential Information.
- 4 The Recipient covenants and agrees not to:
- (a) disclose any of the Confidential Information to any person without Council's prior written consent;
 - (b) use or reproduce any of the Confidential Information for any purpose other than for the performance of Services to Council under the Agreement;
 - (c) use any of the Confidential Information:
 - (i) in a manner which might prejudice the business of Council or otherwise cause loss or damage to Council; or
 - (ii) for the purpose of providing a competitive advantage to the Contractor or a third party.
- 5 The Recipient acknowledges that damages are not a sufficient remedy for any breach of this Undertaking and that Council is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Recipient in addition to any other remedies available to Council at law, in equity or under statute concerning the Contractor under the Agreement.

- 6 The Recipient covenants and agrees to deliver to Council all documents and other materials (including copy documents) in any medium in the Recipient's possession, power or control which contain or refer to any of the Confidential Information (whether or not those documents and other materials were created by the parties) on the earlier of:
- (a) demand by Council; and
 - (b) the time the documents and other materials are no longer required for the performance of Services to Council under the Agreement.

SIGNED by the **Recipient** as a deed

Signature of Recipient

Signature of witness

Name of witness (print)

Schedule 5 Services Specification

[Note to Tenderers: this Schedule will comprise Volume 3 of the Tender Documents]

Schedule 6 Approved form of security

Approved form of Security

At the request of

ACN ABN..... (the *Contractor*) and in consideration of
[Waverley/Woolahra Municipal] Council (the *Council*) accepting this undertaking in respect of the *Processing and disposal services for general solid waste (non-putrescible) Agreement (the Agreement)*

ACN ABN (the *Financial Institution*) unconditionally
undertakes to pay on demand any sum or sums which may from time to time be demanded by the Council to a maximum aggregate sum of
..... (\$)

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

Should the *Financial Institution* be notified in writing, purporting to be signed by
..... for and on behalf of the *Council* that the *Council* 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 *Council* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required to do so pay to the *Council* 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 *Council* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at this day of 20

Schedule 7 Facilities

[Note to Tenderers: this Schedule will be populated with the facility information submitted as part of response to Response Schedule T4, Volume 5]

Schedule 8 Transition of existing workforce, plant, equipment and property

[Note to Tenderers: this Schedule will only be used if commitments are made by a Tenderer in response to Response Schedule T11]

EXECUTED as an agreement.

SIGNED for [insert], by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

EXECUTED by []
(ABN []), in accordance
with section 127(1) of the *Corporations Act*
2001 (Cth):

Signature of director

Signature of director/company secretary

Name

Name

Attachment 1 Disclosed Information

[Note to Tenderers: this Attachment will list by reference the documents that are expressly provided as Disclosed Information.]



Volume 3 – Specification

Tender Title	Processing and disposal services for general solid waste (non-putrescible)
Tender Number:	A17/0666
Issue Date:	Friday 2 March, 2018

This Volume contains the draft specification and scope of works required by this Tender. Proponents are to read and fully understand Council's requirements and propose a response that fully satisfies the detailed requirements

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1. Definitions and Interpretation

In this Specification, except where the context requires otherwise:

Approved notice means a notice, in a form approved by the EPA:

- (a) stating that the place to which the notice relates can lawfully be used as a waste facility for the waste specified in the notice; and
- (b) that contains a certification by the owner or occupier of the place that the statement is correct.

Clean-up Waste Collection Services means means the collection of Clean-up Waste by or on behalf of Council.

Hazardous Waste means a contaminant that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of –

- (a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability; or
- (b) its physical, chemical or infectious characteristics.

References to terms not defined by this clause 1 but which are defined in clause 1 of the Services Agreement have the same meanings as ascribed to those terms in clause 1 of the Services Agreement.

A reference in the Services Specification to a clause is, unless expressly stated otherwise, a reference to a clause in the Services Specification, except that where the reference is to a clause in the Operative Terms then the reference is to a clause in the Operative Terms and not to a clause in the Services Specification.

2. Scope of Works

2.1 General

The Services must:

- 2.1.1 be conducted in a cost effective manner;
- 2.1.2 be based on “best practice” principles; and
- 2.1.3 fulfil the Council’s obligations under relevant legislation relating to provision of waste and resource recovery services.

2.2 Management

- 2.2.1 From the Commencement Date, Council and the Contractor must meet at least once per quarter at a location determined by the Council’s Representative.
- 2.2.2 The Contractor must attend any additional meetings called by Council during the Term.

3. General Requirements of the Contract

3.1 Safety

In compliance with AS/NZS 4801 Occupational Health and Safety Management Systems, the Contractor must have in place at all times during the Services Term a documented Work Health and Safety Management System (**WHSMS**) that complies with that standard.

4. Detailed Technical Specifications

4.1 Commitment to Receive and Accept

The Contractor must:

- 4.1.1 accept Clean-up Waste at the Receival Facility;
- 4.1.2 at all times during the Services Term have sufficient capacity to:
 - (a) receive Clean-up Waste delivered to the Receival Facility; and
 - (b) Process Clean-up Waste delivered to the Receival Facility at the Processing Facility;
- 4.1.3 not refuse entry to any Collection Vehicle at the Receival Facility during the hours that the Receival Facility is required to be open under this Agreement to accept Clean-up Waste;
- 4.1.4 provide to the Collection Vehicle uninterrupted access at the approach and entry to the Receival Facility;
- 4.1.5 receive the Collection Vehicle into the Receival Facility during the Operating Hours;
- 4.1.6 supervise, as necessary, the unloading of the Collection Vehicle and the direction of the Collection Vehicle to the exit of the Receival Facility;
- 4.1.7 accept ownership, and all risks associated with the acceptance, of the Clean-up Waste, when the Clean-up Waste is unloaded from the Collection Vehicle at the Receival Facility; and
- 4.1.8 operate an efficient and rapid delivery of Services in accordance with the Agreement.

4.2 Variations In Clean-up Waste

- 4.2.1 The Councils give no guarantee, and makes no warranty or representation, as to the amount of Clean-up Waste that will be delivered to the Receival Facility during the Services Term.
- 4.2.2 During the Services Term, the amount of Clean-up Waste delivered to the Receival Facility may vary, for example as a result of:
 - (a) fluctuations in the quantity and/or composition of the Clean-up Waste attributed to changes in waste generation or consumption patterns, operational requirements, seasons, population, and Council boundaries; or

- (b) fluctuations in the quantity and/or composition of the Clean-up Waste attributed to waste minimisation, resource recovery and reuse initiatives introduced by the Council through source separation, streamed collection and/or drop-off services.

4.3 Future collection services

The Councils give no guarantee, and makes no warranty or representation, that the Characteristics of the Clean-up Waste will remain the same throughout the Term. For example, changes to the Characteristics of the Clean-up Waste may occur as a result of:

- 4.3.1 changes to the scheduling of Council's Clean-up Waste collection services;
- 4.3.2 changes to the policies and procedures associated with Council's Clean-up Waste collection services; and
- 4.3.3 implementation of alternative and additional Clean-up Waste collection services to maximise material recovery.

4.4 Commitment to perform

The Contractor must maintain and update, on a regular basis, all information it provides under this Agreement to ensure that the Services are performed in accordance with this Agreement during the Term.

4.5 Approval Notice

On the Commencement Date the Contractor must provide to Council an approved notice (as that term is defined in section 143(d) of the *Protection of the Environment Operations Act 1997*) in respect of the Receiving Facility.

4.6 Receiving Facility environmental performance

The Contractor must manage the level of the Services throughout the Term to meet the 'best practice' standards and comply with:

- 4.6.1 emission prevention, odour and dust control, noise mitigation, litter control and all other environmental standards set by the NSW EPA or equivalent body;
- 4.6.2 industrial water quality standards established by Sydney Water or equivalent body; and
- 4.6.3 Australian Standards, or equivalent, level of environmental standards for the Services.

4.7 Vehicular access and Turnaround Times

- 4.7.1 The Contractor must ensure that the Receiving Facility is designed and maintained to:
 - (a) ensure all Collection Vehicles can drive to the nominated receiving point, at which the vehicle is to discharge its load and leave the facility in an uninterrupted movement;
 - (b) allow Collection Vehicles to enter and exit the property in a forward direction and have adequate vehicle clearance; and

- (c) ensure all access roads and driveways within the Receiving Facility comply with the appropriate Building Codes of Australia and Australian Standards.

- 4.7.2 The Contractor must provide directions and instructions to the drivers of any Collection Vehicle delivering Clean-up Waste regarding the traffic flow arrangements and placement of Clean-up Waste at the Receiving Facility.
- 4.7.3 The Contractor must ensure that the total time from the arrival by a Collection Vehicle at the entry gate to a Nominated Facility until the exit by the Collection Vehicle from a Nominated Facility (**Turn-around Time**) is no more than 10 minutes.

4.8 Scheduled Down Time

During any scheduled down time of the Receiving Facility, the Contractor must comply with the arrangements for the acceptance and storage of delivered material during scheduled down time specified.

4.9 Plant

Without limiting clause 5.5 of the Operative Terms, the Contractor must ensure that all plant and equipment is maintained in good operating condition and satisfies the requirements of SafeWork NSW or equivalent body.

4.10 Provision and maintenance of Weighbridge

The Contractor must:

- 4.10.1 ensure that there is a weighbridge at each Nominated Facility;
- 4.10.2 ensure that each weighbridge is in good order at all times during the Services Term;
- 4.10.3 arrange for the accuracy of the weighbridge to be independently tested and certified:
 - (a) every six months; and
 - (b) when directed by the Council’s Representative;
- 4.10.4 maintain records of the tests undertaken and the certifications issued and provide copies of them to the Council’s Representative upon request; and
- 4.10.5 comply in all respects with the *Trade Measurement Act, 1989* and the *Trade Measurement Regulation, 2002*.

4.11 Standards and Guidelines

During the Term the Contractor must comply with all relevant sections of the following standards:

Table 6-1: Standards

AS/NZ 4801	AS/NZS 4801 Occupational Health and Safety Management Systems
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5. Management Systems and Services Management Plans

5.1 Management Systems

5.1.1 Quality Assurance System

- (a) The Contractor must prepare a quality assurance system to ISO9000 series compliance and submit it to Council for Endorsement by Council at least one (1) month prior to the Services Commencement Date.
- (b) The Contractor must perform the Services in accordance with the Endorsed Quality Management Plan, which the Contractor must review and update on an annual basis. The updated plan under this clause must be Endorsed and finalised within one (1) month of each anniversary of the Contract Commencement Date.
- (c) The Quality Management Plan must identify all critical quality aspects of the Services and establish procedures for meeting the Contractor's obligations in respect of the critical quality factors, which must include at least the following:
 - (i) procedures for the management of Clean-up Waste;
 - (ii) training of staff to minimise risks to the health and safety of persons and damage to Collection Vehicles or property;
 - (iii) procedures for identification of and management of pollution incidents. This must include methodology for identifying the cause and responsible people, associated reporting and record keeping;
 - (iv) procedures for continuous improvement to the Service;
 - (v) procedures for the management of Clean-up Waste during and after natural disasters;
 - (vi) procedure for undertaking and reporting self audits on performance and contractual compliance; and
 - (vii) procedures for dealing with complaints.
- (d) Non-compliance with the Endorsed Quality Management Plan will constitute a breach by the Contractor of this Contract and may result in non-performance deductions.

5.1.2 Environmental Management System

- (a) The Environmental Management System (**EMS**) required to be prepared and submitted to Council under clause 7.3 of the Operative Terms must:
 - (i) be consistent with this Agreement;
 - (ii) be consistent with ISO 14001;
 - (iii) have as an objective, compliance with applicable Environmental Laws, such as the *Protection of the Environment Operations Act 1997* (NSW); and

- (iv) complies with the requirements in clause 5.1.2(c).
- (b) Each Nominated Facility must have in place an operating plan and a closure plan approved by any relevant Authority, and the Contractor must comply with those plans.
- (c) The EMS must include:
 - (i) the Contractor's environmental policy and objectives;
 - (ii) a list of all permits and licenses, including processes for how these permits and licences must be adhered to and monitored;
 - (iii) copies of all licences and permits;
 - (iv) the Contractor's organisational structure and responsibilities with regards to environmental management;
 - (v) the Contractor's environmental and training and induction programme;
 - (vi) the Contractor's consultation procedures;
 - (vii) the Contractor's auditing and inspection procedures;
 - (viii) identification of environmental risks arising from performance of the Service;
 - (ix) strategies/procedures for addressing, managing, minimising and controlling these risks (whether caused by Hazardous Waste or not), including, but not limited to, stormwater, litter, water pollution, discharges to the sewer, chemical spillages, soil contamination, preservation of habitat and biodiversity, air pollution, waste minimisation, noise, odour, dangerous goods;
 - (x) strategies for environmental improvement; and
 - (xi) the Contractor's environmental monitoring and reporting programme.
- (d) The EMS must cover any incident or activity that Council may direct. At the very least it must cover each of the following:
 - (i) oil leak;
 - (ii) fuel leak;
 - (iii) material falling out of Collection Vehicles at the Receiving Facility;
 - (iv) Hazardous Waste found in the Clean-up Waste;
 - (v) Contamination (of land);
 - (vi) fire on the Collection Vehicle at the Receiving Facility.
- (e) The Contractor must comply with the EMS and eliminate, or if impossible, minimise and contain the effect of any incident, including without limitation, disposing, at Contractor's cost, of any Hazardous Waste in an appropriate manner.

5.1.3 Workplace Health and Safety and Risk Management System

The Work Health and Safety Management System (**WHSMS**) must be consistent with AS/NZS 4801 Occupational Health and Safety Management Systems.

5.2 Services Management Plans

5.2.1 Contract Governance and Compliance Plan

- (a) The Contractor must include in its Services Management Plan a contract-specific governance and compliance plan for ensuring compliance with all aspects of this Agreement and Specification, including systems for ensuring that:
 - (i) all relevant Contractor's personnel are trained in their obligations under the contract;
 - (ii) any notification or report required to be made to Council is made within the required time and in compliance with the content requirements for that notification or report, including for digital systems;
 - (iii) all meetings required are conducted at the appropriate time and attended by the Contractor's personnel required to be at that meeting;
 - (iv) communications protocols are established and followed for all operating and administration functions;
 - (v) all required Approvals are maintained;
 - (vi) the data necessary for the measurement of all Key Performance Indicators is accurately recorded and reported to Council; and
 - (vii) all other data required to be measured and/or reported, including data required by statutory authorities, is accurately recorded and reported as required to Council.

6. Reporting Requirements

6.1 Records

The Contractor must maintain records of:

- 6.1.1 all complaints concerning the Contractor or a Nominated Facility by regulatory authorities, Council and adjoining neighbours and the actions taken to rectify them;
- 6.1.2 the results of any investigations made into complaints;
- 6.1.3 any accidents or other incidents where a possibility of injury to persons or property damage arose;
- 6.1.4 any breach of this Agreement by the Contractor;

- 6.1.5 detailed information on all Clean-up Waste received at the Receiving Facility including the weight of all loads received each day and the registration number for the Collection Vehicle which delivered each load;
- 6.1.6 summary information on all Clean-up Waste processed, including the total weight of all loads received at the Clean-up Waste Facility and Mattress Facility in each month;
- 6.1.7 summary information on all Product recovered from the Clean-up Waste Facility, including the total weight of all material recovered each month;
- 6.1.8 detailed information on all Residue, arising from the receipt, sorting, processing, and recovery for reuse/recycling of Clean-up Waste, including:
 - (a) all receipts from disposal facilities, including details of any State Government levies paid by the Contractor (including the Waste Levy); and
 - (b) all weighbridge dockets from disposal facilities;
 - (c) implementation of the Services Management Plans and Management Systems; and
 - (d) any other information reasonably requested by the Council and Council's Representative.

6.2 Reports

The Contractor must

- 6.2.1 before the Commencement Date establish a system whereby the following information on Clean-up Waste is transmitted to the Council's Representative in the form of a monthly report:
 - (a) date of receipt of Clean-up Waste at the Receiving Facility;
 - (b) time in and time out for each Collection Vehicle at the Receiving Facility;
 - (c) registration mark of each Collection Vehicle at the Receiving Facility;
 - (d) mass tare and gross net weight of each Collection Vehicle at the Receiving Facility;
 - (e) category;
 - (f) waste code;
 - (g) the weight of Clean-up Waste delivered to each Nominated Facility;
 - (h) the weight of Clean-up Waste (excluding Mattresses) delivered to the Clean-up Waste Facility;
 - (i) percentage of Clean-up Waste diverted to landfill;
 - (j) the weight of Clean-up Waste sent to landfill;
 - (k) number of Mattresses received at the Receiving Facility;

- (l) number of Mattresses sent to landfill;
 - (m) the information required to be included in a monthly report in the Operative Terms, including in clause 12.8.2 and 6.2.5 of the Operative Terms; and
 - (n) name and location details of the disposal facility(s) where any Clean-up Waste was sent to landfill;
- 6.2.2 within ten (10) Business Days of the end of each month, deliver a monthly report to each Council, in a format approved by the Council's Representative, including the information specified in clause 6.2.1;
- 6.2.3 if directed by the Council's Representative, provide some or all of the data contained in the report to the Council's Representative by email or other suitable electronic means in a spreadsheet or database package nominated by the Council's Representative; and
- 6.2.4 make records available on demand for inspection by the Council's Representative or a person nominated by the Council's Representative. If directed by the Council's Representative, the Contractor must prepare a report on any issue arising from the records within any period specified by the Council's Representative.

6.3 Weighbridge Records

- 6.3.1 The Contractor must ensure that all Clean-up Waste delivered to the Receiving Facility is weighed at the weighbridge at the Receiving Facility.
- 6.3.2 The Contractor must provide to the driver of each Collection Vehicle a weighbridge docket for each load of Clean-up Waste brought to the Receiving Facility immediately after the Clean-up Waste is weighed. If Clean-up Waste is delivered to the Receiving Facility in separate streams in the same Collection Vehicle, the Contractor must provide the driver of the Collection Vehicle with a separate weighbridge docket for each stream of waste immediately after each stream of Clean-up Waste is weighed. Each weighbridge docket issued by the Contractor must record the time at which it was issued.
- 6.3.3 If Clean-up Waste is transported by the Contractor to a Nominated Facility, the Contractor must provide to Council a copy of a weighbridge docket for each load of Clean-up Waste brought to the Nominated Facility in the next monthly report.
- 6.3.4 The Contractor must maintain records of the origin of the Clean-up Waste, the Collection Vehicle registration mark, the net weight, the type of Clean-up Waste and time of entry and exit at the weighbridge. If more than one (1) stream of Clean-up Waste is unloaded from one (1) Collection Vehicle, the Contractor must record these details for each stream of Clean-up Waste.
- 6.3.5 The Contractor must deliver the weighbridge dockets or copies thereof for all of the loads of Clean-up Waste received each month to the Council's Representative with reports that the Contractor is required to provide under this Agreement.
- 6.3.6 The Contractor must make available all pertinent records for the purpose of carrying out a waste audit by the Councils upon request.

All of the above information must be provided to the Council's Representative in accordance with this Agreement. The Contractor must keep the weighbridge data up to date and ensure that all records are accurate, with all necessary additions and amendments being made, to provide a true and correct record.



Volume 4 – Commercial Response Schedules

Tender Title	Processing and disposal services for general solid waste (non-putrescible)
Tender Number:	A17/0666
Issue Date:	Friday 2 March, 2018

This Volume contains the Commercial Response Schedules to be completed and returned to Council as part of the Tenderer's Tender

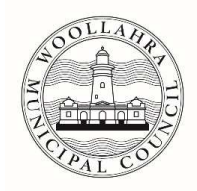


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Tenderers to Note

Format of Tender Response

The Tenderer is to complete the Response Schedules as indicated and shall retain the same format as provided by the Councils.

Tenderers are to input information in response to questions in the areas identified.

The Councils reserve the right to deem responses non-compliant, pass them over and exclude from further evaluation any responses that deviate from the format and contents requirements of the Response Schedules contained in this Volume.

Any attachments that are requested or are required to complete a response to any of the criterion contained within the following Schedules must be clearly identified on top of the attachment with the Tender number, the Tenderer's name and the Schedule and criterion number to which it relates.

Attachments requested as part of this Response Schedule are to be labelled as per the directions above and are to be part of the relevant file (either Commercial or Non-commercial file).

Notes Regarding Responding to this Tender

Before responding to the following compliance criteria, Respondents must note the following:

- all information relevant to your answers to each criterion are to be contained within your Tender;
- Tenderers are to assume that the Evaluation Panel has no previous knowledge of your organisation, its activities or experience, only information supplied will be assessed;
- Tenderers are to provide full details for any claims, statements or examples used to address the qualitative criteria; and
- Tenderers are to address each issue outlined within a qualitative criterion.

A Tender that does not satisfy criterion identified as Mandatory Criteria may be excluded from further participation in the evaluation process.

Please also note, no advertising, product or company information or marketing brochures or presentations other than those expressly requested, are to be sent with the Tender submission. If required the Tender Evaluation Committee will request these materials separately.

For Tenderers - Guidance Notes have been provided in this document where appropriate to assist Tenderers to complete the Schedules. Guidance Notes can be identified by their Red font. Ensure all Guidance Notes, including this one, are deleted prior to submitting your response.



1. Tender Form

Please note that if the Tenderer comprises more than one entity (not including subcontractors and consultants to be engaged by the Tenderer for the Services), this Deed Poll must be executed by each such entity.

DATE:

THIS DEED POLL IS GIVEN BY:

.....ACN.....of.....
(Tenderer)

FOR THE BENEFIT OF:

Waverley Council ABN 12 502 583 608 and Woollahra Municipal Council ABN 32 218 483 245 (together, Council)

1. Background

The Tender which accompanies this Deed Poll is submitted to the Council in response to the Request for Tender A17/0666 – *Processing and disposal services for general solid waste (non-putrescible)* issued by Council dated 2 March, 2018 in relation to the Services (RFT).

2. Interpretation

Terms used in this Deed Poll, where those terms are defined in the RFT, have the same meaning as set out in the RFT.

3. Addenda

The Tenderer acknowledges that it has received all of the Addenda issued by Council and detailed in the table below (Tenderer to complete) and that it has had regard to those Addenda in preparing its Tender:

Addendum Number	Subject

Notwithstanding any failure by the Tenderer to list any Addenda in the above table, the Tenderer is deemed to have received and made itself aware of, and is bound by, all Addenda issued in accordance with the RFT.

4. Tenderer’s Undertakings

In submitting its Tender, the Tenderer:

- (a) expressly repeats, ratifies and confirms the warranties, acknowledgements, representations, agreements, acceptances, releases and indemnities set out in the RFT;
- (b) acknowledges and agrees to be bound by the terms and conditions set out in the RFT, including without limitation in connection with the Disclosed Information;
- (c) confirms that it has complied with, that its Tender complies with, and that its Tender is submitted in accordance with, the RFT;

- (d) warrants that no conflict of interest exists or is likely to arise in connection with the subject matter of the Tender, or the participation of the Tenderer or the Tenderer's Associates in the Tender Process other than those specified in the Tenderer's submitted Statement of Conflict of Interests and Fair Dealings (Schedule C6);
- (e) agrees that Council may use the information in the Tender in accordance with the RFT;
- (f) releases the Council and any Council's Associate absolutely from any liability, obligation or duty to the Tenderer whatsoever in respect of, or in connection with, the RFT, the Tender Process, a Tender by the Tenderer or a Tender by another tenderer, including the evaluation, acceptance or rejection, or negotiation of a Tender;
- (g) confirms its acceptance of the terms and conditions set out in the draft Agreement and draft Services Specification, except as set out in the Tenderer's completed Schedule of Departures (Schedule C5);
- (h) agrees that if Council notifies the Tenderer that its Tender has been accepted, the Tenderer will execute the Agreement within five Business Days of its receipt of that notice;
- (i) certifies that all details submitted in this Tender are correct and agrees to abide by the terms of the RFT.
- (j) consents to and authorises the Council and each Council's Associate to:
 - (i) undertake probity and security credit checks referred to in the RFT; and
 - (ii) seek any financial information required for the purpose of establishing the financial viability of the Tenderer; and
- (k) agrees to provide, at the Tenderer's expense, reasonable assistance to Council to assist Council in any checking Council wishes to have undertaken under or in respect of the RFT; and
- (l) warrants that:
 - (i) it is solvent, there is no unfulfilled or unsatisfied judgment or court order outstanding against it or its related entities, and that it has the capability and capacity to carry out the Services; and
 - (ii) that it is not aware of any circumstances that it (acting reasonably) expects will render the warranty in subparagraph (i) untrue in the 6 months following the date of this Deed Poll.

5. Indemnity

In the event of a breach by the Tenderer or any of the Tenderer's Associates of the warranties, representations and agreements given in the Conditions of Tendering or this Deed Poll, the Tenderer agrees to indemnify and keep indemnified Council and Council's Associates in respect of any loss, damage, expense, suit, proceeding, liability or cost which Council or a Council's Associate may suffer or incur in connection with such a breach.

This Deed Poll is governed by the laws in force in New South Wales.

EXECUTED as a deed poll.

Executed by **## ACN ##** in accordance with s 127(1) of the)
Corporations Act 2001:)

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name



2. Schedule C1 – Tenderer Details

2.1 Tenderers Details

Tenderers Details			
Business Name	<Enter Text>		
Trading As	<Enter Text>		
Date Established	<Enter Text>		
Business Type	<Enter Text> <i>Note – if trading as a trust, a copy of the Trust Deed must be attached and provided in the response (please delete this note prior to submission)</i>		
ABN	<Enter Text>	ACN	<Enter Text>
Registered Address	<Enter Text>		
Postal Address	<Enter Text>		
Telephone Number	<Enter Text>	Facsimile Number	<Enter Text>
General Email Address	<Enter Text>	Website Address	<Enter Text>
Address of Office Responding	<Enter Text>		
Postal Address	<Enter Text>		
Telephone Number	<Enter Text>	Facsimile Number	<Enter Text>
Contact Person Name	<Enter Text>		
Position in Company	<Enter Text>		
Telephone Number	<Enter Text>	Mobile Phone Number	<Enter Text>
Email Address	<Enter Text>		

2.2 Contractor Representative

Please provide the details of the proposed Contractor Representative to be responsible for managing the agreement.

Response – Contractor Representative Details	
Name	<Enter Text>
Position	<Enter Text>
Phone Number	<Enter Text>
Mobile Phone Number	<Enter Text>
Email Address	<Enter Text>
Comments	<Enter Text> <i>Note – any comments input here will not form part of any assessment of the Tender (please delete this note prior to submission)</i>

2.3 Ownership

If your organisation is a company, provide details on your ownership, including the ownership of parent/holding companies and subsidiaries. State whether these companies are Australian based. Name each shareholder holding 20% or more of your issued share capital, paid-up capital and other relevant details. Alternatively, if your organisation is a partnership, provide a list of partners and details of the partnership financial arrangements. Each party to the consortium is to respond to this question.

Response – Ownership Details
<i>Insert response here (please delete this note prior to submission)</i>
<Enter Text>

2.4 Overview and History

Provide a brief overview and history of your company (2-3 paragraphs). Include the number of years you have been in business in the form in which you are presently constituted.

Response – Overview and History
<i>Insert response here (please delete this note prior to submission)</i>
<Enter Text>

2.5 Compliance with Acts and Regulations

The Tenderer warrants that it has NOT, within 5 (five) years prior to submitting the Tender, been found to have breached any Act or Regulation in the table listed below. If you have NOT breached the act, answer “No”.

The list below includes without limitation the following Acts. Has the Tenderer breached the:

Regulation or Act	Breached – Yes/No	Details
-------------------	----------------------	---------

Fair Work Act 2009 (Cth)	<Enter Text Here or 'N/A'>
Industrial Relations Act 1996 (NSW)	<Enter Text Here or 'N/A'>
Work Health & Safety Act 2011 (NSW)	<Enter Text Here or 'N/A'>
Workplace Injury Management & Workers Compensation Act 1998 (NSW)	<Enter Text Here or 'N/A'>
Privacy Act 1988 (Cth)	<Enter Text Here or 'N/A'>
Disability Discrimination Act 1992 (Cth)	<Enter Text Here or 'N/A'>
Fair Trading Act 1987 (NSW)	<Enter Text Here or 'N/A'>
Racial Discrimination Act 1975 (Cth)	<Enter Text Here or 'N/A'>
Sex Discrimination Act 1984 (Cth)	<Enter Text Here or 'N/A'>
Age Discrimination Act 2004 (Cth)	<Enter Text Here or 'N/A'>
Anti-Discrimination Act 1977 (NSW)	<Enter Text Here or 'N/A'>
Protection of the Environment Operations Act 1997 (NSW)	<Enter Text Here or 'N/A'>

If you answered Yes to any of the above, please provide details.



3. Schedule C2 – Schedule of Prices

The Councils require pricing to be based on a schedule of rates.

Tenderers are advised that the Service description column is not to be amended. There is provision to specify any other rates in the cells 'Any other Rates'.

The Councils expects that each cell is filled in in order to submit a conforming Schedule of Prices.

Please Refer to Attachment 1 – Returnable Schedule of Rates to these Response Schedules.

In addition to completing Attachment 1, Tenderers must nominate in the following table, the proportion of each of the Clean-up Waste Rate and Mattress Waste that will be subject to adjustment under Schedule 2 of the Agreement in respect of CPI or changes to the Waste Levy:

Rate	Proportion of unit rate price subject to adjustment by CPI (%)	Proportion of unit rate price subject to adjustment by change to Waste Levy (%)
Clean-up Waste Rate (\$/tonne)		
Mattress Rate (\$/mattress)		



4. Schedule C3 – Schedule of Financial Assessment Information

Provide documents and information listed below -

1. Financial Statements for last 3 (three) years for the entity under consideration, including:
 - i. Statement of Financial Position (Balance Sheet);
 - ii. Income Statement (Profit and Loss);
 - iii. detailed Income and Expenditure Statement (detailed Profit and Loss);
 - iv. Statement of Cash Flows (if forming part of the Financial Statements);
 - v. notes to the Financial Statements;
 - vi. an independent Auditors Report, where forming part of the Financial Statements;
 - vii. an Accountant's Report where vi) was not prepared.

Consolidated accounts of a parent organisation or group to which the entity belongs are not acceptable.



5. Schedule C4 – Schedule of Insurance Certificates

The table below details the Insurance requirements as determined by the Councils to be required for this contract.

The levels of cover detailed are the minimum acceptable levels of cover for this Agreement and will be required to be maintained for the entirety of the Agreement (any insurance requirements that will need to extend beyond the completion of the Agreement will be noted individually)

Please provide detail of insurance coverage as required in the table below against each of the insurance requirements detailed.

Additionally, the Tenderer shall submit as an attachment with its response, certificates of Currency for the Insurances detailed in the table below

Insurance Type	Insurance Amount Required	Name of Insurer	Insured Amount	Policy Number	Policy Expiration	Copy of Certificate of Currency Attached?
Public and products liability	\$20,000,000 for any one occurrence and unlimited in the annual aggregate					
Workers Compensation	As required by law					
Plant and equipment insurance	Full market value					
Compulsory motor vehicle third party insurance	As required by Law					
Motor vehicle third party property insurance	\$20,000,000					



6. Schedule C5 – Schedule of Departures

The Tenderer is required to identify each and every qualification, departure, omission, assumption or deviation proposed by the Tenderer to any part of the RFT or the draft Agreement or Services Specification.

Any departures from the draft Agreement or Services Specification must also be included as a 'tracked' change in an electronic copy of the Agreement and Services Specification attached to this Response Schedule.

The qualifications, departures, omissions, assumptions or deviations set out in this Response Schedule (if any) will be deemed to be the only contractual qualifications or amendments sought by the Tenderer. Except where Council agrees otherwise, only those matters included in this Response Schedule will be admitted for consideration and clarification during the evaluation process and any negotiation period.

Compliance with Tender Requirements

A. The Tenderer is aware that the absence of any qualification, departure, omission, assumption or deviation or any other variation identified in this Response Schedule will mean that the Tenderer accepts and makes its offer in accordance with all of the clauses, conditions and requirements of the RFT and the draft Agreement and draft Services Specification.	[]
---	-----

B. The Tenderer accepts and makes this offer in accordance with all clauses, conditions and requirements of the RFT and the Services apart from the qualifications, departures, omissions, assumptions or deviations noted below (if this box is ticked, the Tenderer must complete the table below)	[]
---	-----



Table of Departures, Clarifications and Assumptions

Reference No.	Item Type	Volume	Clause	Full details of the requested of qualification, departure, omission or deviation	Reason for qualification, departure, omission or deviation
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

Note to Tenderers – add additional rows as required



7. Schedule C6 – Statement of Conflict of Interests and Fair Dealings

Conflicts of Interest: ICAC Guidance

A conflict of interest arises when the Tenderer, in performing the obligations under the Contract, is influenced or seen to be influenced by other interests.

There will be occasions when the performance of the obligations under the Standing Offer Deed will affect a personal or other interest that the Tenderer, or its employees or agents, may also have. Such interests may be able to be valued in money terms. Other interests which are less direct and do not involve money may also be affected.

Everyone has interests which are personal to them or someone close to them and it is not just the possession of these interests which gives rise to a problem. Similarly, from time to time individuals will deal with a matter as part of their work which affects a personal interest that they have. Again, that in itself may not cause any difficulties if the conflict is resolved in favour of the duty to perform the obligations under the Contract. It is inevitable that conflicts of interest will arise. It is important to emphasise that the mere fact that someone has a personal interest in a matter is not necessarily wrong. It is how the conflict is dealt with which can give rise to problems.

The first step is to recognise what situations could give rise to conflicts. Then the conflict must be resolved in favour of the duty to perform the obligations under the Contract.

Pecuniary Interests

Pecuniary or financial interests may result from owning property, holding shares or positions in companies or trusts, debts owed to other people, receiving gifts, and income from working elsewhere as well as for LGP, hospitality and sponsored travel. This list is not exhaustive.

It is not necessary for individuals to hold these interests themselves. A member of their family or close associate may hold them. This is seen to be the same as being an interest of the individual employee or agent of the Tenderer because of the closeness of the relationship.

It is not necessary that the Tenderer, or its employee/s or agent/s would or will act in favour of their personal interest. If they are in a position of conflict, there is that temptation. The aim is to prevent situations arising.

Non-pecuniary Interests

There may also be interests which do not have a financial component (that is, non-pecuniary interests). These might include a personal interest arising out of relationships based on common interest such as sporting, social or cultural activities as well as family, sexual and other relationships.

How Should Conflicts be Resolved?

The aim of resolving these conflicts is to prevent personal considerations from influencing the performance of the obligations under the Contract. Once conflicts have emerged they may be capable of resolution or avoidance by removing the source of the conflict or by making the interest public and thereby limiting the risk of personal interest prevailing over the duty to perform the obligations under the Contract.

The source of the conflict could be removed by requiring the individual to dispose of the interest which has caused the conflict.

Alternatively, it could be removed by a Tenderer, or its employees or agents being precluded from performing any obligations under the Agreement regarding the matter in which he or she has the interest.

Each of these two responses would have the effect of removing the source of the conflict.

Adapted from guidance material prepared by the New South Wales Independent Commission Against Corruption (ICAC).

Item	Conflicts of Interests and Fair Dealings		
1	The Tenderer has read the above guidance information from the ICAC. The Tenderer confirms that it is compliant with this section – Conflicts of Interest and Fair Dealings, and having nothing to declare. (If the answer to this section is 'No', the Tenderer is to complete Item 2 below)	[]	Yes
		[]	No
2	The Tenderer discloses any and all information with regards to any real or perceived Conflicts of Interests or barrier to Fair Dealing where these exist, below.	[]	Yes
		[]	No

Details Regarding Conflicts of Interest and Fair Dealings

Insert response here (please delete this note prior to submission)

<Enter Text>

8. Schedule C7 - Statement of Threatened or Pending Litigation

Threatened or Pending Litigation

Does the Tenderer have Litigation claims against them any threatened or pending litigation, claims, or undischarged judgements or orders? Yes
 No

If the answer to the above question is 'Yes', the Tenderer shall provide a statement, on company letterhead and duly authorised by an appropriate authority, that provides the particulars of any threatened or pending litigation, claims, or undischarged judgements or orders.

This Statement of Threatened or Pending Litigation shall be attached to the Tenderers response to this tender.

END OF VOLUME 4

Attachment 1

The following attachment must be completed as part of the Tenderer's response to Response Schedule C2 – Schedule of Prices

Attachment	Attachment Details
Attachment 1_ Returnable Schedule of Rates	Excel spreadsheet with pricing components to be filled in as part of the pricing schedules.



Volume 5 – Non-Commercial Response Schedules

Tender Title	Processing and disposal services for general solid waste (non-putrescible)
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Tender Number:	A17/0666
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Issue Date:	Friday 2 March, 2018
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This Volume contains the Non-commercial Response Schedules to be completed and returned to Council as part of the Tenderer's Tender

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Tenderers to Note

Format of Tender Response

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For Tenderers - Guidance Notes have been provided in this document where appropriate to assist Tenderers to complete the Schedules. Guidance Notes can be identified by their Red font. Ensure all Guidance Notes, including this one, are deleted prior to submitting your response.

1. Schedule T1 – Schedule of Quality Management Information

The quality assurance requirements for this Tender is outlined in the Services Specification in Volume 3

Quality Management Systems

Does the Tenderer have any documented Quality Management System or quality assurance systems implemented?

Yes

No

If the answer to the above question was 'Yes', please provide details with regards to the Quality Management System in place in the area provided below.

Response – Quality Management Systems

Insert response here (please delete this note prior to submission)

<Enter Text>

2. Schedule T2 – Schedule of Work Health and Safety Management Information

This questionnaire forms part of the Principal's Tender evaluation process and is to be completed by Tenderers.

The objective of the questions in the table below is to provide an overview of the status of Tenderer's safety management system.

Tenderers may be required to verify its responses noted in its questionnaire by providing evidence of its ability and capacity in relevant matters

2.1 WHS Systems, Policies and Management

WHS Systems, Policies and Management	
<p>Does the Tenderer have a third party accredited WHS management system?</p> <p>(if the answer to this question is 'Yes', please provide details of the accreditation in the response area provided below and attach a copy of the current certification)</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have WHS management system?</p> <p>(if the answer to this question is 'Yes', please provide details of the accreditation in the response area provided below)</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have a current WHS Policy?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have a WHS consultation mechanism for all employees?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have WHS training strategy for all employees?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have a process for WHS hazard identification, assessment and control?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

Response – WH&S Systems

Insert response here (please delete this note prior to submission)

<Enter Text>

2.2 Sample Risk Assessment

Please submit as an attachment, a sample risk assessment and control procedure for two activities that may be carried out under the proposed contract and attach it your response.

2.3 Recent Prosecution and Fines

Please respond to the following questions and provide further detail as required –

Recent Prosecution and Fines	
<p>Is the Tenderer in default of any fine issued for a breach of the WHS legislation, regulations or requirements?</p> <p>(if the answer to this question is 'Yes', please provide details of the breach in the response area provided below)</p>	<p>[] Yes</p> <p>[] No</p>
<p><i>Insert response here (please delete this note prior to submission)</i></p> <p><Enter Text></p>	
<p>Has the Tenderer been prosecuted or had a fine imposed on them with regards to WHS matters in the last 2 (two) years?</p> <p>(if the answer to this question is 'Yes', please provide details of every WHS prosecution and fine imposed on the Tenderer in Australia during the last two years, together with a description of actions taken by the Tenderer in response to each prosecution and fine in the response area provided below)</p>	<p>[] Yes</p> <p>[] No</p>
<p><i>Insert response here (please delete this note prior to submission)</i></p> <p><Enter Text></p>	

2.4 Evidence of satisfactory WHS Management

Nominate 3 (three) contracts / projects that the Tenderer has completed within the last 2 (two) years that demonstrate successful management of work health and safety by the Tenderer

Client	Name and Location of Contract	Contract Price / Project Value	Start Date	Completion Date

If / when requested, please submit the following additional information for each of 3 (three) contracts/projects selected from the above list:

- a client referee report commenting on the Tenderer's performance in relation to work health and safety management, identifying the referee's name, position, organisation and telephone and email contact details; and

- a copy of a third party audit report, or internal audit report, or site safety inspection report, or site safety review report or other similar evidence.

3. Schedule T3 – Schedule of Environmental Management

3.1 Environmental Management Systems

The environmental management requirements for this Tender are outlined in the draft Agreement in Volume 2 and the Services Specification in Volume 3.

Environmental Management	
<p>Does the Tenderer have a third party accredited environmental management system?</p> <p>(if the answer to this question is 'Yes', please provide details of the accreditation in the response area provided below and attach a copy of the current certification)</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have environmental management system?</p> <p>(if the answer to this question is 'Yes', please provide details of the accreditation in the response area provided below)</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have a current environmental Policy?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>Does the Tenderer have a process for environmental hazard identification, assessment and control?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

Response – Environmental Management

Insert response here (please delete this note prior to submission)

<Enter Text>

3.2 Recent Prosecution and Fines

Please respond to the following questions and provide further detail as required –

Recent Prosecution and Fines	
<p>Is the Tenderer in default of any fine issued for a breach of the Environmental legislation, regulations or requirements?</p> <p>(if the answer to this question is 'Yes', please provide details of the breach in the response area provided below)</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p><i>Insert response here (please delete this note prior to submission)</i></p> <p><Enter Text></p>	

Recent Prosecution and Fines	
<p>Has the Tenderer been prosecuted or had a fine imposed on them under the Protection of the Environment Operations Act 1997 (POEO Act) or other Australian environmental legislation in the last 2 (two) years?</p> <p>(if the answer to this question is ‘Yes’, please provide details of every prosecution and fine imposed on the Tenderer in Australia during the last 2 (two) years, together with a description of actions taken by the Tenderer in response to each prosecution and fine in the response area provided below)</p>	<p>[] Yes</p> <p>[] No</p>
<p><i>Insert response here (please delete this note prior to submission)</i></p> <p><Enter Text></p>	

3.3 Evidence of satisfactory Environmental Management

Nominate 3 (three) contracts / projects that the Tenderer has completed within the last 2 (two) years that demonstrate successful environmental management by the Tenderer.

Client	Name and Location of Contract	Contract Price / Project Value	Start Date	Completion Date

If / when requested, please submit the following additional information for each of three contracts/projects selected from the above list:

- a client referee report commenting on the Tenderer’s performance in relation to environmental management, identifying the referee’s name, position, organisation, and telephone and email contact details; or
- a copy of a third party audit report, or internal audit report, or inspection report or Environmental Management Plan.
- submit a copy of an Environmental Management Plan implemented by the Tenderer for a contract/project, similar in type and value to this Contract, that was completed within the last 2 (two) years

3.4 Environmental management objectives and measures

If/when requested, please submit details of:

- environmental management objectives proposed for the work under the Contract;
- key environmental management actions proposed for the work under the Contract; and
- the persons who will be responsible for managing the actions proposed.

4. Schedule T4 – Schedule of Functional / Non Functional Specifications.

4.1 Nominated Facility Details

The Tenderer must submit the following details for the facilities and operations which will be used to receive and process Clean-up Waste at each of the Nominated Facility/ies. Refer to the draft Agreement (Volume 2) definitions of 'Nominated Facility', 'Receival Facility', 'Clean-up Waste Facility' and 'Mattress Facility'. If further facilities are proposed to be used to carry out the Services, please include additional tables.

NOMINATED FACILITY 1 – RECEIVAL FACILITY	
Requirement	Tenderer Response
Location/Address	<Enter Text>
Location access details	<Enter Text>
Statutory approval status	<Enter Text>
Fair Trading Requirements (weighbridge)	<Enter Text>
Operational Hours	<Enter Text>
Environmental protection license(s) details (please note that copies must be supplied with submission)	<Enter Text>
Any additional licenses/permits (please note that copies must be supplied with submission)	<Enter Text>
Nominated Turn-around Time (please note that provision is made in Schedule 3 of the draft Agreement for liquidated damages to be applied if the Contractor exceeds a Turnaround Time of 10 minutes)	<Enter Text>
Vehicle access arrangements	<Enter Text>
On-site traffic flow arrangements	<Enter Text>

NOMINATED FACILITY 2 – CLEAN-UP WASTE FACILITY	
Requirement	Tenderer Response
Location/Address	<Enter Text>
Location access details	<Enter Text>
Statutory approval status	<Enter Text>
Fair Trading Requirements (weighbridge)	<Enter Text>
Operational Hours	<Enter Text>
Environmental protection license(s) details (please note that copies must be supplied with submission)	<Enter Text>
Any additional licenses/permits (please note that copies must be supplied with submission)	<Enter Text>

NOMINATED FACILITY 3 – MATTRESS FACILITY	
Requirement	Tenderer Response
Location/Address	<Enter Text>
Location access details	<Enter Text>
Statutory approval status	<Enter Text>
Fair Trading Requirements (weighbridge)	<Enter Text>
Operational Hours	<Enter Text>
Environmental protection license(s) details (please note that copies must be supplied with submission)	<Enter Text>
Any additional licenses/permits (please note that copies must be supplied with submission)	<Enter Text>

4.2 Nominated Recovery Target

Please provide a nominated Recovery Target (as that term is defined in the draft Agreement in Volume 2) that the Processing Facility and processing technology is considered capable of achieving. Note that the Recovery Target is calculated only in respect of recovery at the Clean-up Facility.

Nominated Recovery Target to be expected from processing delivered Clean-up Waste per annum%
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4.3 Additional Information/Innovation

Please provide details on any matters which have not been covered in the Schedules and which it is believed should be taken into consideration when the Tender is being evaluated. Particularly, detail matters which will provide improved environmental or social outcomes or value for money.

As a part of the Councils' commitment to environmental sustainability, the Councils are interested in any aspects of the Tenderer's operational processes or procedures, vehicles, plant and equipment which may have environmental benefits.

5. Schedule T5 – Schedule of Executive Summary of Proposal (including Capacity and Capability)

Please provide an Executive Summary of your proposal no longer than 2 (two) pages in length in the response space provided below.

Response – Executive Summary Proposal

Insert response here (please delete this note prior to submission)

<Enter Text>



6. Schedule T6 – Schedule of Understanding of Requirement

Please provide detail of your understanding of the requirement of the Tender no longer than 2 pages in length in the response space provided below.

Response – Understanding of Requirement

Insert response here (please delete this note prior to submission)

<Enter Text>

7. Schedule T7 – Schedule of Recent Relevant Experience and Referee’s

Provide details of 3 (three) previous contracts / services provided, similar to this service completed within the last 5 years in the table provided below.

Contract / Project 1	
Contract / Project Name	<Enter Text>
Client	<Enter Text>
Date Completed	<Enter Text>
Contract / Project Value	<Enter Text>
Project Details	<Enter Text>
Referee	<Enter Text>
Name	<Enter Text>
Position	<Enter Text>
Office Phone Number	<Enter Text>
Mobile Phone Number	<Enter Text>
Email	<Enter Text>

Contract / Project 2	
Contract / Project Name	<Enter Text>
Client	<Enter Text>
Date Completed	<Enter Text>
Contract / Project Value	<Enter Text>
Project Details	<Enter Text>
Referee	<Enter Text>
Name	<Enter Text>

Contract / Project 2	
Position	<Enter Text>
Office Phone Number	<Enter Text>
Mobile Phone Number	<Enter Text>
Email	<Enter Text>

Contract / Project 3	
Contract / Project Name	<Enter Text>
Client	<Enter Text>
Date Completed	<Enter Text>
Contract / Project Value	<Enter Text>
Project Details	<Enter Text>
Referee	<Enter Text>
Name	<Enter Text>
Position	<Enter Text>
Office Phone Number	<Enter Text>
Mobile Phone Number	<Enter Text>
Email	<Enter Text>

8. Schedule T8 – Schedule of Key Personnel and Experience

The Tenderer shall provide details, including relevant experience, of the Tenderer’s proposed Key Personnel this contract / project.

This information shall be sufficient to demonstrate that proposed Key Personnel have successfully completed a minimum of 2 (two) similar contracts / projects. Details of the relevant experience of the Key Personnel proposed for use on the contract / project shall be provided in the Table below.

The Key Personnel nominated in the Table below are to be available for interview if required by the Principal during the Tender evaluation.

In the event that the Tender is successful, the Tenderer shall be bound by the information provided in this Response Schedule and must not alter the personnel used for the Services without the prior written permission of Council.

Proposed Key Personnel 1	
Name	<Enter Text>
Position	<Enter Text>
Proposed Role & Responsibility	<Enter Text>
Qualifications / Experience	<Enter Text>
Relevant Experience Example 1	
Contract / Project Name	<Enter Text>
Client	<Enter Text>
Project Value	<Enter Text>
Details of Contract / Project	<Enter Text>
Role & Responsibilities on Contract / Project	<Enter Text>
Relevant Experience Example 2	
Contract / Project Name	<Enter Text>
Client	<Enter Text>
Project Value	<Enter Text>

Details of Contract / Project	<Enter Text>
Role & Responsibilities on Contract / Project	<Enter Text>

Proposed Key Personnel 2	
Name	<Enter Text>
Position	<Enter Text>
Qualifications / Experience	<Enter Text>
Relevant Experience Example 1	
Contract / Project Name	<Enter Text>
Client	<Enter Text>
Project Value	<Enter Text>
Details of Contract / Project	<Enter Text>
Role & Responsibilities on Contract / Project	<Enter Text>
Relevant Experience Example 2	
Contract / Project Name	<Enter Text>
Client	<Enter Text>
Project Value	<Enter Text>
Details of Contract / Project	<Enter Text>
Role & Responsibilities on Contract / Project	<Enter Text>

Note to Tenderer – Copy and paste table as required to accommodate all Key Personnel

Further information in relation to the organisations capabilities:

Additional Details	
Please state recent experience for councils	<Enter Text>
Describe Sydney presence including no. of Sydney based staff and permanent office	<Enter Text>

9. Schedule T9 – Schedule of Proposed Subcontractors and Consultants

Please provide details of all contractors to be used to supply the proposed service.

Contractors	
Name	<Enter Text>
Employer	<Enter Text>
CEC accreditation number (If applicable)	<Enter Text>
CEC designer/ installer/both (If applicable)	<Enter Text>
Contract responsibilities and duties	<Enter Text>
Experience and Qualifications	<Enter Text>

Contractors	
Name	<Enter Text>
Employer	<Enter Text>
CEC accreditation number (If applicable)	<Enter Text>
CEC designer/ installer/both (If applicable)	<Enter Text>
Contract responsibilities and duties	<Enter Text>
Experience and Qualifications	<Enter Text>

10. Schedule T11 – Schedule of Services Methodology

Please provide a description of the operational methodology proposed to be delivered in providing the Services.

Contractors	
The waste diversion rate ('Recovery Target') that the technology is considered capable of achieving given the Clean-up Waste definition within the draft Agreement	<Enter Text>
Brief description of each proposed transfer and processing facility	<Enter Text>
Method of receipt and transfer (if relevant) of Clean-up Waste from contributing Councils to the processing facility/facilities	<Enter Text>
Tonnes and types of Clean-up Waste sourced or potentially to be sourced from other councils or commercial/industrial wastes that may be processed by the facility/facilities	<Enter Text>
Process technology description including information on how the Clean-up Waste is received and how it is processed through the key operational processes	<Enter Text>
Details of flexibility in managing variations in Clean-up Waste quantities delivered for processing	<Enter Text>
Details of flexibility in managing variations in Clean-up Waste composition and capacity for processing fluctuations in Clean-up Waste quality over time	<Enter Text>

<p>Management controls to ensure a secure Service is provided to the Councils over the term of the Agreement</p>	<p><Enter Text></p>
<p>Arrangements available for accepting and processing Mattresses</p>	<p><Enter Text></p>
<p>Arrangements available for accepting and processing any additional separated material(s)</p>	<p><Enter Text></p>
<p>Description and details of the quantities and quality of outputs from the process that will be recovered or produced and the markets into which the products will be applied</p>	<p><Enter Text></p>
<p>Methods of disposing of Residue including location of disposal facility/facilities</p>	<p><Enter Text></p>
<p>Customer service provisions to facilitate efficient and effective contract management and performance monitoring by Councils</p>	<p><Enter Text></p>
<p>Reporting arrangements, including how all processed and disposed Clean-up Waste is accounted for</p>	<p><Enter Text></p>
<p>Contingency arrangements proposed to process, recover and dispose of Clean-up Waste during periods of scheduled maintenance and in the event of any un-scheduled facility shut-down.</p> <p>Tenderers may attach their contingency plan if available at this stage, however please note that a copy will be required before the commencement date.</p>	<p><Enter Text></p>

END OF VOLUME 5