



***Local Government New Zealand***

*te pūtahi matakōkiri*

Conditions of Contract  
for  
Kerbside Collection Services

[Party 1]

[Party 2]

# Local Government New Zealand –

## Acknowledgement

Local Government New Zealand acknowledges the support and contribution of the following parties who provided substantial input into this Agreement:

Frances Sullivan, Local Government New Zealand.

Kitty Waghorn, Waimakariri District Council

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Local Government New Zealand also acknowledges the contribution of the legal and consultancy team:

**Legal Input:** Paul Westbury and Paula Nicolaou, WestburyLaw, Wellington

**Consultant:** Brian Gallagher, Timaru

## Notes for Users [Delete these notes prior to issue of the Contract]

1. This Agreement has been developed in response to the need for a template agreement to assist in local government contracting for waste kerbside collection. It is believed that a template agreement will not only expedite the contracting process but also ensure that both local government and industry are operating as effectively and efficiently as possible.
2. This Agreement needs to be tailored to the particular circumstances of each territorial authority. It includes generic conditions of contract for kerbside contracts but does not canvas clauses that may be Council specific, e.g. ownership of collection containers.
3. It is anticipated that this Agreement will get wide usage and because of that **any changes to the general conditions of the Agreement should be clearly identified to allow parties to see where the template Agreement has been amended.**
4. All variable that require completion are highlighted in yellow. Please remove the highlighting and 'notes to the author' prior to issuing the Contract.

## **Issued**

This Agreement has been issued by Local Government New Zealand. Further information or access to the Word version of this Agreement may be obtained from:

Local Government New Zealand  
PO Box 1214  
Wellington 6140

Telephone: (04) 924 1200

Facsimilie (04) 924 1230

Website: [www.lgnz.co.nz](http://www.lgnz.co.nz)

Email: [info@lgnz.co.nz](mailto:info@lgnz.co.nz)

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# CONTRACT AGREEMENT

## PARTIES

[REDACTED] (Council)

[REDACTED] (Contractor)

## BACKGROUND

- A. The Council is a local authority under the Local Government Act 2002 and has as one of its functions the minimising, collection and disposal of waste for the [insert Council name] district] (**District**).
- B. The Council has elected to provide a service to the community for kerbside collection of Waste.
- C. The Contractor has the expertise and resources to provide the services required by the Council.
- D. The Council and the Contractor have agreed that the Contractor will provide the required services for the Council on the basis set out in this Contract.

## AGREEMENT

1. The Contractor agrees to provide the Services and do the other things as set out in the Contract Documents.
2. The Council agrees to pay the Contract Sum to the Contractor and to do the other things set out in the Contract Documents.
3. Each party shall carry out and fulfil all other obligations imposed on that party by agreement and as set out in the Contract Documents.
4. The Contract Documents are:
  - This Contract Agreement
  - The Conditions of Contract
  - The Special Conditions
  - The Annexures to the Contract (including all information to be provided under the Annexures)
  - The Specifications
  - The Contract Information Package incorporating:
    - Contractor's Collection Schedule
    - Collection Vehicle specification (including further Collection Vehicle technologies)
    - Contractor's outline Quality Plan
    - Contractor's draft Programme.
    - Contractor's outline Operations and Procedures Plan
    - Service Areas and Collection Zones
    - Private lanes and gated communities at Contract Commencement

- Collection Container specification (if being provided as part of this contract)
- Nominated Facilities
- Approved Subcontractors
- The Contractor's Tender.
- The Request for Tender

**EXECUTION**

Executed as an Agreement

Dated

20[ ]

**Signed by**

[ ]

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

THE COMMON SEAL of ( )  
**THE [ ] COUNCIL**)  
was affixed in the presence of)

\_\_\_\_\_  
Elected Member

\_\_\_\_\_  
Elected Member

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## **CONDITIONS OF CONTRACT**

### **1. CONTRACT SCOPE**

#### **1.1 Primary aim and objective**

- 1.1.1 The primary aim and objective of this Contract is to provide Kerbside Collection Services for Service Entitled Premises in the Service Area.

#### **1.2 Contract aims and objectives**

- 1.2.1 The further aims and objectives of this Contract are as set out in Annexure 9 – Further Contract objectives:

#### **1.3 Contract model**

- 1.3.1 This Contract adopts the pricing and operations model set out in Annexure 1 – Reference Schedule.
- 1.3.2 Where indicated in Annexure 1 – Reference Schedule the Contract employs a ‘partnering’ style of contract management with regular partnering meetings between the parties to monitor and discuss the provision of the Services.

### **2. TERM**

#### **2.1 Contract Term**

- 2.1.1 The Contract Term means the period beginning on the Contract Commencement Date and ending on the first to occur of:
- (a) the Contract Expiry Date as set out in Annexure 1 – Reference Schedule; or
  - (b) the termination of this Contract in accordance with its terms or at law.

#### **2.2 Services Commencement Date**

- 2.2.1 Services under this Contract are to commence on the Services Commencement Date set out in Annexure 1 – Reference Schedule.
- 2.2.2 The parties acknowledge that there are obligations under this Contract which will be required to be performed prior to the Services Commencement Date.

### **3. SERVICES**

#### **3.1 Provision of Services**

- 3.1.1 The Contractor shall provide the Services and fulfil its other obligations in accordance with the requirements of this Contract and, other than where inconsistent with the requirements of this Contract, in accordance with the Proposal.
- 3.1.2 Without limiting Clause 3.1.1 and the further requirements of the Contract Documents the Contractor shall provide the Services in accordance with:
- (a) The Specifications
  - (b) The Contractor Plans
  - (c) All applicable consents and approvals

- (d) All applicable laws and standards
- (e) All Council Representative instructions and directions given under clause 3.3.1.

### **3.2 Contractor warranty**

- 3.2.1 The Contractor warrants that it possesses the necessary skills, personnel, organisation and equipment to provide the Services in accordance with this Contract and agrees that it shall:
- (a) meet or exceed the Performance Standards; and
  - (b) exercise all reasonable skill, care and diligence in providing the Services.

### **3.3 Council Representative's directions**

- 3.3.1 The Contractor shall comply with all reasonable directions given by the Council Representative.
- 3.3.2 If compliance with any such directions requires the Contractor (acting reasonably) to undertake operations which are additional to the Services or to incur costs which are additional to the costs the Contractor reasonably expects to be incurred in performing the Services as at the date of execution of this Contract, such directions shall be treated as a Variation request under clause 16.3.2 of this Contract.

### **3.4 Compliance with laws**

- 3.4.1 The Contractor shall, in providing the Services and complying with its obligations under this Contract, comply with all applicable legislation and regulations including but not limited to, all applicable bylaws.
- 3.4.2 An Applicable Law Change means any change in any statute, regulation, by-law, district plan or district rule that directly relates to the kerbside collection of the Collection Material.
- 3.4.3 Any cost or expense incurred by the Contractor that results from an Applicable Law Change shall be payable by the Council to the Contractor and shall be treated as a Variation request in accordance with clause 16.3.5 of this Contract.
- 3.4.4 The Council Representative may request the Contractor to provide a submission under clause 16.3.2 regarding the cost and expense arising under this Clause.
- 3.4.5 If the parties cannot agree as to the Contractor's submission the cost and expense incurred by the Contractor shall be treated as a Mandatory Variation instructed by the Council Representative under clause 16.3.7.

### **3.5 Fees**

- 3.5.1 The Contractor will pay all fees, charges and costs incurred in the provision of the Services, except as stated, if at all, in the Specifications.

### **3.6 Reports**

- 3.6.1 The Contractor will provide all Reports as required by this Contract as set out in Annexure 13 – Reporting and as set out in the Specifications.

- 3.6.2 The Contractor shall also provide such further reports as the Council Representative shall reasonably require.
- 3.6.3 The Contractor shall keep all other reports and records that the Council Representative may reasonably consider are required in carrying out the Services and deliver such reports to the Council Representative at the time(s) and frequency specified by the Council Representative. Any additional reports not contained in Annexure 13 – Reporting or the Specifications shall be treated as a Variation.
- 3.6.4 The Contractor shall provide facilities for electronic transfer of reporting information to and from the Contractor and the Council as reasonably required by the Council and as set out in the Specification.
- 3.6.5 If directed by the Council, the Contractor shall provide some or all of the data contained in the report to the Council on a computer disc or other agreed electronic means in a spreadsheet or database application nominated by the Council.

### **3.7 Records**

- 3.7.1 The Contractor shall maintain records of the information set out in Annexure 14 – Contractor Records.
- 3.7.2 All records required to be maintained by the Contractor under this Contract shall be made available upon request to the Council and shall be available in an electronic and hard copy format as reasonably required by the Council Representative.

### **3.8 Minimise interference**

- 3.8.1 The Contractor shall carry out all operations necessary for the provision of the Services so as not to interfere unnecessarily with the convenience of the public.
- 3.8.2 The Contractor shall take all reasonable precautions, in the provision of the Services, for the general safety of the public, pedestrian, and vehicle traffic, sub-contractors and employees and in particular shall:
- (a) be responsible for traffic control during the course of the provision of the Services and shall comply with all applicable Authority's requirements as to traffic control.
  - (b) take all reasonable precautions to prevent accidents while undertaking the Services.

## **4. CONTRACTOR'S VEHICLES, PLANT and EQUIPMENT**

### **4.1 Generally**

- 4.1.1 The Contractor shall, except where otherwise specified in this Contract, supply at its own cost everything, including (without limitation) all materials, labour, consumables Vehicles, Plant and Equipment necessary for the provision of the Services. All labour, plant and consumables, Vehicles, Plant and Equipment supplied by the Contractor shall conform to the requirements and standards of the applicable Specifications and, unless otherwise approved by the Council Representative, all such consumables shall be new.
- 4.1.2 The Contractor will ensure that all Vehicles, Plant and Equipment being used in the provision of the Services:

- (a) complies with all applicable Acts, regulations and by-laws;
- (b) are suitable for the purpose for which they are to be used; and
- (c) are maintained in good repair and condition.

## **4.2 Deficient Vehicles, Plant and Equipment**

### **4.2.1 Notice of Deficiency**

- (a) If the Council Representative considers that any item of the Contractor's Vehicles, Plant and Equipment is deficient, having regard to the requirements of Clause 4.1.2 the Council Representative may give notice to the Contractor:

4.2.2 specifying the deficiency;

4.2.3 stating a date by which the deficiency is to be remedied;

4.2.4 stating that the item of the Contractor's Vehicles, Plant and Equipment is not to be further used in the performance of the Services or otherwise in connection with this Contract until the deficiency has been remedied;

4.2.5 stating that the item of the Contractor's Vehicles, Plant and Equipment may only be used subject to specified conditions until the deficiency has been remedied; and

4.2.6 may require the Contractor to obtain the Council Representative's approval before using the item of Vehicles, Plant and Equipment which has been subject to a notice of deficiency.

### **4.2.7 Reasons for Direction**

- (a) Any notice given under Clause 4.2.1 will give reasons for the Council Representative's direction.

## **5. QUALITY MANAGEMENT**

### **5.1 Quality management accreditation**

5.1.1 Where required by Annexure 1 – Reference Schedule, the Contractor shall, at all times during the Contract Term, hold a Quality Management System (QMS) which is accreditation certified as set out in Annexure 1 – Reference Schedule or to another internationally recognised QMS standard, by an accredited agency or as otherwise approved by the Council Representative.

5.1.2 The Contractor shall have the accreditation required under clause 5.1.1 in place by the date set out in Annexure 1 – Reference Schedule.

5.1.3 The Contractor shall provide a copy of its QMS to the Council Representative not later than Contractor's Plans Submittal Date or the date set out in Annexure 1 – Reference Schedule, which is the later and will promptly provide a copy of each updated QMS to the Council Representative.

5.1.4 The Contractor shall provide evidence of the QMS certification to the Council Representative annually.

5.1.5 The Contractor shall review and update the Contractor's QMS at not less than annual intervals.

## **5.2 Quality Plan**

- 5.2.1 The Contractor shall submit its Quality Plan for the provision of the Services to the Council Representative for approval (such approval shall not be unreasonably withheld or delayed) not later than Contractor's Plans Submittal Date.
- 5.2.2 The Quality Plan shall be in accordance with the Contractor's outline Quality Plan as set out in the Contract Information Package and shall detail the Contractor's quality plan for the provision of the Services including (without limitation) the following:
- (a) Ensuring compliance with all elements of this Contract in respect of the quality of the Services to be provided;
  - (b) a monitoring, auditing and performance reporting regime;
  - (c) compliance with all health and safety procedures;
  - (d) compliance with the Specifications, including but not limited to:
- 5.2.3 reliability and timeliness in provision of the Services;
- 5.2.4 overall management of the provision of the Services;
- 5.2.5 Customer service and public relations;
- 5.2.6 accuracy in all data collection and inputting, documentation and verbal communications;
- 5.2.7 complaints procedures;
- 5.2.8 procedures protecting against fraud and employee dishonesty; and
- 5.2.9 reporting procedures.
- 5.2.10 The Contractor shall, in the provision of the Services, implement and comply with the approved Quality Plan.
- 5.2.11 The Contractor shall review and update the Contractor's Quality Plan at not less than annual intervals and will promptly provide a copy of all such updated plans to the Council Representative.
- 5.2.12 The Contractor shall regularly audit its compliance with the approved Quality Plan. These audits shall be undertaken at regular intervals throughout the Contract Term. Copies of all audit reports will be promptly provided to the Council Representative.

## **6. OPERATIONS AND PROCEDURES PLAN**

### **6.1 Provision of Operations and Procedures Plan**

- 6.1.1 The Contractor shall submit its Operations and Procedures Plan for the provision of the Services to the Council Representative for approval not later than The Contractor's Plans Submittal Date.
- 6.1.2 The Operations and Procedures Plan shall be in accordance with the Contractor's outline Operations and Procedures Plan as set out in the Contract Information Package.
- 6.1.3 The Operations and Procedures Plan shall set out the Contractor's operations and procedures for the provision of the Services.
- 6.1.4 The Operations and Procedures Plan shall set out:
- (a) How the Contractor will meet the obligations of the Specifications.
  - (b) The purpose and anticipated performance of the Services

- (c) Operational practices and procedures for the various Service components.
- (d) The management infrastructure required to oversee the provision of the Services.

6.1.5 The Operations and Procedures Plan should detail operations and procedures specific to each of the Collection Services.

## **6.2 Collection Services requirements**

6.2.1 The Operations and Procedures Plan should cover the matters set out in Annexure 10 – Operations and Procedures Plan.

## **6.3 Review of Operations and Procedures**

6.3.1 The Contractor must review the Operations and Procedures Plan annually and promptly submit any amendments to the Council Representative for approval.

6.3.2 The Council Representative may require, at any time, the Contractor to make any amendments to the Operations and Procedures Plan that is reasonably required to ensure compliance by the Contractor of its obligations under the Contract Documents.

## **6.4 Implementation of Operations and Procedures Plan**

6.4.1 The Contractor shall, in the provision of the Services, implement and comply with the approved Operations and Procedures Plan.

# **7. ENVIRONMENTAL MANAGEMENT**

## **7.1 Environmental Management System**

7.1.1 Where required by Annexure 1 – Reference Schedule the Contractor shall, at all times during the Contract Term and in the provision of the Services, operate an Environmental Management System which is accreditation certified as set out in Annexure 1 – Reference Schedule or to another internationally recognised standard, by an accredited agency or as otherwise approved by the Council Representative.

7.1.2 The Contractor shall have the accreditation required under clause 7.1.1 in place by the date set out in Annexure 1 – Reference Schedule.

7.1.3 The Contractor shall provide a copy of its Environmental Management System and (where required) evidence of the Environmental Management System certification to the Council Representative not later than the Contractor's Plans Submittal Date or the date specified in Annexure 1 – Reference Schedule, whichever is the later, and annually thereafter.

7.1.4 The Contractor shall, in the provision of the Services, implement and comply with the Contractor's Environmental Management System.

## **7.2 Review of Environmental Management System**

7.2.1 The Contractor must review the Environmental Management System annually and promptly submit any amendments to the Council Representative for approval.



7.2.2 The Council Representative may require, at any time, the Contractor to make any amendments to the Environmental Management System that are reasonably required to ensure compliance by the Contractor of its obligations under the Contract Documents.

### **7.3 Environmental Management System audits**

7.3.1 The Contractor shall regularly audit its compliance with the approved Environmental Plan at the times stated in the Environmental Plan. Copies of all audit reports will be promptly provided to the Council Representative.

7.3.2 The Council may undertake independent audits of the Contractor's Environmental Management System and Environmental Management System compliance and require the Contractor to implement any recommendations to improve environmental management arising from such audits.

## **8. TRAFFIC MANAGEMENT**

### **8.1 Traffic Management Plan**

8.1.1 The Contractor shall have an approved Traffic Management Plan for the provision of the applicable parts of the Services before the Services Commencement Date. The Traffic Management Plan shall be kept up to date and current at all times during the Contract Term. The Traffic Management Plan shall cover all applicable parts of the Services.

8.1.2 The Traffic Management Plan is to be submitted to the relevant Roading Control Authorities for approval not later than the Contractor's Plans Submittal Date. The Contractor shall provide the Council Representative with a copy of the approved Traffic Management Plan.

## **9. HEALTH AND SAFETY**

### **9.1 Health and Safety in Employment Act 1992 compliance**

9.1.1 The Contractor will comply with its obligations and ensure that its Subcontractors comply with their obligations under the Health and Safety in Employment Act 1992 (**HSEA**), all regulations made under the HSEA, all approved codes of practice under section 20 of the HSEA and the health and safety requirements of this Contract.

### **9.2 General health and safety compliance**

9.2.1 The Contractor warrants to and agrees with the Council that in the provision of the Services, the Contractor shall take all practicable steps to ensure that no act or omission:

- (a) causes a hazard, significant hazard, harm or serious harm to any personnel utilised in the provision of the Services or any person at the place of work or in the vicinity of the place of work or member of the public who might be affected by the provision of the Services; or
- (b) is a breach of duty or obligation of the Contractor under the HSEA; or
- (c) does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSEA against the Council, the Contractor any Subcontractor.

9.2.2 The Contractor shall immediately advise the Council Representative if the Contractor receives any improvement notice, prohibition notice, infringement

notice, warning, notice of proceedings or other formal notice under the HSEA in relation to the provision of the Services. The Contractor shall promptly provide copies of all such notices received to the Council Representative.

9.2.3 If the Contractor is required by the HSEA or by any other Act or Regulation to give any notice of an accident occurring during the provision of the Services, the Contractor must, at the same time, or as soon thereafter as possible in the circumstances, give a copy of the notice to the Council Representative.

9.2.4 The Contractor shall provide written advice to the Council Representative of the outcome of all investigations, formal proceedings of any nature or prosecutions promptly after the completion of the investigation, proceeding or prosecution.

9.2.5 The Contractor must promptly notify the Council Representative, where appropriate verbally followed in writing, of any accident, injury, which occurs in relation to the provision of the Services. The Contractor must, within three (3) Working Days after any such incident, provide an initial report giving complete details of the incident and as soon as practicable after the date of the incident provide the final report which shall include the results of investigations into its cause, and any recommendations or strategies for prevention in the future.

9.2.6 If, during the Contract Term, the Council give the Contractor notice that, in the opinion of the Council, the Contractor is:

- (a) not performing its health and safety obligations under the Contract in compliance with the Contractor's Health and Safety Management System or the Contractor's health and safety obligations under this Contract; or
- (b) performing its health and safety obligations under this Contract in such a way as to endanger the health and/or safety of the Contractor's personnel or any other person,

the Contractor must promptly:

- (c) rectify the Contractor's failure to comply with such obligations; and/or
- (d) ensure that it thereafter performs all such obligations.

9.2.7 Should the Contractor be in breach of its health and safety obligations under this Contract the Council Representative may direct the Contractor to suspend the Contractor's performance of all or part of the Services until such time as the Contractor satisfies the Council Representative that it is able and will comply with such obligations.

9.2.8 The Council is not required to make any payment to the Contractor in respect of any period for which the Service is suspended in accordance with Clause 9.2.7. Any such period of suspension of Services is deemed, unless otherwise agreed by the Council, to constitute a failure to provide Services (for the purposes of Clause 26.1.1 of this Contract) arising from an inability of the Contractor to perform the Services.

### **9.3 Health and Safety Management System**

9.3.1 The parties acknowledge that the Contractor has provided a copy of its Health and Safety Management System to the Council as part of the Contractor selection process that preceded the entry by the parties into this Contract covering:

- (a) the Contractor's Health and Safety policy and objectives;
- (b) the Contractor's health and safety organisational structure and responsibilities

- (c) safe work methods statements;
- (d) the Contractor's health and safety instruction, training and induction;
- (e) the Contractor's health and safety auditing and inspection procedures;
- (f) the Contractor's health and safety consultation procedures;
- (g) the Contractor's health and safety incident reporting procedures;
- (h) the Contractor's health and safety review of risk assessments and control measures;
- (i) the Contractor's health and safety performance monitoring.

9.3.2 The Contractor shall, in the provision of the Services implement and comply with its Health and Safety Management System.

#### **9.4 Health and Safety Plan**

9.4.1 The Contractor shall prepare a written Health and Safety Plan for the provision of the Services. The Health and Safety Plan will address how the Contractor will comply with the HSE Act and its health and safety obligations under this Contract.

9.4.2 The Contractor will provide a copy of its Health and Safety Plan to the Council Representative for approval not later than the Contractor's Plans Submittal Date. The Contractor must consider any amendments to the Health and Safety Plan which the Council may propose. However the onus for ensuring the adequacy of the Health and Safety Plan remains with the Contractor.

9.4.3 The Contractor shall, in the provision of the Services implement and comply with the approved Health and Safety Plan.

9.4.4 The Contractor's Health and Safety Plan shall incorporate the following together with all other matters that are required to be covered in the plan in order to comply with the Contractor's obligations under this Contract:

- (a) The prior identification and assessment of hazards arising in connection with the provision of the Services and the steps proposed to eliminate, isolate or minimize significant hazards.
- (b) Procedures for the identification and management of new hazards arising in relation to the provision of the Services during the Contract Term.
- (c) Procedures for the management of safety in relation to the provision of the Services generally including the allocation of responsibilities both within the Contractor's employees and as between the Contractor and Subcontractors.
- (d) The need for and provision of correct protective equipment and training in the use of protective equipment.
- (e) Standard work procedure methodologies to minimise hazards.
- (f) Emergency procedures.
- (g) Procedures for co-ordination and communication with separate contractors.
- (h) Procedures for safety training and safety induction of all personnel utilised in the provision of the Services.
- (i) The training and supervision of all personnel utilised in the provision of the Services.

- (j) Procedures for ensuring that the Contractor contracts with Subcontractors having the required safety competence, that all Subcontractors have proper safety plans and will comply with the requirements of the HSE Act and the health and safety requirements of this Contract.
- (k) The audit and inspection of the Contractor's health and safety procedures, the provision of the Services to ensure compliance with the safety requirements of the HSE Act and this Contract.
- (l) The promotion of health and safety principles and encouraging of a commitment to health and safety by all personnel utilised in the provision of the Services.
- (m) The management of health and safety interface issues with Nominated Facility operator plans and requirements when Contractor personnel are on site at Nominated Facilities.

## **9.5 Emergency and Incident Plan**

- 9.5.1 The Contractor shall prepare a written, step-by-step Emergency and Incident Plan to cover all health and safety emergencies reasonably likely to arise in relation to the provision of the Services.
- 9.5.2 The Emergency and Incident Plan must be submitted to the Council Representative for approval not later than the Contractor's Plans Submittal Date.
- 9.5.3 The Contractor must consider any amendments to the Emergency and Incident Plan which the Council may propose.
- 9.5.4 The Emergency and Incident Plan must include as a minimum:
  - (a) a list of reasonably likely events that would constitute an emergency or incident;
  - (b) the name(s) of the persons who will declare an event to be an emergency; and
  - (c) the actions and responses to the emergency.
- 9.5.5 Events that constitute an emergency in the Emergency and Incident Plan may also constitute a failure to provide Services for the purposes of Clause 26.1 of this Contract.

## **9.6 Review of health and safety plans**

- 9.6.1 The Contractor will maintain its Health and Safety Management System, the Health and Safety Plan and the Emergency and Incident Plan and ensure that all are comprehensive and take into account any changes in the HSE Act and regulations made under the HSE Act and applicable standards and procedures.
- 9.6.2 The Contractor shall review each such plan as required and in any event at not greater than annual intervals.
- 9.6.3 The Contractor will provide any updates or revisions to each such plan to the Council Representative within 10 Working Days of making any such changes.

## **9.7 Further health and safety requirements**

- 9.7.1 The Contractor acknowledges that it has the primary responsibility for the identification of hazards relating to the provision of the Services.

**[Note to Author:** *Remember that the Council also has obligations to advise the Contractor of known hazards under the HSE Act and particularly hazards that are known to the Council but may not be known to a reasonable contractor providing the services.]*

9.7.2 The Contractor shall appoint a single person as the safety officer for the Services. The safety officer shall be the primary point of contact on all health and safety matters. The Contractor will give written notice of the name and contact arrangements for the safety officer to the Council Representative.

## **9.8 Health and safety audits**

9.8.1 The Contractor will implement and carry out an audit and inspection regime as shall be required to ensure:

- (a) compliance by the Contractor with the Contractor's health and safety obligations under this Contract; and
- (b) compliance by all personnel with the Contractor's Health and Safety Management System and Health and Safety Plan.

9.8.2 The Council may itself or through an agent audit the Contractor's compliance with its health and safety procedures and obligations under the HSE Act and this Contract.

9.8.3 The Contractor will co-operate with the Council in any audit undertaken by the Council or their agents. The Contractor will allow the Council or their agent access to all aspects of the Services to carry out such audits.

## **9.9 Health and safety reporting**

9.9.1 The Contractor must, when requested by the Council, provide evidence of the Contractor's ongoing implementation of the Health and Safety Management System and Health and Safety Plan.

9.9.2 The Contractor must also provide to the Council (and in addition to the specific notification requirements set out in this Clause 9) on a monthly basis the following information in relation to the Contractor's HSE obligations under this Contract:

- (a) the number of "lost time" injuries suffered by personnel involved in the provision of the Services;
- (b) the number of working days lost due to injury;
- (c) the number of "near miss" incidents;
- (d) the current status of any injured personnel;
- (e) the status of the implementation and outcomes of corrective actions undertaken as a result of Health and Safety inspections and risk assessments;
- (f) confirmation of the carrying out of required HSE audits undertaken by the Contractor and the outcome of all such audits.

9.9.3 The Contractor must also, when requested by the Council, promptly provide reports on health and safety inspections, audits or assessments undertaken by the Contractor during the Contract Term.

**9.10 Contractor's indemnity**

9.10.1 To the extent permitted by law, the Contractor indemnifies and shall keep indemnified the Council against all costs, damages, loss and expenses incurred or suffered by the Council arising out of any breach by the Contractor of the health and safety requirements of this Contract.

**10. CONTRACTOR'S OBLIGATIONS**

**10.1 Contractor to obtain licences and maintain records**

10.1.1 Where any person, facility, vehicle, plant, equipment, or activity utilised by the Contractor in the provision of the Services is required to be licensed, registered, approved or accredited, the Contractor must, at its own cost, obtain and ensure that the appropriate licence, registration, approval or accreditation is in force and current at all times during the performance of the Services. If any such licence, permit or other approval is cancelled or modified to any material extent, the Contractor shall immediately notify the Council in writing of such cancellation or modification.

10.1.2 The Contractor shall maintain copies of all licences, approvals, consents, accreditations, orders, directions and instructions that relate to the performance of the Services, including details of applicable renewal or expiry dates and any restrictions that apply, and any variations to this Contract or notices issued under this Contract until the date six (6) months after the completion of the performance of the Services in their entirety or the date six (6) months after termination of this Contract, whichever is the later.

10.1.3 The Contractor and its employees must upon request by the Council and without any expense to the Council attend as witnesses for the Council in all cases where prosecutions are laid or where legal proceedings are instituted against the Council or by the Council against another person in relation to the Services.

**10.2 Removal of property**

10.2.1 The Contractor shall not (and shall ensure its personnel do not) remove any property or materials from any Collection Containers other than in the proper provision of the Services.

**10.3 Damage to property**

10.3.1 The Contractor will promptly remedy any damage caused by its employees, agents or Subcontractors to any property of the Council or any other person. Should the Contractor fail to do so, the Council may effect the necessary repairs and/or pay reasonable compensation to the owner of the property. The cost of effecting any necessary repairs or the amount of any reasonable compensation will be payable on demand by the Contractor to the Council or may be deducted from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

**10.4 Council reputation**

10.4.1 In the provision of the Services the Contractor shall take all actions as may be necessary or expedient, and shall ensure that all personnel utilised in the provision of the Services do likewise, to positively promote the Council with the

public and shall not do anything which will or may bring the Council into disrepute.

## **10.5 Co-operation**

10.5.1 In providing the Services, the Contractor shall at all times co-operate to the fullest extent possible with:

- (a) the Council.
- (b) The Council Representative.
- (c) Any employees or agents of the Council.
- (d) Any other organisation, group or business that may provide other services that relate to the Services.
- (e) Any members of the public who will use the Services.

## **10.6 Council facilities**

10.6.1 The Contractor and its personnel shall not use any Council facilities unless provided under this Contract or with the prior written consent of the Council Representative.

## **10.7 Customer service and complaint rectification**

10.7.1 The Contractor shall implement and comply with the Customer service and complaints requirements set out in Annexure 11 – Customer service and complaints.

## **10.8 Nominated Facility Access Agreements**

10.8.1 The Contractor shall enter into and comply with the requirements of each Nominated Facility Access Agreement as outlined in Annexure 4.

10.8.2 Breach by the Contractor of the requirements of any of the Nominated Facility Access Agreements shall be a breach of the Contractor's obligations under this Contract.

10.8.3 The Council may pay any moneys owed and unpaid by the Contractor to any Nominated Facility operator pursuant to a Nominated Facility Access Agreement. All such moneys shall be paid by the Contractor to the Council immediately on request and may be deducted from moneys owed by the Council to the Contractor pursuant to this Contract.

## **11. CONTRACTOR'S EMPLOYEES**

### **11.1 Generally**

11.1.1 The Contractor must provide a sufficient number of personnel with adequate skills, training and qualifications (including in the case of drivers, hold an appropriate and current New Zealand driver's licence) to carry out promptly and effectively the Services under this Contract and otherwise to perform the obligations of the Contractor under this Contract.

- 11.1.2 The Contractor must employ sufficient numbers of suitably qualified, trained and experienced staff to adequately supervise all field operations including those of Subcontractors.
- 11.1.3 Details of the Contractors staff and structure are to be included in the Operations and Procedures Plan under clause 6.
- 11.1.4 When required by the Council Representative the Contractor must provide evidence and records to demonstrate it is complying with the requirements of Clause 11.1.

## **11.2 Key personnel**

- 11.2.1 The Contractor shall utilise the Key Personnel specified in Annexure 1 – Reference Schedule in the positions nominated.
- 11.2.2 The Contractor shall not remove Key Personnel from the Services, vary the duties of Key Personnel as they specifically relate to this Contract, or replace any Key Personnel nominated for the Services without the prior approval of the Council's Representative.
- 11.2.3 Any replacement of Key Personnel proposed by the Contractor shall require the Council Representative's written approval (such approval shall not be unreasonably withheld or delayed). Wherever possible the Contractor shall allow for an appropriate period of overlap to prevent any loss of continuity in performance of the Services. All costs of replacing assigned personnel including the costs of information transfer between the Contractor's personnel shall be borne by the Contractor.
- 11.2.4 The Council Representative may, on reasonable grounds, give notice (including reasons) to the Contractor requiring that any of the Key Personnel be no longer employed in providing the Services provided that where practicable, before giving that notice, the Council Representative has advised the Contractor of the concerns and has given the Contractor reasonable opportunity to address them. The Contractor shall take all necessary action to comply with such request.

## **11.3 Staff presentation and Identification**

- 11.3.1 The Contractor must ensure that all staff and subcontractors performing the Services are appropriately attired and wear name badges.
- 11.3.2 The Council may direct the Contractor that certain uniforms, clothing, safety equipment and name badges may or may not be used.
- 11.3.3 The Council may direct the Contractor as to the standard of cleanliness, repair and presentation of uniforms, clothing, safety equipment that is acceptable.
- 11.3.4 The Contractor must comply with any directions given under Clause 11.3.3.

## **11.4 Conduct of personnel**

- 11.4.1 The Contractor will ensure that all personnel utilised in the provision of the Services:
  - (a) Conduct themselves in a friendly, courteous, civil and inoffensive manner to foster good relationships between the Council and the public;
  - (b) Carry out their duties at all times with as little inconvenience and disturbance to others as possible, and without causing any nuisance;



- (c) Conduct themselves in accordance with the requirements set out in the Specifications.

11.4.2 The Contractor shall ensure that all personnel utilised in the provision of the Services collect ONLY Collection Materials specified under the Contract. The collection of additional Collection Materials (including commercial waste) for money or other consideration is prohibited without the written consent of the Council Representative. If the Contractor personnel are found collecting such materials the Council may, in addition to any other remedies, recover the estimated costs of disposal and/or reprocessing such materials for the period which such materials are shown to have been collected or in the absence of clear evidence of the period from the beginning of the Contract.

## **11.5 Removal of personnel**

11.5.1 The Council Representative, acting reasonably may by notice in writing from the Council Representative to the Contractor require that any personnel utilised in the provision of the Services that misconducts him or herself or fails to comply with customer courtesy requirements of this Contract be removed, within a stated time, from any activity involved in performing the Services. In this event the Contractor shall comply with the Council Representative's instructions and provide a suitable replacement at its own cost

## **12. ADVERTISING ON VEHICLES AND COLLECTION CONTAINERS**

### **12.1 Council's advertising rights**

12.1.1 The Council reserves the right to have appropriate promotional signage relevant to the Services placed on Collection Containers and Collection Vehicle bodies. The Council will consult with the Contractor concerning the content of the promotional material prior to the promotional material being placed on any vehicle. Such advertising may include (but is not limited to) messages pertaining to waste minimisation and or sustainability. All costs incurred under this clause shall be a Variation.

12.1.2 The Contractor shall not advertise, nor permit advertising, on Collection Containers or Collection Vehicles bodies, unless approval is given by the Council Representative which may be given or withheld in the Council's entire discretion.

12.1.3 This provision does not prevent the Contractor including its own name or logo on its Collection Vehicles or Transport Vehicles.

## **13. TRANSITION ON CONTRACT END**

### **13.1 Transition Plan**

13.1.1 If required by the Council Representative, the Contractor shall prepare and submit to the Council Representative for approval, a draft transition plan for the changeover or transfer of any Services to the Council, and/or any incoming contractor(s) engaged by the Council to perform all or part of the Services. The draft transition plan shall be provided to the Council by the time stated in Annexure 1 – Reference Schedule. The Transition Plan shall contain the information required as set out in the Specifications and any other information reasonably required by the Council Representative. The Contractor shall make any amendments to the draft transition plan as directed by the Council Representative and shall implement the approved transition plan.

### **13.2 Handover report**

- 13.2.1 On termination of this Contract for any reason the Contractor shall provide a Handover Report to the Council Representative. The Handover Report shall contain the information required on Contract termination set out in the Specifications and any other information reasonably required by the Council Representative.
- 13.2.2 The Contractor shall bear the cost of the Handover Report if termination arises as a result of default by the Contractor on expiry of the Contract. The Council shall bear the cost of the Handover Report if termination occurs as a result of default by Council or as a result of a Force Majeure Event.

### **13.3 Return of information and data**

- 13.3.1 On termination of this Contract for any reason:
- (a) The Contractor shall promptly provide to the Council Representative all data and factual information collected by the Contractor during the course of the Contract and any other property or equipment of any of the Council in the possession or control of the Contractor in relation to this Contract.
  - (b) The Contractor may retain a copy of such data and factual information. Such data and factual information shall be Confidential Information for the purposes of Clause 30.1 and shall not be released to any third party without the written approval of the Council Representative.

### **13.4 Cooperation**

- 13.4.1 On termination of this Contract for any reason, and in order to provide a seamless transition of the Services, the Contractor shall co-operate fully with the Council and/or any incoming contractor(s) engaged by the Council to perform all or part of the Services.
- 13.4.2 The Contractor shall co-ordinate with the Council and/or the incoming contractor(s) in connection with the transfer of data as is required (if any) from the Contractor's system to the Council's system or the system of the incoming contractor, whether prior to or after the termination date.

### **13.5 Council logo**

- 13.5.1 On termination of this Contract for any reason the Contractor shall:
- (a) At the Council Representative's direction, either return to the Council Representative or destroy all stationery and other items which include the Council's logo, or other Council corporate identity held by the Contractor; and
  - (b) Cease using any such Council logo or corporate identity and remove such logo and corporate identity from all Vehicles, Plant and Equipment and personnel uniforms.

## **14. AUDIT AND MONITORING OF SERVICES**

### **14.1 Contractor self audit**

- 14.1.1 The Contractor is responsible for monitoring the quality of the Services provided under this Contract and its compliance with the requirements of this Contract.

The Council's primary focus will be on ensuring that the Contractor carries out this self monitoring and accurately reports the results to the Council Representative in accordance with the Contractor's reporting requirements as set out in the Specifications.

- 14.1.2 The objective of this self monitoring regime is to implement a continuous improvement approach, taking remedial action where service quality deficiencies have occurred.

## **14.2 Council audits**

14.2.1 The Council may monitor and audit all or any aspects of the provision of the Services and the performance of the Contractor under this Contract from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by the Contractor with the requirements of this Contract, with a particular focus on the quality of the Service.

14.2.2 The Council Representative will give the Contractor reasonable notice if a formal audit is to be undertaken.

14.2.3 The Contractor shall co-operate with the Council and its auditors to provide access to such information, premises and employees of the Contractor and its Subcontractors as shall be reasonably necessary to facilitate such audits.

## **14.3 Right of Access**

14.3.1 The Council Representative (or any person(s) authorised in writing by the Council Representative) may at all reasonable times access and inspect the Contractor's Facilities, Vehicles, Plant and Equipment, the Contractor's records and the provision of the Services to audit the Contractor's compliance with the requirements of this Contract. Without limiting the foregoing this includes allowing the Council Representative or any other able bodied authorised persons to travel in any Collection Vehicle during the provision of the Services. Such persons must comply with the Contractor's health and safety requirements.

## **14.4 Waste stream audits**

14.4.1 The Council may undertake waste stream analysis of the various Collections Materials from time to time as the Council shall elect. The Contractor shall co-operate and assist with all waste stream audits. Waste-stream audits may be conducted to determine:

- (a) the composition of all waste streams;
- (b) the proportion and composition of potentially recoverable material available in the waste stream;
- (c) the proportion and composition of unacceptable materials within the Recyclables and Organics streams;
- (d) participation and quantity generation rates.

14.4.2 Waste stream audits may include Kerbside audits which may be conducted on a random basis. Kerbside audits have the following objectives:

- (a) compliance by Customers in the presentation of Recyclables, Rubbish & Organics; and

- (b) compliance by the Contractor with the requirements of the Collection Specifications.

#### **14.5 Customer satisfaction surveys**

- 14.5.1 The Council may carry out Customer satisfaction surveys to monitor Contractor compliance with the requirements of the Contract Documents.
- 14.5.2 Effective management of Customer problems will be an important aspect of such surveys, and (where applicable) may be used as an indicator in the formal performance measurement and evaluation process as detailed in Annexure 5 – Performance Standards
- 14.5.3 Customer satisfaction surveys shall be statistically valid and will represent a fair and accurate measure of Customer satisfaction across the Service being surveyed.

### **15. COUNCIL OBLIGATIONS**

#### **15.1 General Council obligations**

- 15.1.1 The Council shall ensure that the information and other material set out in Annexure 15 – Information to be provided by the Council is provided promptly and accurately to the Contractor at the times set out in that Annexure.
- 15.1.2 The Council will provide the communication, education and information programmes as set out in Annexure 12 – Council Provision Schedule.

### **16. VARIATIONS**

#### **16.1 Emergencies**

- 16.1.1 Where in the opinion of Council Representative an emergency exists which poses a risk to public health, public safety or the environment the Council may direct the Contractor to provide additional or varied Services.
- 16.1.2 Additional or varied Services provided by the Contractor under this Clause shall be treated as a Mandatory Variation under Clause 16.3.7.

#### **16.2 No variations without instruction**

- 16.2.1 The Contractor shall not vary the Services without an instruction in writing from the Council Representative unless the Council Representative has verbally advised that the Variation is required as a result of an emergency. In that instance the Contractor will carry out the Services required by the Variation. In an emergency situation, the Council Representative will provide a written Variation Order within 5 Working Days of the verbal instructions.

#### **16.3 Variations**

- 16.3.1 A Variation is:
  - (a) any increase, decrease or addition to the Services provided any additional services are within the type of services offered generally by the Contractor;
  - (b) any change in the way in which the Services are to be provided by the Contractor.

- 16.3.2 The Council Representative may request the Contractor to provide a submission as to a proposed Variation.
- 16.3.3 As soon as reasonably practicable after receiving such a Variation submission request the Contractor shall submit to the Council Representative the following:
- (a) the cost of the Variation;
  - (b) where not specified in the request, the commencement date for the Variation; and
  - (c) such other supporting information and/or conditions as shall be reasonably required by the Contractor or that the Contractor reasonably requires to be included in the Variation.
- 16.3.4 The Contractor shall be entitled to reasonable costs and expenses in providing this information.
- 16.3.5 The Contractor shall be entitled to present a Variation request to the Council. The Contractor shall, when submitting such a request, provide the information required under clause 16.3.3.
- 16.3.6 The Council is not obliged to proceed with any Variation sought under clauses 16.3.3 and 16.3.5. If the Variation is to proceed the Council Representative will notify the Contractor in writing of that decision and will provide a written Variation Order.
- 16.3.7 The Council Representative may instruct the Contractor to carry out any Variation without the Contractor having to supply the information required under clause 16.3.3. Such notice shall be referred to as a Mandatory Variation and shall be instructed by a Variation Order.
- 16.3.8 The Contractor shall comply with and carry out a Variation ordered under clause 16.3.6 and Mandatory Variations under clause 16.3.7.
- 16.3.9 The Contract Sum shall be adjusted for a Variation ordered under clause 16.3.6 and Mandatory Variations under clause 16.3.7 as set out in Clause 16.5.

#### **16.4 Clarification of direction**

- 16.4.1 Where a direction is given by the Council Representative which is not in writing or is not expressly stated to be a Variation or is a matter to be treated as a Variation that the Contractor considers is a Variation (or a matter to be treated as a Variation), it shall, within 15 Working Days of receiving the direction, give written notice to the Council Representative that it considers the direction to entitle the Contractor to a Variation claim. Unless the Council Representative, by written notice within a reasonable time, rejects the Contractor claim, it shall be treated as if it was a Variation which shall be formalised as provided for in clause 16.2.1. If the Contractor does not give such written notice within the required time, the direction shall not be a Variation.

#### **16.5 Valuation of Variations**

- 16.5.1 If any Variation (or a matter to be treated as a Variation under this Contract) results in:
- (a) Any reasonable additional cost being incurred, or any additional work reasonably being required to be performed by the Contractor, the payment to be made for the Services to the Contractor shall be adjusted by such amount as the parties may agree or, failing such agreement, by such amount as fairly reflects the value of the Variation.

- (b) Where the pricing information set out in the Schedules of Prices contains prices or rates which are directly applicable or if not directly applicable have a sufficient relationship to the Variation for it to be reasonable for the Variation value to be derived from them, those figures shall be used as a base for calculating the value of the Variation. A negative valuation (reducing the quantum of the Services or the cost of the provision of the Services) shall be valued in accordance with Clause 16.5.1.

16.5.2 Where practicable all Variations shall be valued before the Variation is ordered, but any failure to do so shall not invalidate the Variation.

16.5.3 The Council is entitled to omit any work from the Services to be provided under the Contract, whether or not any such work omitted is subsequently carried out by another contractor or by the Council itself.

## **16.6 Dayworks**

16.6.1 The Council Representative may request Variations that do not have applicable rates in the Schedule of Prices be carried out on a Dayworks basis. In addition some elements of the Services are to be carried out on a Dayworks basis as set out in the Specifications.

16.6.2 Such Variations and Services shall be valued on the basis of the Dayworks rates set out in the Schedule of Prices.

16.6.3 Where there are no applicable Dayworks rates, and the parties have not subsequently agreed a Dayworks rate, then the relevant work shall be valued as a Variation.

16.6.4 The Contractor shall record Dayworks Services on a daily basis in such format as is required by the Council Representative. The recording shall include:

- (a) Time spent by each worker
- (b) Each item of Vehicles, Plant and Equipment and hours used.

16.6.5 Daily records shall be provided to the Council Representative on a daily basis, and if agreed shall be the basis for payment. If the Council Representative is not available the daily records shall be verified by the Contractor Representative (or other senior employee of the Contractor) and shall be signed as correct. Such signed off records shall be submitted with the Contractor's monthly claim and shall be prima facie evidence of the time and materials used in carrying out the Dayworks.

16.6.6 The Daywork rates for labour, Materials and Vehicles, Plant and Equipment in the Schedule of Prices are all-inclusive rates, and:

- (a) The rates for labour include all costs necessary to provide an efficient worker on site, and shall be deemed to include but not be limited to, all wages inclusive of the penal portion of overtime payments, all the Contractor's overhead costs, supervision, time keeping, travel to and from site, all overheads and profit, minor charges, and all minor equipment.
- (b) The rates for Vehicles, Plant and Equipment include all costs necessary to provide an efficient vehicle, plant and equipment item per working hour on site and shall be deemed to include but not be limited to all, insurance, maintenance, wear and tear, repairs and renewals, standing time, fuel and consumables, superintendence, fittings and fixtures, all hire and lease costs, overheads and profit and incidental charges.

- (c) Materials shall be priced on the basis of trade price of the materials to the Contractor inclusive of all discounts whether trade or otherwise plus the percentage to be applied to Dayworks materials as set out in the Schedule of Prices, which percentage is deemed to cover transport, loading and off-loading, all the Contractor's overheads and profit and incidental costs.
- (d) Miscellaneous items necessary to carry out the Services.

## **17. SUBCONTRACTING**

### **17.1 Generally**

- 17.1.1 The Contractor shall utilise the Subcontractors nominated by the Contractor as set out in the Contract Information Package to undertake the applicable Services.
- 17.1.2 The Contractor may only engage further subcontractors as have been approved in writing by the Council (such approval shall not be unreasonably withheld or delayed) to carry out a material part of the Services under this Contract. The Contractor shall not subcontract all of the Services to be provided by it under this Contract. The Contractor will be responsible for the payment of all Subcontractors' remuneration.
- 17.1.3 The Council may require, as a condition of its approval of a Subcontractor proposed by the Contractor for significant portions of the Services, that the form of subcontract be approved by the Council [and that the Subcontractor enters into a Continuity Deed with the Council in accordance with Clause 37].  
*[Note to Author: Only include the words in brackets if you are including clause 37 from the special conditions as part of this contract. You may also need amend the clause cross reference here if clause 37 is given a different number in the contract.]*
- 17.1.4 The Contractor acknowledges that upon the termination of this Contract for any reason, the Council may negotiate with any Subcontractor directly for the provision of further services.

### **17.2 Contractor to provide information**

- 17.2.1 With any application for the consent of the Council to any subcontracting, the Contractor must provide all such information as may be reasonably required by the Council, including, but not limited to, evidence that the proposed subcontractor will be capable of performing the obligations of the Contractor under this Contract that are to be subcontracted.
- 17.2.2 This may include details of motor vehicles and equipment, employees, facilities, management, staff, systems and financial resources proposed to be used by the subcontractor.

### **17.3 Contractor still to be liable**

- 17.3.1 No subcontracting of any part of the Services under this Contract will relieve the Contractor from any liability under this Contract or at law in respect of the performance or purported performance of this Contract. The Contractor will be responsible for the acts and omissions of all Subcontractors or any Subcontractor's employees and agents as if they were the acts or omissions of the Contractor.

**17.4 Sub-contract not to be varied**

17.4.1 Any contract with a Subcontractor that has been approved by the Council shall not be varied in any material way or terminated without prior written consent of the Council, which shall not be unreasonably withheld or delayed.

**18. GUARANTEE AND BOND**

**18.1 Bond**

18.1.1 Where required pursuant to Annexure 1 – Reference Schedule the Contractor shall provide a Bond which shall:

- (a) be in the form (or substantially in accordance with the form) set out in Annexure 7 – Form of Bond.
- (b) be provided, duly executed, not later than 10 Working Days after the Contract Commencement Date.
- (c) amount to the Bond Amount as set out in Annexure 1 – Reference Schedule
- (d) be provided by the Bond provider set out in Annexure 1 – Reference Schedule.

18.1.2 The Bond shall be released on the proper completion of all of the Contractor's obligations under this Contract and finalising of all payment adjustments under this Contract.

18.1.3 The Council may only make demand under the Bond if the Contractor shall fail to pay any moneys due to the Council under this Contract or if the Contractor shall otherwise be in default of a material obligation under this Contract.

18.1.4 The Council shall give written notice to the Contractor if demand is made on the Bond.

18.1.5 If the Council shall apply the Bond or any part thereof to rectify or part rectify any breach of this Contract by the Contractor, the Contractor shall within five (5) Working Days of receipt of written notice from the Council Representative provide a replacement Bond or "top up" Bond so that the total aggregate Bond amount will be maintained in the Bond Amount specified in Annexure 1 – Reference Schedule.

**18.2 Guarantee**

18.2.1 Where required by the Annexure 1 – Reference Schedule the Contractor will procure the execution of a Guarantee from the Guarantor specified in the Annexure 1 – Reference Schedule in the form attached in Annexure 8 – Form of Guarantee. Such Guarantee will be in respect of the Contractor's obligations under this Contract and any extension of the Contract Term.

18.2.2 The executed Guarantee shall be provided to the Council contemporaneously with the execution of this Contract.

**18.3 Deferral of payments**

18.3.1 The Council shall not be required to make any payment to the Contractor under this Contract until the executed Guarantee (if required) and the executed Bond (if required) have been provided to the Council.



## **19. INTELLECTUAL PROPERTY AND CONTRACT INFORMATION**

### **19.1 Contract Information**

- 19.1.1 All Contract Information is owned by the Council.
- 19.1.2 The Contractor may use Contract Information for the purposes of this Contract only.
- 19.1.3 On this Contract coming to an end (for any reason) the Contractor shall if called upon by the Council Representative immediately hand over (where practicable the original and otherwise a copy) all of the Contract Information held by it to the Council Representative. The Contractor is however entitled to retain one copy of the Contract Information as a file copy for its records. The Contractor shall not use such retained information for any other purpose.
- 19.1.4 If the Council Representative asks, the Contractor shall also supply reasonable comment or explanation in connection with the Contract Information that is required to provide the Services. Such comment or explanation shall be supplied within a reasonable time of the request. Other than when the Contract is terminated due to the default of the Contractor, the Contractor's reasonable expenses in providing such comment or explanation shall be borne by the Council.

### **19.2 Intellectual Property**

- 19.2.1 Each Party shall continue to own Intellectual Property held by it prior to the commencement of this Contract.
- 19.2.2 The Contractor shall retain copyright of all Intellectual Property provided by the Contractor in the provision of the Services. The Council shall be entitled to use such Intellectual Property only for the provision of the Services under clause 26.
- 19.2.3 The Contractor warrants that it holds the copyright in all Intellectual Property provided by the Contractor as part of the Services and has the power to grant the non-exclusive licence referred to in clause 19.2.2.
- 19.2.4 The Contractor warrants that the Intellectual Property utilised or provided by the Contractor in the provision of the Services does not infringe the Intellectual Property rights of any other person.

## **20. COMMUNICATIONS**

### **20.1 Contractor Representative**

- 20.1.1 The Contractor shall at all times during the Contract Term appoint a competent person acceptable to the Council to be the Contractor Representative. As at the date of this Contract the Contractor Representative is the person referred to in Annexure 1 – Reference Schedule.
- 20.1.2 The Contractor Representative is authorised to receive all directions and instructions in connection with provision of the Services and this Contract on behalf of the Contractor.
- 20.1.3 The Contractor Representative or a substitute person nominated by the Contractor Representative shall be contactable at all reasonable times (to be not less than the hours any Collection Vehicle is operating) by telephone, mobile telephone, radio, facsimile, pager or other suitable communication device.
- 20.1.4 The Contractor Representative must be equipped with a suitable vehicle (including a reliable motor vehicle mobile communication system).

20.1.5 The Contractor may appoint a replacement Contractor Representative with the Council Representative's written consent (such consent will not be unreasonably withheld or delayed).

20.1.6 The Council may at any time by notice in writing to the Contractor object on reasonable grounds to the continuance of any person as the Contractor Representative. The Council's notice shall state the grounds upon which the objection is based. The Contractor shall, subject to clause 20.1.5, as soon as practicable appoint a replacement person to that position.

## **20.2 Council Representative**

20.2.1 The Council shall at all times during the Contract Term appoint a competent and authorised representative to be the Council Representative. As at the date of this Contract the Council Representative is the person referred to in Annexure 1 – Reference Schedule.

20.2.2 The Council may replace the Council Representative at any time. The Council will give prompt written notice to the Contractor of any replacement Council Representative.

20.2.3 The Council Representative is authorised by the Council to give and receive all directions and instructions in connection with the Services on behalf of the Council.

## **20.3 Communications**

20.3.1 All contract administration and higher level communications between the Contractor and the Council shall, as is practicable and subject to any express contrary provision in this Contract, be between the Parties Representatives. The Parties acknowledge the need for discussion and dialogue and that the Parties Representatives will regularly talk together. However material and significant advice, communications or instructions should be recorded in writing (email is acceptable for routine communications).

20.3.2 Any direction, instruction, notice, determination, approval or other communication made or given to the Contractor Representative is deemed to have been made or given to the Contractor. Any matter within the knowledge of the Contractor Representative is deemed to be within the knowledge of the Contractor.

## **20.4 Meetings**

20.4.1 The Contractor Representative (or his or her alternate) must be available to meet the Council Representative daily (if required) at the Council's offices to discuss delivery of the Services and to discuss how any problems or complaints are being addressed.

20.4.2 If the Council Representative waives these meetings he/she may reinstate these meetings at any time.

20.4.3 The Contractor Representative and the Council Representative shall engage in regular monthly partnering meetings or at any other time reasonably requested by the Council Representative to review the Services and discuss any issues relating to the performance of the Services and the Council' requirements. Such meetings will be chaired by the Council Representative. The Council shall be responsible for taking and distributing minutes of each meeting.

- 20.4.4 The Council Representative and the Contractor Representative shall also facilitate an annual review of Service delivery performance on or about each anniversary of the Services Commencement Date to review the performance of the Contract over the year and to agree performance standards, waste minimisation targets and any joint programmes to be implemented over the coming year.
- 20.4.5 Meetings will be chaired by the Council Representative. The Council shall be responsible for taking and distributing minutes of each meeting.

## **21. PARTNERING**

### **21.1 Partnering**

21.1.1 Where partnering is included in this Contract pursuant to Annexure 1 – Reference Schedule the following provisions apply.

21.1.2 Partnering philosophy

(a) 'Partnering' is a method of operating a contractual relationship to promote prompt and constructive communication and a problem solving approach between the Parties. Partnering has 4 primary objectives:

- ensuring that the Contract operates smoothly;
- to explore opportunities to deliver mutual benefits to the parties under the Contract;
- facilitating open 'no surprises' contract communication
- facilitating the prompt and constructive resolution of disputes.

21.1.3 Partnering obligations

(a) The parties agree to implement partnering in this Contract in accordance with Annexure 3 - Partnering.

21.1.4 Partnering and the Contract

- (a) The use of partnering techniques and the adoption of the partnering procedures as promoted in this Contract does not in any way imply any fiduciary obligations, partnership or joint venture between the Parties.
- (b) The partnering obligations set out in Annexure 3 - Partnering and any partnering charter and protocol developed by the Parties are subordinate to the provisions of this Contract and shall not be construed as overriding, amending or waiving any contractual rights or obligations.

### **21.2 Contract Performance Team**

21.2.1 General

- (a) In addition to the partnering meetings described above and (where applicable) within the context of the partnering approach to be implemented under this Contract, the parties agree to establish a Contract Performance Team to facilitate the regular assessment of performance and continual improvement to work practices.
- (b) The Contract Performance Team will undertake the dual role of reviewing recent operations, and considering future improvements to the Services.

21.2.2 Appointment of team members

- (a) The Council and the Contractor must each appoint the number of representatives set out in Annexure 1 – Reference Schedule to the Contract Performance Team.
- (b) The Council and the Contractor will only select persons as representatives who have the necessary skills and knowledge to initiate and develop improvements in the delivery of the Services.

#### 21.2.3 Functions of the Contract Performance Team

- (a) The Contract Performance Team will monitor the provision of the Services and Service delivery outcomes and seek co-operatively to identify investigate and where applicable resolve:
  - problems in delivery of Services;
  - non compliance with Service standards and the Performance Standards;
  - promoting safe work practices;
  - promoting quiet work practices;
  - potential improvements to Customer service centre efficiency, quality and productivity;
  - potential improvements to the efficiency, quality and productivity of Services;
  - performance targets for Service(s);
  - technological developments and other possible improvements;
  - measures that may be taken to increase and maintain resource recovery and protect resource value.

#### 21.2.4 Participation in the Contract Performance Team

- (a) The Contractor and the Council will each actively participate in joint Contract Performance Team meetings.
- (b) In addition to the Contract Performance Team representatives from the Council and the Contractor, the Council Representative may also invite representatives of the operator of any Nominated Facility and any party that the Council Representative considers could reasonably contribute to the Contract Performance Team deliberations.
- (c) The Council Representative may also invite any other person to Contract Performance Team meetings from time to time such as (but not limited to) elected Council members, the media, representatives of interested industry groups etc.

#### 21.2.5 Contract Performance Team meetings

- (a) The Contract Performance Team shall be chaired by the Council Representative or the Council Representative's nominee. Such chairperson will determine the procedures of the Contract Performance Team and call meetings as required, record and distribute the minutes of meetings.

- (b) The Contract Performance Team meeting frequency may be every month in the lead-up to the Services Commencement Date and during the first twelve (12) months of the Contract Term, then at least every three (3) months during the balance of the Contract Term or otherwise at a frequency agreed between the Council Representative and the Contractor Representative.

21.2.6 Decisions of team not binding

- (a) The Contract Performance Team is not competent to vary this Contract or alter the obligations of any Party under this Contract.
- (b) The deliberations and decisions of the Contract Performance Team do not bind the parties unless reduced to writing and signed by a duly authorised representative of each party. The minutes of the proceedings of the Contract Performance Team shall not be construed as reducing such agreements or approvals to writing for the purposes of this Clause.
- (c) Nothing requires any Party to accept any proposals or decisions of the Contract Performance Team.

## **22. INSURANCE**

### **22.1 Public liability insurance**

22.1.1 The Contractor shall effect public liability insurance, for at least the sum (and having an excess or deductible not exceeding the sum) set out in Annexure 1 – Reference Schedule for any one claim or series of claims arising out of the same occurrence with no limit on the total number of occurrences payable.

22.1.2 The public liability insurance effected by the Contractor must cover liability for loss or damage to any property, injury or death or illness to any person occurring anywhere in New Zealand arising in connection with the Contract.

### **22.2 Motor vehicle public liability**

22.2.1 The Contractor shall effect insurance against public liability arising out of the use of any motor vehicle belonging to or under the custody or control of the Contractor and its personnel or any other person in connection with the provision of the Services. Under this clause the term 'motor vehicle' means any vehicle or equipment which is licensed or required by law to be licensed as a motor vehicle. The motor vehicle liability insurance shall be for at least the sum (and having an excess or deductible not exceeding the sum) set out in Annexure 1 – Reference Schedule for any one claim or series of claims arising out of the same occurrence with no limit on the total payable on the number of occurrences.

### **22.3 General provisions re public liability insurance**

22.3.1 All public liability insurance effected by the Contractor pursuant to clauses 22.1 and 22.2 must:

- (a) be in place from the Contract Commencement Date and be maintained until the Expiry Date.
- (b) include the Council as a co-insured.

- (c) be effected with reputable insurers acceptable to the Council and on terms approved by the Council. The Council's acceptance and approval shall not be unreasonably withheld.
- (d) provide that:
  - if a claim is made and accepted, the amount of cover shall automatically be reinstated to the full cover required by this Contract;
  - the insurance shall not be cancelled for non payment of premiums without 5 Working Days prior notification by the insurer in writing to the Council and to the Contractor; and
  - default by an insured does not prejudice the rights of the other insureds.

## **22.4 Vehicles, Plant and Equipment insurance**

- 22.4.1 The Contractor shall insure (or ensure insurance cover is in place) all Vehicles, Plant and Equipment utilised in the provision of the Services.
- 22.4.2 The amount of the cover shall be at least the current market value of the Vehicles, Plant and Equipment.
- 22.4.3 The Vehicles, Plant and Equipment cover shall cover loss or damage from any cause but may exclude wear and tear or gradual deterioration. This exclusion shall be limited to the defective item in the plant and shall not extend to other items consequently lost or damaged.

## **22.5 Insurances generally**

- 22.5.1 All insurances required by this Contract:
  - (a) shall be in effect prior to or on the Contract Commencement Date.
  - (b) Shall continue in force until the expiry of this Contract.
- 22.5.2 The Contractor shall, if requested by the Council Representative, produce:
  - (a) a certificate of insurance currency from the relevant insurer;
  - (b) a copy of the policies; and
  - (c) receipts for payment of the current premiums.
- 22.5.3 If the Contractor fails to arrange or keep in force any insurance required by this Contract, the Council may after notifying the Contractor in writing, arrange or keep in force the insurance.
- 22.5.4 The Council may pay any premium due and unpaid by the Contractor and deduct that amount from any moneys due to the Contractor.

## **23. Indemnity**

### **23.1 Contractor indemnity**

- 23.1.1 The Contractor shall be liable for and shall indemnify the Council in respect of any damages, costs, loss or expenses incurred by the Council as a result of any breach by the Contractor of any of its obligations or warranties under this Contract, or as a direct result of any other negligent or fraudulent error or omission on the Contractor's part in the provision of the Services. The Council's right to make any claim against the Contractor whether under this indemnity or

otherwise, will not be affected by the Council being an insured party under the same insurance policy as the Contractor.

- 23.1.2 The indemnity of the Contractor under Clause 23.1.1 extends to any acts or omissions of the Contractor, its Subcontractors, agents and employees and any assignees and includes indemnity in relation to personal injury, property and economic loss.

### **23.2 Council indemnity**

- 23.2.1 The Council shall be liable for and shall indemnify the Contractor in respect of any damages, costs, loss or expenses incurred by the Contractor as a result of any breach by the Council of any of its obligations or warranties under this Contract, or as a direct result of any other negligent or fraudulent error or omission on the Council's part in the performance of its obligations under this Contract. The Contractor's right to make any claim against the Council whether under this indemnity or otherwise, will not be affected by the Contractor being an insured party under the same insurance policy as the Council.
- 23.2.2 The indemnity of the Council under Clause 23.2.1 extends to any acts or omissions of the Council, its agents and employees and any assignees and includes indemnity in relation to personal injury, property and economic loss.

### **23.3 Indemnities continue**

- 23.3.1 The indemnities contained in this Clause 23 continue in full force and effect after the termination or expiry of this Contract for any reason.

## **24. WARRANTIES AND REPRESENTATIONS**

### **24.1 Contractor warranties and representations**

- 24.1.1 The Contractor represents and warrants that:
- (a) The Contractor is a duly incorporated company under the laws of New Zealand, has the power to enter into and perform this Contract and has taken all necessary action to:
    - Authorise the entry into and performance of its obligations under this Contract;
    - Ensure that its obligations under this Contract are legal, valid and binding; and
    - Make this Contract admissible in evidence in New Zealand and in its jurisdiction of incorporation.
  - (b) This Contract constitutes valid and legally binding obligations of the Contractor enforceable in accordance with its terms.
  - (c) There is no action, suit, litigation, arbitration, administrative proceeding or claim current, pending or to the knowledge of the Contractor threatened which could materially adversely affect its financial condition, its business operations or its ability to fulfil its obligations under this Contract.
  - (d) All consents, permits and approvals under any law as shall be required on the part of the Contractor to render this Contract enforceable have been obtained.
  - (e) No corporate actions nor other steps have been taken by the Contractor nor to the best of the Contractor's knowledge have any steps been taken or proceedings initiated by any other person against the Contractor, for

the winding up, dissolution, administration, re-organisation or liquidation of the Contractor or for the appointment of a receiver, administrator, trustee, statutory manager or liquidator of the Contractor or of any of its assets or revenues.

- (f) The execution of and the performance of its obligations under this Contract will not conflict with any of the existing obligations of the Contractor or any applicable statute regulation or official or judicial order.

24.1.2 The Contractor warrants that:

- (a) all information contained in the Contractor's Tender is true, accurate and complete in all material respects and is not misleading.
- (b) it has the expertise and resources to perform the Services with due care and skill and that all Services will comply with the requirements of the Contract Documents.
- (c) it has examined all information and has made all enquiries relevant to its obligations under this Contract and is aware of all risks, contingencies, costs, difficulties and other circumstances in any way connected with the performance of its obligations under this Contract.

## **24.2 Council warranties and representations**

24.2.1 The Council warrants and represents that:

- (a) It is a local authority duly constituted under the Local Government Act 2002 and has the power to enter into and perform its obligations under this Contract and has taken all necessary action to:
- Authorise the entry into and performance of its obligations under this Contract;
  - Ensure that its obligations under this Contract are legal, valid and binding; and
  - Make this Contract admissible in evidence in the Courts of New Zealand.
- (b) This Contract constitutes valid and legally binding obligations of the Council enforceable in accordance with its terms.
- (c) All consents, permits and approvals under any law as shall be required on the part of the Council to render this Contract enforceable have been obtained.

## **25. PAYMENTS**

### **25.1 Payment Rates**

25.1.1 The Council will pay the Contractor for Services provided under this Contract at the Service Rates that apply at the time the Services are supplied in accordance with



25.1.2

25.1.3 Annexure 2 – **Schedule of Payments.**

## **25.2 Submission of Claims**

25.2.1 The Contractor shall deliver to the Council Representative a Claim for payment for the Services provided in each month during the Term. The Claim for payment must be supported by evidence of the amount due to the Contractor and such other information as the Council Representative may reasonably require to verify the amount due including the Services performed and the Service Rates applicable to those Services and (where applicable) adjustments required pursuant to the Performance adjustment regime. The Claim shall also include sufficient information to allow the Council Representative to prepare a Buyer Created Tax Invoice in accordance with Clause 25.5.2.

25.2.2 Each Claim shall be in the form required by the Council and shall be delivered within 5 Working Days of the last day of the month to which the Claim relates. Claims submitted by the Contractor after the required 5 Working Days period shall be processed by the Council in the next month.

25.2.3 The Council Representative shall approve or reject the Claim in writing to the Contractor within ten (10) Working Days of receipt. Where the Council Representative approves the Claim subject to conditions or adjustment or rejects a Claim, the Council shall notify the Contractor of such conditions or adjustment within ten (10) Working Days of submission of the Claim by the Contractor.

25.2.4 Claim approval by the Council Representative may be withheld or delayed if insufficient information is supplied to enable a Claim to be verified. No interest pursuant to clause 25.9 will be paid on payments delayed under this clause.

## **25.3 Contractor certification of payments**

25.3.1 On submitting a Claim for any payment under this Contract, the Contractor will certify in writing to the Council Representative that:

- (a) It has paid all amounts due to all Subcontractors and all other, including any relevant government taxes, levies or charges, in respect of all work claimed for which has been subcontracted;
- (b) It has made all payments that it is required to make in respect of the Contractor's Vehicles, Plant and Equipment falling due for payment up to the end of the period to which the claim applies.

## **25.4 Power to pay Subcontractors and suppliers**

25.4.1 If Council Representative has evidence that:

- (a) The Contractor has failed to pay any amounts due to any party to which it has subcontracted any of its rights and obligations under this Contract; or
- (b) The Contractor has failed to make any payment that it is required to make in respect of its Vehicles, Plant and Equipment or facilities

the Council may deduct such amounts as appear to be due to the Contractor's Subcontractors or to any third party with an interest in any of the Contractor's Vehicles, Plant and Equipment from any payments due to the Contractor under this Contract, and withhold the moneys until it has been provided with evidence to

the satisfaction of the Council Representative that all amounts due to the Contractor's Subcontractors or such third parties have been paid.

- 25.4.2 If no such evidence is provided to the Council within five (5) Working Days of request, the Council may:
- (a) pay to the Contractor's subcontractors and such third parties any amounts which appear to be unpaid to the extent of the moneys which have been withheld from payments to the Contractor; and
  - (b) deduct the amount of those direct payments from payments which are due or may become due to the Contractor.
- 25.4.3 The Council will not make direct payments pursuant to clause 25.4.2 where the Council Representative is reasonably satisfied that the reason for non-payment by the Contractor is that there is a genuine unresolved dispute between the Contractor and the payee as to payment.
- 25.4.4 Nothing in this Clause will in any way oblige the Council to make any payment to any of the Contractor's Subcontractors or any such third parties. Any payments that may be made by the Council under this Clause will be deemed to have been made on behalf of the Contractor.
- 25.4.5 Payment of any amount to a Subcontractor shall not of itself imply that the Council have taken over the subcontract or in any way becomes bound to perform the Contractor's obligations to that Subcontractor.

## **25.5 Tax invoices**

- 25.5.1 The Claim submitted by the Contractor shall not be in the form of a tax invoice.
- 25.5.2 Following approval of each Claim the Council Representative will prepare, on behalf of Council, a Buyer Created Tax Invoice for the amount of the Claim approved by the Council Representative and payable by the Council.

## **25.6 Payment**

- 25.6.1 Each Claim approval shall show:
- (a) The amount payable by the Council for the Services provided;
  - (b) Provisional Sums, contingency and Dayworks amounts claimed;
  - (c) All additions or deductions for Variations;
  - (d) All deductions pursuant to the Performance Standards regime; and
  - (e) GST payable.
- 25.6.2 The Council must, within ten (10) Working Days of approval by the Council Representative pay the approved Claim to the Contractor.

## **25.7 GST**

- 25.7.1 In addition to the Council's obligation to pay approved Claims, the Council agrees to pay GST to the Contractor for the Services supplied under this Contract that are a taxable supply under the GST Act.
- 25.7.2 GST will be payable by the Council on the dates payment for the relevant supply is due under clause 25.6.2.

**25.8 Correction of payments**

- 25.8.1 The Council Representative may at any time correct any error discovered in any previous approved Claim, and may (without limiting the Council's rights to recover any overpayment) add to or deduct from any subsequent approved Claim appropriate adjustments to compensate for such error.
- 25.8.2 When such adjustments occur the Contractor will provide tax invoices to the Council Representative to support any corrections within twenty (20) Working Days of being advised of them.

**25.9 Interest on overdue payments**

- 25.9.1 If any moneys due to any Party are not paid by the date on which they should have been paid, then interest shall be payable thereon from the due date until the date on which they are paid. The rate of interest shall be the rate stated in Annexure 1 – Reference Schedule and if no rate is stated the rate shall be a rate of 4% per annum over the receiving party's authorised overdraft rate adjusted and compounded quarterly.

**25.10 Set off**

- 25.10.1 The Council may deduct any moneys payable by the Contractor to the Council from any moneys payable by the Council to the Contractor under this Contract.

**25.11 Taxes and deductions**

- 25.11.1 The Council may make such deductions and withholdings from payments due to the Contractor as required by law.
- 25.11.2 The Council shall not be liable for any corporate, personal or withholding taxes or other taxes and levies in respect of the Contractor, its employees, or Subcontractors (except as set out in this Contract). The Contractor shall indemnify the Council for any claim upon it by the Inland Revenue Department for any such corporate, personal or withholding taxes or other taxes or levies which should have been paid in respect of the Contractor, its employees or subcontractors.
- 25.11.3 The Contractor warrants that it is a New Zealand resident for the purposes of the New Zealand Non-Resident Contractors Tax regime (**NRCT**) and that the Council are not required to make withholding payments under that regime in relation to payments made under this Contract.

**25.12 Provisional Sums**

- 25.12.1 Provisional Sums relate to elements of the Services that are so nominated in the Schedule of Prices.
- 25.12.2 Provisional Sum Services shall only be undertaken on the written instructions of the Council Representative.
- 25.12.3 Provisional Sum Services are discretionary and will be included in the Services as the Council Representative directs.
- 25.12.4 Expenditure against these sums may only occur at the direction of the Council Representative. Any claims by the Contractor Services covered by provisional or contingency sums must be identified separately in Claims. Any unused amounts

from these sums at the end of each Contract Year shall remain with the Council and may not be carried over from year to year.

25.12.5 Payment for Provisional Sum Services shall be effected as follows:

- (a) The Provisional Sum amount as shown in the Schedule of Prices shall be deleted.
- (b) The Provisional Sum Services actually performed will be valued as a Variation.

**25.13 Calculation of revised Service Rates**

25.13.1 The Service Rates set out in the Schedule of Prices will be adjusted in accordance with the escalation formula set out in

25.13.2

25.13.3 Annexure 2 – **Schedule of Payments.**

**25.14 Non payment for service failure**

25.14.1 The Council may withhold payment under this Contract if:

- (a) The Contractor has either, failed to comply with the requirements set out in this Contract or has omitted to provide any Services required under this Contract; and
- (b) Such failure is not directly attributable to any act or omission by the Council under this Contract.

25.14.2 The total amount withheld under this Clause shall not exceed the value of the Service which the Contractor failed to perform.

25.14.3 Clauses 25.14.1 and 25.14.2 do not limit the Council further remedies under this Contract or at law.

**26. STEP IN RIGHTS**

**26.1 Non-performance**

26.1.1 Where the Contractor fails to provide all or a material part of the Services for any reason, the Council may, without prejudice to any other right or remedy available to the Council under this Contract or at law, arrange for the provision of those Services.

26.1.2 The Contractor shall provide the Council or its contractor(s) with its full co-operation as is necessary to facilitate the provision of those Services.

26.1.3 Other than where the Contractor's failure is due to Force Majeure Event under clause 29, the reasonable costs incurred by the Council under this Clause shall be a debt due to the Council by the Contractor and may be deducted from payments due to the Contractor by the Council.

**26.2 Prolonged non-performance**

26.2.1 Council to give notice

- (a) Without limiting Clause 26.1 and in addition to all other rights and remedies available to the Council under this Contract or at law, should the Contractor default in the performance or observance of any obligation it has under this Contract, or refuse or neglect to carry out or give effect to any order, instruction, direction or determination which the Council Representative and/or the Council is empowered to give or make under this Contract, and which is given or made in writing to the Contractor, the Council Representative may give notice requiring the Contractor to explain why the powers contained in this Clause should not be exercised.
- (b) Such notice:
  - shall signify that it is a notice under this Clause; and
  - shall specify the default, refusal or neglect on the part of the Contractor upon which it is based.

26.2.2 Council's powers

- (a) If, within twenty (20) Working Days after receipt of a notice given under Clause 26.2.1, the Contractor fails to rectify the default to the Council's satisfaction, or the order, instruction, direction or determination is not carried out or given effect to and this Contract satisfactorily performed, the Council, without prejudice to any other rights that it may have under this Contract or at law, may:
- Suspend the performance by the Contractor of all or part of the Services;
  - Treat the matter as a dispute under Clause 28 of this Contract;
  - Suspend all payments under this Contract pursuant to Clause 26.2.4 until the default is rectified or the Contract dispute is resolved;
  - Issue notice and terminate this Contract pursuant to Clause 27.1.1; and/or
  - Provide the applicable Services or arrange for the provision of those Services pursuant to Clause 26.1.

26.2.3 The suspension of payment under this Clause by the Council, will not in any way affect the continuing obligations of the Contractor under this Contract. Suspension of payment may be continued until the default has been rectified or the order, instruction, direction or determination is carried out or given effect to.

26.2.4 If the Council elect to suspend the Services or part thereof, during the period of any suspension the Council shall not be required to make payment to the Contractor in respect of those Services and the amounts payable to the Contractor under the Contract will abate by the value of the suspended Services as reasonably determined by the Council Representative. The Council shall be entitled to engage a third person to undertake all or any part(s) of the suspended Services during the period of the suspension provided that any loss, damage, cost or expense suffered or incurred by the Council as a direct result of the suspension of the Services shall be payable by the Contractor upon receipt of written demand by the Council or may (at the Council' sole and absolute discretion) be deducted from any amount payable to the Contractor by any of the Council under this Contract.

26.2.5 Effect of Termination or Suspension

- (a) Any suspension or termination by the Council in accordance with this Contract shall not affect any other right or remedy of the Council, or any obligation or liability of the Contractor, under this Contract.

26.2.6 Further remedies

- (a) Nothing in this clause shall prejudice any other rights or remedies either Party may have (including any claim that either Party may have in respect of a breach or a failure of the other Party to comply with any part of this Contract, prior to the date of termination).

## **27. TERMINATION**

### **27.1 Termination rights**

27.1.1 Either the Council or the Contractor may terminate this Contract immediately by notice in writing if the other party commits or allows to be committed any material breach of this Contract and fails to remedy the breach or fails to provide a solution to the breach acceptable to the non-defaulting party within 15 Working

Days of receiving written notice of such breach. (Such notice must specify it is given under this Clause and that termination may follow if the breach is not remedied).

- 27.1.2 The Council may immediately terminate this Contract, by giving written notice of termination to the Contractor, if any of the following events occur:
- (a) The Contractor having a petition presented or an order made or an effective resolution passed or analogous proceedings taken for its bankruptcy, liquidation, dissolution or winding up (except for the purposes of solvent reconstruction);
  - (b) The Contractor having an encumbrancer, receiver, liquidator, trustee or similar officer take possession of or be appointed with respect to all or any part of its business, assets, or undertakings;
  - (c) A meeting of creditors of the Contractor is called with a view to entering into a scheme of arrangement or composition with creditors or placing the Contractor under official management;
  - (d) The Contractor enters a scheme of arrangement or composition with creditors;
  - (e) The Contractor abandons or repudiates this Contract;
  - (f) Over a period of 90 days the Contractor commits 4 or more material breaches of this Contract of which the Council have given the Contractor written notice pursuant to this subclause within 15 days after the date it became aware of such breach or (if later) the date it ought reasonably to have become aware of such breach;
  - (g) If the Contractor assigns its interest in this Contract in breach of Clause 31.1.1; or
  - (h) The Contractor fails to provide the executed Guarantee or the executed Bond pursuant to and within the times stipulated in Clause 18.
- 27.1.3 Termination of the Contract shall not prejudice or affect the accrued rights and liabilities of either Party under this Contract.

## **27.2 Payments on termination**

### **27.2.1 Payment for Services**

- (a) In the event of termination of this Contract under Clause 27.1 or as a result of Force Majeure the Council will be liable to make payments to the Contractor:

27.2.2 only in respect of Services which have been properly provided up to the date of termination and not paid for at the date of termination; and

27.2.3 For the use by the Council of the Contractor's Vehicles, Plant and Equipment for the purpose of providing the Services or part of the Services (but without payment for fair wear and tear), except that the Council is not required to make any payment under this Clause if a contract entered into under clause 26.1.1 requires the Council to make any payments to any other party in respect of the use of the vehicles, plant and equipment provided by other persons for the purposes of completing the Services.

### **27.2.4 Payment for Losses and Expenses**

- (a) In the event of a termination under Clause 27.1, the Contractor must pay to the Council the amount of all costs, losses and expenses incurred by the Council by reason of or arising from the termination including but not limited to all professional fees, the costs of making alternative arrangements for provision of the Services, including any amount payable to any other contractor engaged to provide any Services which exceeds the amount which would have been payable by the Council to the Contractor had the Contractor completed or carried out the Services in the manner contemplated by this Contract.

27.2.5 Council determination

- (a) The Council will determine the amounts payable by each Party pursuant to this Clause 27.2 as soon as practicable after the termination of the Contract. The Council will give notice of such determination under this Clause to the Contractor. Any amounts payable under this Clause by the Contractor and the Council must be paid within ten (10) Working Days of the receipt of notice by the Contractor of the Council's determination.

27.2.6 Council may retain moneys

- (a) The Council may retain moneys payable to the Contractor pursuant to this Clause 27.2 until the amount payable by the Contractor to the Council under Clause 27.2.5 has been determined and paid by the Contractor. Alternatively, the Council may set off against moneys payable by it to the Contractor, any moneys payable by the Contractor to the Council.

## **28. DISPUTE RESOLUTION**

### **28.1 Resolution of dispute**

28.1.1 A dispute under this Contract is any dispute, disagreement or difference of opinion arising under the Contract, as to:

- (a) the meaning or application of any part of the Contract; or
- (b) any other matter arising under the Contract.

28.1.2 If a dispute arises between the Parties, either Party seeking to resolve the dispute must do so in accordance with the provisions of this Clause 28.

28.1.3 Reasonable compliance with this Clause 28 is a condition precedent to any entitlement to claim, relief or remedy whether by way of proceedings in a court or other tribunal in respect of the dispute.

28.1.4 Nothing in this Clause 28.1 prevents:

- (a) A Party seeking urgent injunctive or declaratory relief from a court in connection with a dispute without first having attempted to negotiate and settle the dispute in accordance with this Clause 28;
- (b) A Party terminating this Contract pursuant to any Clause of this Contract; or
- (c) the Parties meeting at any time to seek to resolve a dispute.

28.1.5 The Parties' obligations under this Contract will continue despite any dispute between the Parties.



28.1.6 Despite any provisions in this Clause 28, the Parties will use reasonable endeavours to resolve disputes before any Notice of Dispute is served.

## **28.2 Notice of dispute**

28.2.1 If either Party wishes to initiate these dispute resolution processes in relation to a dispute, that Party must give written notice to the other Party, specifying the nature of the dispute including, if appropriate, references to documents and provisions of the Contract which relate to the dispute (**Notice of Dispute**).

## **28.3 Further information**

28.3.1 A Party who receives a Notice of Dispute pursuant to Clause 28.2 may, within five (5) Working Days after such receipt, reasonably require the Party who served the Notice of Dispute to provide further or more detailed information relating to the dispute.

## **28.4 Negotiation**

28.4.1 Upon receipt of a Notice of Dispute and, if applicable, the provision of further or more detailed information in relation to the dispute under Clause 28.3, the Parties must negotiate to resolve the dispute as follows:

- (a) One or more representatives of each Party in dispute will meet, within ten (10) Working Days of the receipt by a Party of a Notice of Dispute or the further information, if any, required pursuant to Clause 28.3 (whichever be the later), to discuss and attempt to resolve the dispute; and
- (b) If those representatives do not resolve the dispute within five (5) Working Days of their first meeting then within ten (10) Working Days of that first meeting the Council Representative and a senior management representative of the Contractor must meet to discuss and attempt to resolve the dispute.

## **28.5 Appointment of mediator**

28.5.1 If a dispute is not resolved within ten (10) Working Days of the meeting of the Council Representative and a senior management representative of the Contractor pursuant to Clause 28.4.1(b), or if the Council Representative and a senior management representative of the Contractor shall fail to meet within that ten (10) Working Days period, (**Mediation Referral Date**), then the dispute must be referred to mediation in accordance with the following provisions.

28.5.2 The Parties must agree upon the selection and appointment of a mediator who will act in respect of the dispute. The Parties may agree to appoint a different mediator at any time.

28.5.3 If no agreement is reached between the Parties on the selection and appointment of the mediator within fifteen (15) Working Days of the Mediation Referral Date, then either Party may request the president of the Arbitrators and Mediators Institute of New Zealand to appoint a mediator, and any mediator so appointed shall be the mediator for the dispute pursuant to this Clause 28.

## **28.6 Initial mediation meeting**

- 28.6.1 The Parties must as soon as practicable after the reference of the dispute to mediation, confer in the presence of the mediator to:
- (a) Identify the subject matter of the dispute;
  - (b) Identify the provisions of this Contract relevant to the dispute;
  - (c) Discuss each other's position in relation to the dispute;
  - (d) Listen to any comments made by the mediator; and
  - (e) Attempt to resolve the dispute by mutual agreement.

## **28.7 Mediation**

- 28.7.1 The mediation will be conducted by the mediator at a time, place and in a manner agreed between the Parties and failing that as determined by the mediator. Unless agreed otherwise, the mediation shall take place at the City/Town nominated in Annexure 1 – Reference Schedule.
- 28.7.2 With the consent of the Parties, the mediator may appoint a neutral expert of the mediator's choice to provide assistance in relation to the mediation.
- 28.7.3 The Parties agree that the mediator will act as an aid to assist them to resolve the dispute and not as an arbitrator or decider of any matter.
- 28.7.4 All discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings.
- 28.7.5 The Parties will share equally the costs of the mediation and any neutral expert appointed by the mediator unless otherwise agreed by the Parties.

## **28.8 Arbitration**

- 28.8.1 If the dispute is not resolved under clause 28.7 within a further 20 Working Days after the appointment of a mediator, either party may then require the dispute to be referred to arbitration. If this clause is invoked:
- (a) The dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996;
  - (b) If the parties fail to agree on an arbitrator, then the President of the Arbitrators and Mediators Institute of New Zealand Incorporated shall appoint the arbitrator;
  - (c) The arbitration will take place in the city/town nominated in Annexure 1 – Reference Schedule, New Zealand;
  - (d) No person who has participated in an informal dispute resolution of the dispute shall act as arbitrator;
  - (e) The arbitrator will proceed promptly to deliver an award. The Parties shall co-operate fully to facilitate the delivery of the award;
  - (f) The award in the arbitration will be final and binding on the parties subject to the provisions of clauses 4 and 5 of the Second Schedule to the Arbitration Act 1996; and
  - (g) Each Party shall bear their own costs in arbitration and (in the absence of an arbitrator's award to the contrary) shall pay the costs of the arbitrator in equal shares.

**28.9 Time limits**

28.9.1 The Parties in dispute may agree to extend any of the time limits in this Clause 28.

**28.10 Continuing provision of services**

28.10.1 Despite the existence of a dispute under this Contract the Contractor must continue to perform the Services in accordance with this Contract except neither Party shall be obliged to pay any money which is the subject of the dispute.

**29. FORCE MAJEURE**

**29.1 Claim of Force Majeure**

29.1.1 Neither party will be liable for any act, omission or failure to fulfil its obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond its control (a **Force Majeure Event**), which includes (without limitation):

- (a) floods, earthquakes and other acts of God;
- (b) industrial action except any internal Contractor (or Subcontractor) industrial action;
- (c) any power, gas and other service failures;
- (d) any riots or public demonstrations;
- (e) any acts of terrorism.

29.1.2 If by reason of a Force Majeure Event occurring, any Party is wholly or partially unable to carry out its obligations under this Contract, that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) Details of the Force Majeure Event;
- (b) The probable extent of the obligations that the Party will be unable to perform;
- (c) Details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to take to remedy the situation;
- (d) An estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event;

**29.2 Suspension of rights and obligations**

29.2.1 Once a Party notifies the others of a Force Majeure Event, the notifying Party's obligations under this Contract (other than its obligations to make payments already owing) will, to the extent only that such obligations are affected by the Force Majeure Event, be suspended.

29.2.2 Any such suspension of performance must be limited to the period during which the Force Majeure Event continues. For the avoidance of doubt a lack of funds and the failure to insure against events or circumstances which a party could and

would (in the ordinary course of business) have insured against shall not be construed as Force Majeure Events.

- 29.2.3 The Party giving notice which is affected by the Force Majeure Event must take all reasonable steps to mitigate the effects of and eliminate the intervening event and must resume performance of the Services as promptly as is practicable possible.

### **29.3 Provision of further information**

- 29.3.1 Upon the notice under Clause 29.1.2 having been given the Party giving such notice must provide the other Party promptly with all further relevant information, pertaining to the Force Majeure Event, that the other reasonably Party requests.

### **29.4 Consultation re mitigation**

- 29.4.1 Following a notification pursuant to Clause 29.1.2, the Parties will promptly meet to identify alternative viable means of providing the Services affected and to discuss ways the effect of the Force Majeure Event can be mitigated.

- 29.4.2 Such discussion shall include (without limitation):

- (a) estimates of the cost to remedy or mitigate the effects of the Force Majeure Event; and
- (b) Details of all insurance monies which each Party will be able to rely on in making good damage or loss caused by the Force Majeure Event.

- 29.4.3 All reasonable efforts to mitigate the Force Majeure Event must be implemented promptly.

### **29.5 End of period of Force Majeure**

- 29.5.1 Subject to the Clause 29.5.1, the suspension of one or more obligations of a Party pursuant to Clause 29.2.1 ends when that Party is able to recommence fulfilment of each such obligation. At such time that Party must issue a notice to that effect to the other Party, and immediately recommence the performance of each such obligation.

### **29.6 Termination after extended Force Majeure**

- 29.6.1 If a Party is rendered wholly or partially unable to carry out its obligations in relation to this Contract due to a Force Majeure Event for a period of more than five (5) consecutive Working Days, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Services. Failing an alternative means being agreed upon within ninety (90) Working Days of the commencement of the suspension of obligations pursuant to the Force Majeure Event either Party may, by written notice to the other party, terminate this Contract.

- 29.6.2 In the event of a termination of this Contract under this Clause 29.6.1 the provisions of this Contract relating to termination set out in Clause 27.2 apply.

**29.7 No additional costs**

29.7.1 Neither party shall be deemed to have accepted any extra costs that may be incurred or sustained by the other party through a delay resulting from a Force Majeure Event.

**29.8 Interruption of Service**

29.8.1 Should the performance of Services under this Contract become interrupted by reason of Force Majeure Event, the Council may have that work carried out by other persons and, without prejudice to any other right or remedy available to it, call upon the Contractor to reimburse it for any cost or expense in carrying out any of such work or deduct the amount of any such cost or expense from money payable under this Contract to the Contractor.

29.8.2 The Contractor shall advise the Council Representative of the possibility of any impending industrial action that could materially disrupt the provision of the Services the earliest opportunity in order to allow the Council and the Contractor to make alternative arrangements.

**29.9 Government Authorities and termination**

29.9.1 If the Contractor is prevented from carrying out the Services by any order, notice or direction from any competent Authority or by law then the Council may, at their option:

- (a) Recommend the Contractor agree to the variation of the Services in accordance with Clause 16; and/or
- (b) Terminate this Contract by notice in writing to the Contractor and upon delivery of such notice this Contract will be cancelled and no Party will be liable to any other Party for any costs, damages, compensation, charges or expenses suffered or incurred by any Party arising out of such termination. However, such termination will be without prejudice to the rights of the Council and the Contractor in respect of any breach or default under this Contract occurring prior to such termination.

**30. CONFIDENTIALITY AND MEDIA**

**30.1 Confidential Information**

30.1.1 Neither Party may use, exploit or divulge to any other person during and after the Contract Term, the other Party's Confidential Information, other than with the prior written consent of the other Party or as strictly necessary to undertake its obligations under the Contract.

30.1.2 The obligations of confidentiality set out in this clause will not apply to information that:

- (a) is or becomes in the public domain (except as a result of breach by the divulging Party);
- (b) was lawfully received by the receiving Party from another person having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality;
- (c) was already in the possession of the receiving Party without restriction or disclosure; or

- (d) is required (and only to the extent so required) to be disclosed by any law or in relation to any proceedings or action before any court, tribunal, or other competent authority or body.

## **30.2 Official information**

- 30.2.1 The Parties acknowledge that the Council is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act the Council may be required to release information about the Services and the Contract.
- 30.2.2 In addition, the Contractor agrees to comply with the requirements of the Local Government Official Information and Meetings Act 1987 in relation to all information relating to the Council held by the Contractor or its employees.
- 30.2.3 The Contractor will only release information to a third party under the Local Government Official Information and Meetings Act 1987 through the Council unless compelled by law, in which case it will immediately advise the Council as to the information released.

## **30.3 Media**

- 30.3.1 The parties agree that the Council shall be entitled to make the initial announcement as to the existence of this Contract. The Contractor shall not make any announcement or otherwise make public the existence of this Contract prior to the Council announcement. The Council shall issue their initial statement in conjunction and with the agreement of the Contractor provided that the Council shall have the final discretion as to the wording of any such announcement.
- 30.3.2 Neither Party shall make any announcement or otherwise make public or release any publicity or make any statement in connection with this Contract without first notifying the other. The Parties agree they shall endeavour to make announcements relating to this Contract in conjunction and with the agreement of the other provided that this clause shall not restrict the right of the Council to discuss any aspect of this Contract in open Council meetings and have such deliberations reported in the media or to make statements in relation to the Contract as in the Council's opinion are necessary or desirable in the performance of the Council's role as a local authority or in the interests of full public debate of all issues relevant to a local authority, its community and its ratepayers.

## **31. ASSIGNMENT**

### **31.1 Consent to assignment**

- 31.1.1 The Contractor shall not assign or transfer the whole or any substantial right or obligation under this Contract without the written consent of the Council (to be not unreasonably withheld or delayed).
- 31.1.2 The assignment or transfer of shares in or the restructuring of the Contractor so that the effective control of the Contractor passes to persons other than those holding it at the date of this Contract will be an assignment of this Contract for the purpose of this Clause.
- 31.1.3 Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge either Party from any liability or obligation under this Contract. Any assignee shall be fully liable for payment of all moneys and/or damages payable under the Contract notwithstanding Section 11 of the Contractual Remedies Act 1979.

## **32. GENERAL**

### **32.1 Contractor's due diligence**

32.1.1 The Contractor acknowledges that it has entered into this Contract in reliance on its own investigations and due diligence.

### **32.2 Council approvals**

32.2.1 No comment, review, acceptance or approval by the Council or the Council Representative shall relieve the Contractor of any responsibility for any part of the Services or diminish or release the Contractor from any liability it shall have under the Contract Documents, nor shall any such action be treated as an acceptance by the Council of responsibility for, or the waiving by the Council of, any claim it might otherwise have in respect of any matter arising in relation to the provision of the Services, or as to any obligation or liability of the Contractor under this Contract.

### **32.3 No fettering of Council's powers**

32.3.1 Nothing in this Contract does or shall be construed as fettering or restricting the powers or discretions of any of the Council in relation to any powers or obligations it has under any legislation.

32.3.2 In addition and without in any way limiting the foregoing, the Contractor acknowledges that the Council, in terms of its regulatory function as a local authority, is obliged to and shall act as an independent local authority and not as a party to this Contract. The Contractor expressly acknowledges that it shall have no right or claim against the Council in its capacity as party to this Contract as a result of any lawful action, decision or determination made by the Council in the performance of its regulatory function as a local authority.

### **32.4 Further assurance**

32.4.1 Each Party will sign, execute and complete all further documents necessary to effect, perfect or complete the provisions of and the transactions contemplated by this Contract.

### **32.5 Cumulative rights**

32.5.1 The rights or remedies conferred on any Party by this Contract are in addition to all rights and remedies of that Party at law or in equity.

### **32.6 Contract interpretation – contra proferentem**

32.6.1 No rule of contract interpretation will be applied in the interpretation of this Contract to the disadvantage of one Party on the basis that it prepared or put forward any document comprising part of this Contract, to the intent that the principle of law known as contra proferentem shall not apply to this Contract.

**32.7 Amendments**

32.7.1 This Contract cannot be amended, modified or varied or supplemented except in writing signed by duly authorised representatives of each Party.

**32.8 Precedence**

32.8.1 Should the Contract Documents contain any discrepancy or inconsistency, then the documents will take precedence in the order in which they are listed in the Contract Agreement for the purposes of resolving the discrepancy or inconsistency.

**32.9 Severability**

32.9.1 If any part of this Contract is or becomes illegal, invalid or unenforceable in a relevant jurisdiction, the legality, validity or enforceability of the remainder of this Contract will not be affected and this Contract will be read as if that part had been deleted.

**32.10 Entire agreement**

32.10.1 This Contract represents the entire agreement between the parties and supersedes all previous arrangements, whether written, oral or both.

32.10.2 No party shall be bound by any prior warranty or representation unless included in this Contract

**32.11 Governing law**

32.11.1 The law of New Zealand governs this Contract and any legal proceedings or arbitration under this Contract. Any legal action in relation to this Contract against any party may be brought in any court of competent jurisdiction in New Zealand.

32.11.2 Each party by execution of this Contract irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

**32.12 Currency**

32.12.1 All prices and payments shall be in New Zealand currency.

**32.13 Language**

32.13.1 Communications under this agreement shall be in the English language.

**32.14 No partnership**

32.14.1 Nothing in this Contract constitutes the Parties as partners or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Contract.



**32.15 No agency**

32.15.1 Other than is specifically set out in the Contract Documents, the Contractor will not:

- (a) Hold itself out as being an agent of the Council, or being in any way entitled to make any contract on behalf of the Council, or to bind the Council to the performance, variation, release or discharge of any obligation; or,
- (b) Hold out its employees or agents or allow its employees or agents to hold themselves out as being employees or agents of the Council.

**32.16 Several and joint liability**

32.16.1 Obligations that bind more than one person shall bind those persons jointly and severally.

**32.17 No waiver**

32.17.1 No time or other indulgence granted by one Party to any other Party, or any variation of the terms and conditions of this Contract, or any judgement or order obtained by one Party against any other Party, will in any way amount to a waiver of any of the rights or remedies of the Parties against one another in relation to the terms of this Contract. Additionally, a waiver by a Party in respect of any breach of any provision of this Contract by the other Party shall not be deemed to be a waiver of any other or of any subsequent breach. The failure of a Party to enforce at any time any of the provisions of this Contract shall in no way be interpreted as a waiver of such provision.

**32.18 Costs**

32.18.1 Each party shall bear its own costs incurred in the preparation and execution of this Contract.

**32.19 Notices**

32.19.1 Method of giving notices

- (a) All notices and other communications provided for or permitted under this Contract which are required to be in writing may be:
  - (a) Handed to that Party's Representative or a senior employee of the Party; or,
  - (b) Delivered to that Party's address; or,
  - (c) Sent by courier to that Party's address; or,
  - (d) Transmitted by facsimile to that Party's facsimile number.
- (b) Formal notices under this Contract may not be served by email.

32.19.2 Time of Receipt

- (a) A notice given to a Party in accordance with Clause 32.19.1 will be treated as having been duly given and received:
  - (e) If handed to that Party's Representative, immediately; or,
  - (f) If delivered to that Party's address, on the day of delivery; or,

- (g) If sent by courier on the day of delivery; or
  - (h) If transmitted by facsimile to that Party's facsimile number upon the receipt of the correct electronic confirmation that the facsimile has been transmitted successfully.
- (b) Any such notice which has been served on a non Working Day or after 4:00pm on a Working Day is deemed served on the first Working Day after that day.

32.19.3 Addresses of Parties

- (a) For the purposes of Clause 32.19.2, the postal address or facsimile number of a Party is the address or facsimile number stated in Annexure 1 – Reference Schedule unless written notice of another address and/or facsimile number has been given to the other Party.

### 33. DEFINITIONS AND INTERPRETATION

#### 33.1 Definitions

33.1.1 In this Contract, the following terms have the meanings indicated:

**Authority** includes any Government (local or central), Government departments, statutory corporation or other body having jurisdiction over the Services.

**Bond** means the Bond to be provided by the Contractor under Clause 18.1.1.

**Bond Amount** means the Bond Amount set out in Annexure 1 – Reference Schedule.

**Buyer Created Tax Invoice** means a tax invoice created by a recipient as described in s.24(2) of the GST Act.

**Claim** means a statement prepared by the Contractor, containing the information required by the Contract Documents and such further information as the Council Representative may require, which sets out the Services provided in a given period and the amount considered by the Contractor to be due under this Contract as payment for these Services.

**Clause** means a clause of this Contract.

**Collection Container** means the collection container to be utilised for the Kerbside Collection Service under this Contract as specified in Annexure 1 – Reference Schedule. Generally throughout the Contract Collection Container(s) shall mean Collection Container(s) as specified and where the context allows distributed to Service Entitled Premises.

**Collection Day** means a Collection Day as described in the Specifications.

**Collection Material(s)** means the Waste as defined and as is more particularly set out in the Specifications.

**Collection Services** means the Services to be provided by the Contractor pursuant to the Collection Specifications.

**Collection Specifications** means the Kerbside Collection Specifications included in the Contract Documents).

**Conditions of Contract** means these Conditions of Contract.

**Confidential Information** means, when used in relation to a Party, all business, financial, customer and supplier information relating to that Party (which in the

case of the Council includes that Council's customers, ratepayers and community members), the terms of this Contract and all services, costing and pricing arrangements or other information disclosed under or in connection with this Contract which would generally or at law be considered to be confidential information.

**Continuity Deed** means a Continuity Deed as referred to in clause *[insert clause reference if this is required and the relevant clause from the special conditions is included as part of the contract. If not applicable state 'not applicable' after the word 'clause' in this definition.]*

**Contract** means this agreement comprising the Contract Documents, as may be amended in accordance with the terms of this Contract.

**Contract Agreement** means the Contract Agreement to which these Conditions of Contract are attached.

**Contract Commencement Date** means the date of this Contract.

**Contract Documents** means the documents listed in clause 4 of the Contract Agreement.

**Contract Expiry Date** means the Contract Expiry Date set out in Annexure 1 – Reference Schedule.

**Contract Information** means the source data and other data and factual information collected by the Contractor during the course of providing the Services and all other information relating to the Services held by the Contractor under this Contract.

**Contract Information Package** means the separate bound volume labelled "Kerbside Collection Services Contract Information Package" and initialled by the parties. The Contract Information Package shall be a Contract Document and forms part of this Contract.

**Contract Performance Team** means the Contract Performance Team constituted pursuant to Clause 21.2.

**Contract Sum** means the total amount payable under this Contract each year.

**Contract Term** has the meaning set out in Clause 2.1.1.

**Contract Year** means each annual period from 1 July to 30 June during the Contract Term. The day on which the Contract expires or terminates will be deemed to be the last day of the final Contract Year.

**Contractor** means the Party or Parties described as such in the Contract Agreement and as the context requires includes any employee, agent or Subcontractor acting on behalf of the Contractor.

**Contractor Representative** is the person so described appointed under Clause 20.1.1.

**Contractor's Plans** means the plans to be prepared, maintained and implemented by the Contractor in the provision of the Services as set out in Annexure 1 – Reference Schedule and otherwise as set out in the Specifications.

**Contractor's Plans Submittal Date** means the date by which (as is listed in Annexure 1 – Reference Schedule ) that the Contractor is required to submit the various plans required by the Contract Documents

**Contractor's Tender** means the Contractor's Tender submitted in response to the Council's Request for Proposals as set out in the Contract Information Package.

**Council Representative** means the person(s) appointed from time to time by the Council as the Council Representative.

**Customer** means an owner or occupier of Service Entitled Premises in the Service Area who uses any of the Collection Services.

**Dayworks** means work requested to be carried out as Dayworks or specified as Dayworks in the Specifications.

**Dayworks Services** means Services performed as Dayworks.

**Equipment** - see Vehicles, Plant and Equipment.

**Emergency and Incident Plan** means the Emergency and Incident Plan referred to in Clause 9.5.

**Environmental Management System** means an Environmental Management System as referred to in Clause 7 of this Contract.

**Facility** and **Facilities** means facilities used by the Contractor to provide Services under this Contract including but not limited to the Contractor's depot, Vehicles, Plant and Equipment.

**Force Majeure Event** has the meaning set out in clause 29.1.1.

**GST** means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time

**GST Act** means the Goods and Services Tax Act 1985.

**Guarantee** means the guarantee referred to in clause 18.2.1.

**Guarantor** means the Guarantor set out in Annexure 1 – Reference Schedule

**Health and Safety Management System** means the Contractor's Health and Safety Management System as referred to in Clause 9.3.

**Health and Safety Plan** means the Health and Safety Plan for the provision of the Services as referred to in Clause 9.4.

**HSEA** means the Health and Safety in Employment Act 1992.

**Intellectual Property** means any, methodologies, procedures, formula, software, technical handbooks and information data and factual information, drawings, plans, designs, specifications or copyright, patents, designs, trademarks (registered or unregistered) or other protectable intellectual property rights.

**Key Personnel** means the Key Personnel set out in Annexure 1 – Reference Schedule.

**Mandatory Variation** means a Mandatory Variation ordered under clause 16.3.7.

**Maximum Contract Term** has the meaning set out in Annexure 1 – Reference Schedule.

**Nominated Facility** means either a Transfer Station, waste handling, processing, storage or treatment facility, landfill, Materials Recovery Facility or Composting Facility approved by the Council for receiving Collection Materials collected by the Contractor pursuant to the Collection Services.

**Nominated Facility Access Agreements** means the agreements to be entered into by the Contractor and the applicable Nominated Facility operator as set out in Annexure 4 – Nominated Facility Access Agreements.

**Notice of Dispute** means a notice served by a Party pursuant to Clause 28.2.

**Organics** means materials or substances of animal or vegetative origin listed in the Specification that are collected for composting or other organic processing methods.

**Party or Parties** means any party or parties to this Contract as set out in the Contract Agreement.

**Party's Representative/Party's Representatives** means the representative(s) nominated by each Party in writing to the other Party to act as its representative(s) in the administration of this Contract (i.e. the Contractor Representative and the Council Representative).

**Performance Standards** means the performance standards specified in Annexure 5 – Performance Standards.

**Plant** - see Vehicles, Plant and Equipment.

**Premises** has the meaning set out in the Specifications.

**Recyclables** means containers, packaging and products listed in the Specification that are collected for recycling.

**Service Area** means the Service Area described in the Specifications.

**Services** means all or any of the services to be provided by the Contractor as described in the Specifications.

**Services Commencement Date** has the meaning set out Annexure 1 – Reference Schedule

**Service Entitled Premises** means any property or Premises entitled to a kerbside collection service as specified in the Specifications.

**Service Rates** means for the year commencing on the Contract Commencement Date the rates specified in and (where applicable) for each subsequent year those rates as adjusted in accordance with Clause 25.13.

**Special Conditions** means the Special Conditions adding to and amending the Conditions of Contract included in the Contract Documents.

**Specifications** means the Specifications set out in Annexure 16 - Specifications.

**Subcontractor** means any person that subcontracts to the Contractor for the provision of any part of the Services and where the context allows includes suppliers.

**Traffic Management Plan** means the Traffic Management Plan referred to in Clause 8 of this Contract.

**Variation** means a Variation under Clause 16.3.1.

**Variation Order** means a written Variation order confirming a Variation or a Mandatory Variation under clause 16.3.6 or 16.3.7.

**Vehicles, Plant and Equipment** means all or any of the vehicles, plant, implements, appliances and equipment utilised in the provision of the Services under this Contract whether or not owned by the Contractor.

**Waste means:**

- anything disposed of or discarded that is to be collected as specified; and
- includes a type of waste that is defined by its composition or source (for example, organic waste, electronic waste, but excluding construction and demolition waste); and

- to avoid doubt, includes any component or element of diverted material, if the component or element is disposed of or discarded.

**Working Day** means any day other than a Saturday, Sunday or a public holiday applying in the Council's District New Zealand.

33.1.2 Terms used in this Contract that are defined in any other Contract Document shall have the meaning set out in that Contract Document and vice versa.

## **33.2 Interpretation**

### 33.2.1 Special Conditions

- (a) The Conditions of Contract are added to and amended as set out in the Special Conditions.

### 33.2.2 In this Contract:

- (a) **Defined terms:** Defined expressions are signified by capitalisation.
- (b) **Headings:** Headings and underlinings are for convenience and do not affect interpretation.
- (c) **Number:** Words expressed in the singular include the plural and vice versa.
- (d) **Gender:** A reference to a gender includes a reference to any other gender.
- (e) **Reference to Clauses etc:** References to clauses, schedules and attachments are to clauses, schedules and attachments (if any) to this Contract (unless otherwise stated).
- (f) **Grammatical Forms:** Where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning.
- (g) **Reference to law:** Reference to a 'law' or 'laws' means a statute, regulation bylaw or any other requirement of a governmental or semi-governmental organisation.
- (h) **Reference to any Statute:** A reference to any Act, regulation, planning instrument, local law or by-law includes all Acts, regulations, planning instruments, local laws or by-laws amending, consolidating or replacing same, and a reference to an Act includes all regulations, planning instruments, local laws and by-laws made under that Act.
- (i) **Successors and Permitted Assigns:** A reference to a Party in a document includes that Party, its legal representatives, successors and permitted assigns.
- (j) **Reference to Documents:** A reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document.
- (k) **Obligation not to do anything:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- (l) **GST exclusive:** All monetary amounts are stated exclusive of GST and in New Zealand dollars, unless provided otherwise.
- (m) **Include:** The words "include" or "including" are to be construed as meaning include or including without limitation

- (n) Person: References to a person include a natural person, firm, corporation, association or other entity whether incorporated or not and whether or not having a separate legal personality.
- 33.2.3 The Contract Information Package sets out information relevant to this Contract and includes descriptions of the way the Contractor will fulfil its obligations under this Contract. The Contract Information Package does not vary or override this Contract or the Specifications.

## **SPECIAL CONDITIONS**

The Conditions of Contract are added to and amended as follows:

### **34. Extension of Contract Term**

#### **34.1 Application of extension provisions**

- 34.1.1 Where specified in Annexure 1 – Reference Schedule the following extension of term provisions shall apply.

#### **34.2 Extension provisions**

- 34.2.1 The Council may consider offering an extension of the Contract Term for a further period as specified in Annexure 1 – Reference Schedule in Council's complete discretion (or any other period agreed between the Council and the Contractor) on either the same or amended terms and conditions.
- 34.2.2 The Council may initiate extension of Contract Term discussions with the Contractor at any time but shall initiate such discussions (where appropriate) not later than [12] months prior to the Contract Expiry Date.
- 34.2.3 If Council decides prior to that [12] months period not to offer an extension of the Contract Term to the Contractor, the Council will advise the Contractor of that decision not later than 12 months prior to the Contract Expiry Date.
- 34.2.4 Should the Council wish to extend the Contract Term the Council shall provide a written extension proposal setting out the proposed terms and conditions of the extension.
- 34.2.5 If the Contractor wishes to extend the Contract on the basis tabled by the Council it shall signify accordingly by written notice to the Council within [1] month of receipt of the Council's proposal.
- 34.2.6 If the Council's extension of Contract Term proposal is not acceptable to the Contractor, the Contractor shall give written notice to the Council as soon as is practicable but not later than [1] month from receipt of the Council's proposal.
- 34.2.7 If the Council's proposal is not acceptable to the Contractor, the parties may continue further negotiations in an endeavour to determine a mutually acceptable basis for the extension. Either party may discontinue such negotiations at any time.
- 34.2.8 If no agreement is reached as to an extension of Contract Term within [3] months of the date of Council's proposal the Council shall have the right, in its absolute discretion, to discontinue negotiations and re-tender (or negotiate with others) for the Services.

- 34.2.9 Neither party shall be bound to enter into an agreement to extend the Contract Term.
- 34.2.10 The Contract shall not be extended until both parties have entered into a formal extension of term agreement.
- 34.2.11 Each party shall bear their own costs in relation to extension of Contract Term negotiations and the documenting and signing of any extension of term agreement.
- 34.2.12 For the extended Contract Term, this clause 34.2 shall not apply to the intent that the total Contract Term, including all extensions, shall not exceed the Maximum Contract Term set out in Annexure 1 – Reference Schedule.

## **35. Contractor innovation**

### **35.1 Contractor innovation and trials**

- 35.1.1 During the Contract Term the Contractor is encouraged to propose innovative arrangements to the provision of the Services for incorporation in the current or future contracts. Service trials may be undertaken provided the Council is satisfied that improved Services performance will result.
- 35.1.2 Prior to any trial the Contractor and the Council must negotiate a price (if any), set evaluation criteria, and performance measures for the trial.
- 35.1.3 The Council, in its complete discretion, may use persons other than the Contractor to conduct and or monitor trials.
- 35.1.4 The Council retains the right to elect whether or not to proceed with any innovation proposal. Incorporation of any such proposal into the Contract shall be by way of Variation.

### **35.2 Further innovation**

- 35.2.1 During the Contract Term either party may propose changes to the Services that will deliver Services improvements, improved resource recovery and performance outcomes or reduced costs. Where these proposals achieve cost savings, the parties shall endeavour to agree to any allocations prior to the proposal being introduced provided that this clause shall not be construed as limiting the Council rights to require changes to the Specifications or any aspect of the provision of the Services by way of Variation.

## **36. Existing Contracts**

### **36.1 Transfer from existing contractual arrangements**

- 36.1.1 Where an existing contractual arrangement exists between the Council and the Contractor for any or all of the Services described in this Contract this Contract supersedes the earlier arrangements to the extent that Services are included within this Contract.
- 36.1.2 No compensation will apply to the Contractor for the transfer of existing arrangements under Clause 36.1.1.



**37. Subcontract continuity**

**37.1 Continuity deeds**

- 37.1.1 The Contractor will, prior to commencing the provision of any Services by the Subcontractor(s) specified in Clause 17.1.1, procure such Subcontractors to enter into a Continuity Deed in favour of the Council in the form set out Annexure 6 – Form of Continuity Deed.
- 37.1.2 The specified Subcontractors for the purposes of Clause 17.1.1 are:
- (a) The Subcontractors listed in Annexure 1 – Reference Schedule ; and
  - (b) Such further Subcontractors notified by the Council under Clause 17.1.3.

**38. Performance Contract Requirements**

**38.1 Performance adjustments**

- 38.1.1 Where specified in Annexure 1 – Reference Schedule the following provisions shall apply.
- 38.1.2 The amount payable by the Council under this Contract in each month shall be adjusted in accordance with the Contractor's levels of achievement of the Performance Standards. The adjustments shall be determined in accordance with Annexure 5 – Performance Standards.
- 38.1.3 The parties acknowledge that the Contract Sum adjustments set out in Annexure 5 – Performance Standards reflect the diminished value of the Services to the Council where the Contractor has failed to achieve the Performance Standards.
- 38.1.4 The Council's rights to adjust the payments due to the Contractor under clause 38.1.2 do not limit the Council' rights and remedies under the remaining parts of this Contract or at law. In particular the Performance adjustments are not in substitution for and do not limit the Council' rights to recover damages arising from any breach of the Contractor's obligations under this Contract.

## ANNEXURES

### Annexure 1 – Reference Schedule

REFERENCE SCHEDULE		
Clause 1.3.1	Contract model	[The Contract model is a blend of fixed and variable pricing [with provision for escalation] [and includes a system of payment adjustments determined on the basis of achievement of Performance Standards in accordance with clause 38.1].
Clause 1.3.2	Partnering	Partnering [ <i>is/is not</i> ] included in this Contract
Clause 2.1.1	Contract Expiry Date:	[ ]
Clause 2.2.1	Services Commencement Date:	[ ]
Clause 5.1	Quality Management Plan	Required: <b>YES/NO</b> Accreditation required by the Contract Commencement Date/ by [ ] [ <i>select which option applies</i> ]
Clause 5.1.1	Quality Assurance Certification	The Contractor [ <i>is/is not</i> ] required to be Quality Assurance accredited. The Contractor [ <i>is/is not</i> ] to be accredited to [ <i>to ISO 9001:2000/other</i> ] <b>[Note to Author: Amend as required]</b>
Clause 5.1.2	Quality Assurance Certificate	The Contractor shall have the accreditation in place by [ ]
Clause 5.1.3	Quality Assurance Certificate	The Contractor will provide a copy of each updated QMS to the Council Representative by [ ].

Clause 7.1	Environmental Management System	Required: <b>YES/NO</b> Accreditation required by :
Clause 7.1.2	Accreditation Required by:	At the Contract Commencement Date/ by [ ] [select which option applies]
Clause 7.1.3	Copy of EMS	Required by: [ ]
Clause 11.2.1	Key Personnel:	[insert Key Personnel and their roles]
Clause 13.1.1	Transitional Plan (if required by the Council) to be submitted by:	Transitional Plan Required: <b>YES/NO</b>  If yes, period prior to Expire Date by which it is to be submitted: [ ] months.
Clause 28.8.1(c)	The nominated place for any arbitration proceedings under this Contract is:	[ ]
Various Clauses	Contractor's Plans Submittal Date	[Option] [ ] Months prior to the Services Commencement Date [Option] The Contractor's Plans Submittal Date for each of the Contractor's Plans are: <i>[Note to Author: delete the following rows relating to the specific Contractor's plans if the above option is used.]</i>
	Quality Plan	date required [ ]
	Health and Safety Plan	date required [ ]
	Collection Schedule	date required [ ]
	Contamination and Presentation Strategy	date required [ ]
	Operations and Procedures Plan	date required [ ]
	Environmental Management System	date required [ ]

	Traffic Management Plan	date required [ ]
	Customer Service Plan	date required [ ]
	Collection Container Distribution Plan	date required [ ]
Clause 37	Specified Subcontractors required to complete a Continuity Deed:	[ ] [ ]
Clause 18.1.1(c)	Bond Amount: (See Note 1)	\$( )
Clause 18.1.1(d)	Bond provider:	.....
Clause 18.2.1	Guarantee	A guarantee [is/is not] required  The Guarantor is: .....
Clause 20.1.1	Contractor Representative:	.....
Clause 20.2.1	Council Representative:	.....
Clause 21.2.2(a)	Contract Performance Team members	Each party shall appoint [ ] representatives to the Contract Performance Team.
Clause 22.1.1	Public liability insurance cover amount: (See Note 1) Public liability insurance deductible amount:	[ ]
Clause 22.2.1	Motor vehicle public liability insurance cover amount: (See Note 1) Motor vehicle public liability insurance deductible amount:	[ ]
Clause 38	Performance adjustment	The Performance adjustment provisions in Clause [insert clause reference for clause used in the special conditions if this is to form part of the Contract – if not part of the

		<b>Contract state 'not applicable'.]</b>
Clause 25.9.1	Interest rate on overdue payments:	<b>[a rate equivalent to the payees authorised overdraft rate with a reputable trading bank in New Zealand plus 4% pa compounded and adjusted quarterly]</b>
Clause 32.19.3	Parties address for service  Contractor:  Council:	
Clause 33.1.1	Collection Container	<b>[Set out description and/or specification of collection container(s)]</b>
Clause 34	Extension of Contract Term	The Extension of Contract Term provisions in Clause 34 <b>[do/do not]</b> apply.
Clause 34.2.12	Maximum Contract Term:	<b>[ ]</b> years
	Collection Containers	The Contractor <b>[is/is not]</b> required to provide Collection Containers <b>[as set out in the Specifications]</b>  <b>[Note to Author: If the Contractor is to provide the Collection Containers then you may want/need to include other clauses and requirements in this contract around ownership etc of those containers.]</b>
<b>Note 1</b>	[This is an option for long term contracts only.] The Bond Amount, the public liability insurance amount and the motor vehicle public liability insurance amount as set out in this Schedule shall be adjusted on the <b>[second]</b> anniversary of the Services Commencement Date and <b>[two yearly]</b> thereafter in accordance with movements in the Escalation Index in the manner set out in Clause 25.13.1.	

## Annexure 2 – Schedule of Payments

### 1. Basis of Payment

**[Note to Author:** *Include the basis on which payments are to be calculated ie fixed sum, per container, etc and how any variation to nominated quantities listed in the schedule will be addressed*].

### 2. Service Rates Escalation

(refer to clause 25.13)

Service Rates shall be escalated [6 monthly/annually] in accordance with the following

$$\text{Revised Service Rates} = \text{SSR} \times (1 + (\text{CEI} - \text{BEI})/\text{BEI})$$

Where

SSR	means the Specified Service Rate
CEI	means the Current Escalation Index
BEI	means the Base Escalation Index

and

Revised Service Rates	are the rates that are to be applied to all payments under the Contract for Services supplied from the relevant Escalation Date for the following 12 calendar months.
Specified Service Rates	are the Service Rates quoted in the Schedule of Prices.
Current Escalation Index	is the Escalation Index (as described below) for the quarter immediately preceding the relevant review.
Base Escalation Index	is Escalation Index for the quarter ending 30 June [date].
Escalation Index	is a composite index constituted as follows: 40% Labour Cost Index -Series Ref LCIQ - Private Sector All Salary & Wages - Construction - Series SE51E9 60% Transport Cost Index Series Ref SI0I all as published by Statistics New Zealand by (or any successor organisation) and if that index ceases to be published or if the basis of calculation of the index is fundamentally changed then an index providing the closest substitute agreed by the parties

### 3. Service Rates

[To be attached]

### **Annexure 3 - Partnering**

#### Partnering philosophy (refer to clause 21)

The Parties will conduct the Contract within the philosophy of partnering. To achieve this on-going success will depend upon both Parties working collectively together at all times in the spirit of the following principles:

- Build trust and have a good working relationship,
- Generate a culture of respect, mutual support, co-operation and good faith,
- Commitment to achieving the Contract outcomes,
- Share in the vision, goals, objectives and values of sustainability and waste minimisation,
- Create good communication in an open and supportive manner,
- Address and resolve difficulties and issues as they arise,
- Develop and maintain an excellent public profile,
- Promote and encourage a creative synergy for on-going improvement, cost effectiveness and efficiency.

#### Partnering plan

Partnering under this Contract shall involve (but will not necessarily be limited to) the following:

1. Gaining top management commitment from each party;
2. Arranging team building/bonding between the Parties as a planned process to acknowledge each others' agendas, focussing on common goals, clarifying expectations and establishing ground rules for the implementation and management of the Contract;
3. Expanding the commitment to all other significant participants who will be working together on the Contract by forming a cohesive team with a single set of objectives and developing a joint commitment for the timely identification, discussion and resolution of issues effecting the provision of the Services;
4. Producing a charter for the Contract with each team building workshop participant signing the charter to reinforce its commitment. The charter may typically contain the following commitments:
  - (a) to maintain quality control;
  - (b) to carry out and administer the Contract so that all parties are treated fairly;
  - (c) to achieve the Performance Standards expectations;
  - (d) to resolve disputes as quickly as possible; and
  - (e) to encourage the achievement of added value for the benefit of all parties by indicating improvements which become apparent throughout the Contract Term;
5. Conducting regular joint evaluations of partnering performance by all participants;
6. Conducting regular formal follow up evaluations of team performance and identifying areas for improvement at regular intervals as are necessary to enforce the attitudes and processes developed in the initial workshops;
7. Developing commitment and support from all levels of management including consistent endorsement of the principles of partnering

#### **Annexure 4 – Nominated Facility Access Agreements**

(refer clause 10.8)

*[List Nominated Facility Operators and include copy of required Nominated Facility Access Agreement for each facility*

*Standard Access Agreement is included as an example]*



[Example – Standard Access Agreement. **Note:** If using this document you need to use the same document used under the Facilities Management Contract entered into between the Council and the facilities operator]

**[insert name of Facility Operator]**  
**(Facility Operator)**

**and**

**[insert name of Contractor]**  
**(Collection Contractor)**

## **FACILITY ACCESS AGREEMENT**

## **PARTIES**

[*Facility Operator*] (**Facility Operator**)

[ ] (**Collection Contractor**)

## **BACKGROUND**

- A The Council has entered into an Agreement with the Facility Operator under which the Facility Operator agrees to provide a service to accept Collection Materials collected from the [ ] District (**District**) for processing and distribution (**Facility Contract**).
- B The Council has also entered into an agreement with the Collection Contractor for Collection Materials kerbside collection throughout the District and (**Collection Contract**).
- C Under the Collection Contract the Collection Contractor is directed to deliver the collected Collection Materials to the Facility.
- D This Agreement records the terms and conditions as between the Facility Operator and the Collection Contractor relating to:
- the Collection Contractor's access to the Facility; and
  - The parties obligations to implement and comply with the [Acceptance Protocol].

## **OPERATIVE PROVISION**

In consideration of the mutual covenants set out in this agreement and the entry by the Council and the applicable party into the Facility Contract and the Collection Contract and to facilitate the implementation of the Facility Contract and the Collection Contract, the parties agree as follows.

## **AGREEMENT**

### **1. SCOPE OF AGREEMENT**

- 1.1 The Facility Operator will accept Collection Materials collected by the Collection Contractor pursuant to the Collection Contract and presented by the Collection Contractor at the Facility on the basis set out in this Agreement.
- 1.2 Each party shall implement and comply with the Acceptance Protocol.
- 1.3 The Contractor shall pay the amounts payable to the Facility Operator as set out in this Agreement.
- 1.4 The Collection Contractor shall ensure that the Collection Vehicle drivers and all other Collection Contractor personnel comply with all access rules and requirements as notified to the Collection Contractor by the Facility Operator and all reasonable directions of Facility personnel when on the Facility site.

### **2. TERM OF AGREEMENT**

- 2.1 This Agreement shall commence on the Commencement Date and remain in force until the expiry or earlier termination of the Collection Contract.

### **3. ACCEPTANCE PROTOCOL**

- 3.1 The Collection Contractor shall at all times comply with the Acceptance Protocol and shall only present Collection Materials to the Facility Operator for acceptance at the Facility in compliance with the Acceptance Protocol.

3.2 The Acceptance Protocol is set out in Appendix 1.

**4. COLLECTION Contract LOADS ONLY**

4.1 The Collection Contractor shall only present Collection Materials collected under the Collection Contract to the Facility Operator pursuant to this Agreement.

**5. TIME REQUIREMENTS**

5.1 The Collection Contractor shall present Collection Materials at the Facility and the Facility Operator shall ensure the acceptance of presented Collection Materials (subject to the Acceptance Protocol) between the hours specified in the Acceptance Protocol or such other hours as the parties shall agree and as shall be approved by the Council Representative.

5.2 The Facility Operator will not unreasonably delay Collection Vehicles unloading at the Facility but may require Collection Vehicles to remain at the Facility for a period of up to [20 minutes] where the Facility Operator reasonably suspects the load may contain Excessive Contamination to enable the Facility Operator to assess the nature of the load and decide whether or not the load is to be subjected to the full Acceptance Protocol procedures.

5.3 The Facility Operator will cooperate with the Collection Contractor to make access available to the Collection Contractor out of hours when requested by the Collection Contractor. The Collection Contractor shall pay the Facility Operator's reasonable costs (if any) incurred in making such out of hours access available.

5.4 The Facility Operator will, at the Facility Operator's cost, extend the Collection Contractor access hours, within consent conditions, to make up for delays in unloading times caused by the Facility Operator.

**6. Collection Contractor personnel**

6.1 The Collection Contractor shall ensure that its Collection Vehicle drivers and other employees, agents and subcontractors comply with this Agreement.

6.2 The Collection Contractor shall not allow any employee, agent or subcontractor to deliver Collection Materials to the Facility unless such employee, agent or subcontractor acknowledges having read this Agreement and undertakes to comply with the terms thereof.

6.3 The Collection Contractor shall at all times be liable for the acts and omissions of its employees, agents and subcontractors.

6.4 The Collection Contractor shall indemnify the Facility Operator for all losses, expenses, costs and damages incurred by the Collection Contractor and arising from the act or omission of any of the Collection Contractor's employees, agents or subcontractors.

**7. OPERATIONS ON THE FACILITY SITE**

7.1 When entering and while on the Facility site, Collection Contractor personnel shall follow the directions and instructions of the Facility Operator's personnel and the Facility Operator's access rules at all times.

7.2 Collection Vehicle drivers shall unload loads as instructed by the Facility Operator's personnel and with minimal interference and disruption to the Facility Operator's operations and with due consideration to other users of the Facility.

**8. DAMAGE TO FACILITY**

8.1 The Collection Contractor shall make good, at its cost, all damage to the Facility, the property of the Facility Operator or any other property damaged by the Collection Contractor or its personnel while on the Facility site.

**9. FORCE MAJEURE**

9.1 The Facility Operator shall accept Collection Materials during the standard operating hours set out in clause 5.1 on Collection Days unless prevented from so doing by force majeure or other extraordinary circumstances outside the reasonable control of the Facility Operator. The Facility Operator will endeavour to provide reasonable notice to the Collection Contractor in the event that the Facility Operator is required to temporarily close the Facility. The Facility Operator shall not be liable for any loss of business, loss of profits or costs or expenses sustained by Collection Contractor during any period of temporary closure of the Facility.

**10. INTEREST**

10.1 The Collection Contractor shall pay interest to the Facility Operator on any amount due and unpaid from the due date for payment until payment is actually made. Interest shall be payable at a rate of 4% per annum over the Facility Operator's authorised overdraft rate adjusted quarterly.

**11. ASSIGNMENT**

11.1 The Collection Contractor shall not assign its rights and obligations under this Agreement.

11.2 Any material change in the ownership or control of Collection Contractor shall be deemed to be an assignment of this Agreement.

11.3 The Facility Operator may assign this Agreement to such other party as shall operate the Facility for the Council, as directed by the Council Representative.

**12. SUBCONTRACTING**

12.1 The Collection Contractor shall not subcontract the delivery of the Collection Materials to the Facility without the prior written approval of the Council.

12.2 The Collection Contractor shall ensure any such subcontractor enters into a Facility Access Agreement in favour of the Facility Operator in the same form as this Agreement before requiring access to the Facility.

**13. PUBLIC LIABILITY INSURANCE**

13.1 The Collection Contractor shall at all times during the term of this Agreement hold public liability insurance for an amount not less than [\$5,000,000].

**14. TERMINATION**

14.1 In the event that the Collection Contractor fails to perform or fulfil at any time any of its material obligations under this Agreement and fails to remedy such default within 30 days of receiving written notice of default from the Landfill Operator then the Facility Operator may after prior consultation with the Council by notice in writing (copied to the Council Representative) terminate this Agreement with immediate effect.

14.2 The Facility Operator may terminate this Agreement with immediate effect if a receiver or liquidator of the Collection Contractor is appointed or if the Collection Contractor becomes insolvent or unable to pay its debts in the ordinary course of business or if a final judgment or order is issued against the Collection Contractor under any law relating to bankruptcy or insolvency or if the Collection Contractor is wound up or liquidated or dissolved whether voluntarily or otherwise howsoever.

14.3 The Agreement shall immediately terminate if the Collection Contract is terminated or comes to an end for any reason.

14.4 The termination of this Agreement by the Facility Operator shall not preclude the Facility Operator from the recovery of all losses, costs, damages, expenses and

claims arising by reason of any antecedent breach of this Agreement by the Collection Contractor.

## 15. DEFINITIONS

15.1 In this Agreement the following definitions apply:

**Acceptance Protocol** means the Acceptance Protocol set out in Appendix 1.

**Agreement** means this Agreement and includes the schedules and any additional documents specified in the Agreement.

**Collection Contract** has the meaning set out in Background clause B.

**Collection Days** has the meaning set out in the Acceptance Protocol.

**Collection Materials** means the Waste to be collected by the Contractor under the Collection Contract.

**Collection Vehicle** means a vehicle used by the Collection Contractor for the delivery of Collection Materials to the Facility.

**Commencement Date** means [                      ].

**Excessive Contamination** has the meaning set out in the Acceptance Protocol.

**Facility** means the Facility located at [                      ].

**Council Representative** means the Council Representative under the Collection Contract.

**Waste means:**

- anything disposed of or discarded that is to be collected as specified; and
- includes a type of waste that is defined by its composition or source (for example, organic waste, electronic waste, but excluding construction and demolition waste); and
- to avoid doubt, includes any component or element of diverted material, if the component or element is disposed of or discarded.

**Working Day** means any day other than a Saturday, Sunday, or a public holiday applying in the District.

## 16. INTREPRETATION

16.1 In this Agreement unless the context otherwise requires:

- (a) where the context permits the singular includes the plural and vice versa.
- (b) references to any party mean the parties to this Agreement and includes their respective successors and permitted assignees (as the case may be).
- (c) references to clauses, schedules and attachments are to clauses, schedules and attachments (if any) to this Agreement (unless otherwise stated).
- (d) all schedules or appendices to this Agreement shall have the same effect as if set out in the body of this Agreement.
- (e) where the context permits references to a party include the party's employees, agents and officers.
- (f) all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation.
- (g) references to a person include a natural person, firm, corporation, association trust, state, or agency of state, government department or municipal authority

or other entity whether incorporated or not and whether or not having a separate legal personality.

- (h) the headings in this Agreement shall not be used in its interpretation.
- (i) words and expressions defined are indicated by capital letters for convenience.
- (j) obligations that bind more than one person shall bind those persons jointly and severally.
- (k) this Agreement comprising the Agreement and all Schedules shall be read together as one Agreement. Ambiguities or discrepancies shall not invalidate the Agreement.
- (l) if there is a conflict between the provisions of the Agreement, the provisions shall take priority in the following order:
  - (i) the Agreement provisions;
  - (ii) the schedules;
  - (iii) additional documents as specified in the Agreement.
- (m) reference to a 'law' or 'laws' means a statute, regulation bylaw or any other requirement of a governmental or semi-governmental organisation.
- (n) The language of this Agreement is English. All notices and communications of any kind required under or arising in connection with this Agreement shall be in English.

**EXECUTION**

Dated

20[ ]

**SIGNED** by or on behalf of the Facility Operator:

Signature:

\_\_\_\_\_

Title:

\_\_\_\_\_

**SIGNED** by or on behalf of the Collection Contractor:

Signature:

\_\_\_\_\_

Title:

\_\_\_\_\_

## **APPENDIX I ACCEPTANCE PROTOCOL**

*[Acceptance Protocol to be inserted here]*



**Annexure 5 – Performance Standards**

(refer clause 38)

*[Note: this should only be used where the contract provides for performance standards]*

<b>Performance Standards</b>			
	<b>Performance Standard</b>	<b>Required level and measurement</b>	<b>Payment Adjustment (excluding GST)</b>
1.	<p><b>Collection Service faults</b></p> <p>Incidence of:</p> <ul style="list-style-type: none"> <li>○ Missed Services</li> <li>○ failure to uplift Collection Containers or from a Service Entitled Premises within the required time frame</li> <li>○ failure to deliver a new or replacement Collection Containers to a Service Entitled Premises within the required time frame</li> </ul>	<p>The aggregate number of validated Collection Service failures of any nature over the month exceeds [ ]</p> <p>Measured by verified complaints or audit and sampling conducted either by the Contractor or the Council</p>	<p>The Contract Sum payable for the applicable month shall be reduced by a sum equivalent to [ ]% of that payment</p>
2.	<p>Spilt materials</p> <p>Incidence of spilt material from Collection Containers or Alternative Containers not picked/cleaned up by Collection Services personnel</p>	<p>Reported non pick up/clean up incidents over the month exceeds [ ].</p> <p>Measured by verified complaints or by audit and sampling conducted either by the Contractor or the Council.</p>	<p>The Contract Sum payable for the applicable month shall be reduced by a sum equivalent to [ ] of that payment.</p>
3.	<p>Contaminated loads (where contaminant management is the Contractor's responsibility)</p> <p>Incidence of loads rejected for Excessive Contamination or failure to meet applicable Acceptance Criteria</p>	<p>The number of loads of Collected Materials that fails to meet the required Acceptance Criteria exceeds [ ] over the month</p> <p>Measured in accordance with the Acceptance Protocols set</p>	<p>The Contract Sum payable for the applicable month shall be reduced by a sum equivalent to [ ]% of that payment.</p>

		out in the Specifications..	
4.	Complaints  Unacceptable level of Customer/public complaints	The number of verified material Customer or public complaints as to the Contractor's provision of the Services in the applicable month exceeds [ ].	The Contract Sum payable for the applicable month shall be reduced by a sum equivalent to [ ]% of that payment
5.	Audit  Failure by the Contractor to carry out required audits and quality monitoring	Failure to carry out required audits and quality monitoring in the applicable month to an extent that, in the Council Representative's reasonable view, the failure will materially prejudice the efficacy of the Contractor self audit and quality management regime	The Contract Sum payable for the applicable month shall be reduced by a sum equivalent to [ ]% of that payment
6.	Failure to report  Failure to report Performance Standards failures	Failure to accurately report any verified instance of a Performance Standard failure.	The Contract Sum payable for the applicable month shall be reduced by a sum equivalent to [ ]% of that payment  The failure to report adjustment shall apply to the month the underlying failure occurred and to each subsequent month until the failure is identified and reported to the Council to a maximum of three (3) monthly adjustments for any one reporting failure.

The Contract Sum payable in relation to the Services provided by the Contractor in any month during the Contract Term shall be adjusted in accordance with the above table.

**[OPTION]** Contract Sum adjustments for Performance Standards failures shall not apply for the three month period following the Services Commencement Date.

The maximum Contract Sum adjustment for any month shall not exceed [ ]% of the amount otherwise payable for that month.

All audits and samples shall be conducted in accordance with reasonable and statistically valid sampling methodologies.



PARTIES

---

[ ] (Council)  
[Subcontractor] (Subcontractor)

BACKGROUND

---

- A The Council and [ ] (Contractor) have entered into a contract dated [ ] for the provision of Kerbside Collection Services (**Head Contract**).
- B The services to be provided by Contractor under the Head Contract include the services described in clause 1.1 (**Subcontract Services**).
- C By subcontract dated [ ] (**Subcontract**) Contractor has contracted the Subcontractor to provide the Subcontract Services.
- D In consideration of the Council approving the engagement of the Subcontractor by the Contractor pursuant to the Contract, the Subcontractor has agreed to assure continuity of the Subcontract Services on the terms set out in this deed.

OPERATIVE PROVISIONS

---

This deed witnesses and for the consideration set out above, the Subcontractor covenants with the Council as follows.

- 1. SUBCONTRACT SERVICES**
  - 1.1 The Subcontract Services are [ ].
- 2. SUBCONTRACTOR TO COMPLETE SUBCONTRACT SERVICES**
  - 2.1 The Subcontractor covenants that if the Head Contract is determined or comes to an end before the Expiry Date under the Head Contract, the Subcontractor will, if required by the Council (by written notice), continue to provide the Subcontract Services for the Council under the same conditions, for the same term and for the same consideration as set out in the Subcontract.
  - 2.2 As from the giving of notice under clause 2.1 a new contract shall be deemed to be in place as between the Council and the Subcontractor on the same terms as the Subcontract subject to such amendments as are required to give effect to this deed or are otherwise agreed by the parties.
  - 2.3 The parties acknowledge that the Council does not assume liability for any defaults or outstanding payments owed by Contractor to the Subcontractor under the Subcontract and that this deed and any notice given under this deed do not constitute and shall not be construed as an assignment or novation of the Subcontract.
- 3. RIGHTS ADDITIONAL TO AGREEMENT**
  - 3.1 The Council’s rights under this deed are in addition to and do not derogate from any other rights the Council may have under the Head Contract.
- 4. NOTICES**
  - 4.1 Each notice or other communication under this deed is to be in writing and is to be given by facsimile, personal delivery or registered post to the addressee at the facsimile number or address, and shall be marked for the attention of the person or

office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial facsimile number, address and relevant person or office holder of each party is set out under the name at the end of this deed.

4.2 No communication shall be effective until received. Communications are, however, deemed to be received:

4.1.1 in the case of a letter, on the third business day after posting, and

4.5.2 in the case of a facsimile, on the business day on which it is dispatched or, if dispatched after 5.00pm (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of dispatch.

## **5. NO WAIVER**

5.1 A failure of party, at any time, to require full or part performance of any obligations under this deed will not in any way affect the rights of that party to require that performance subsequently.

## **6. GOVERNING LAW**

6.1 This deed is governed by the laws of New Zealand. Each party unconditionally and irrevocably submits to the non exclusive jurisdiction of the Courts of New Zealand.

## **7. SEVERABILITY**

7.1 If any provision of this deed is illegal or unenforceable, then:

7.1.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or words are severed, and

7.1.2 in any other case, the whole provision is severed, and, except where the basic nature of this deed is altered, as altered, in contrary to public policy, the remainder of this deed continues to have full force and effect.

## **8. COUNTERPARTS**

8.1 This deed may be executed in any number of counterparts. All counter parts taken together will be deemed to constitute the one deed.

## **9. ASSIGNMENT**

9.1 This deed is personal to the Council. The Council cannot assign, transfer or otherwise deal with any of its rights under this deed.

## **10. INTERPRETATION**

10.1 In this deed, unless the context otherwise requires:

10.1.1 Words importing the singular number include the plural number

10.1.2 Words importing the plural number include the singular number

10.1.3 Words of any gender include the other gender and bodies corporate

10.1.4 Covenants given in this document by more than one person shall bind each of them jointly and severally

10.1.5 A party includes its successors and permitted assigns

10.1.6 Paragraph headings and table of contents are not to be used to construe this document

10.1.7 References to a clause, clauses, Schedule or Schedules shall unless otherwise specified be a reference to the corresponding clause, clauses, Schedule or Schedules in this deed.

- 10.2 Except where expressly provided to the contrary all references in this deed to 'including', 'includes' or 'include' shall be read as if that reference is followed by the words 'without limitation'.
- 10.3 Terms used that are not defined in this contract have, unless the context does not allow, the same meaning as in the Head Contract.

## EXECUTION

---

Executed as a deed.

Dated

20[ ]

Signed by

)

**[Subcontractor]**

)

Director

in the presence of:

)

)

Witness signature:

Director

Witness name:

Occupation:

Address:

THE COMMON SEAL of

)

**[Council]**

)

was affixed in the presence of:

---

Elected Member

---

Elected Member

**BOND**

**PARTIES**

[ ] (**Principal**)  
[ ] (**Surety**)

**BACKGROUND**

- A [ ] (**Contractor**) has entered into a contract dated [ ] (**Contract**) with the Principal to provide Kerbside Collection Services.
- B The Contract requires the Contractor to provide the Principal with security in the form of a bond.
- C The Surety has agreed to provide this bond in favour of the Principal.

**OPERATIVE PROVISION**

The Surety undertakes and binds itself in favour of the Principal as follows.

**COVENANTS**

- 1. SURETY’S UNDERTAKING**
  - 1.1 The Surety unconditionally undertakes to pay to the Principal all sums which the Principal shall demand up to an amount in the aggregate not exceeding the sum of [ ] dollars (\$[ ]) (**Bond Amount**).
- 2. DEMAND BY THE PRINCIPAL**
  - 2.2 Demand by the Principal shall be in writing.
  - 2.2 The Principal may make demand under this bond at any time and without any need to first pursue remedies against the Contractor.
- 3. BOND TO CONTINUE IN FORCE**
  - 3.1 This Bond and the Surety's undertaking shall continue in force until the earlier of the following events:
    - 3.1.1 The Principal advises the Surety in writing of the termination or expiry of the Contract and the proper completion of all the Contractor’s obligations and the finalising of all payment adjustments under the Contract; or
    - 3.1.2 the Surety pays the whole of the Bond Amount to the Principal; or
    - 3.1.3 the Principal provides a written release of this bond to the Surety.
  - 3.2 Notwithstanding any other provision in this Deed, the Surety may at any time at its discretion, whether or not the Surety has received a demand, terminate its obligations under this Deed by paying the Principal the Bond Amount or the balance outstanding of the Bond Amount or any lesser sum that the Principal may agree to accept.
  - 3.3 Except as provided in clause 3 this bond shall continue in full force and effect.
- 4. SURETY NOT RELEASED FROM LIABILITY**
  - 4.1 The Surety shall not be released from any liability under this bond:
    - 4.1.1 by any alteration in the terms of the Contract between the Principal and the Contractor;



- 4.1.2 by any alteration in the extent or nature of the Services to be performed under the Contract;
- 4.1.3 by any allowance of time by the Principal;
- 4.1.4 by any forbearance or waiver by the Principal in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor;
- 4.1.5 by any alteration of the extent or nature of the Contractor's obligations under the Contract;
- 4.1.6 by any indulgence or additional or advance payment, forbearance, payment or concession given to the Contractor;
- 4.1.7 by the compromise or resolution of any dispute with the Contractor.
- 4.1.8 by the failure to detect or prevent any default by the Contractor under the Contract.

**5. PAYMENTS BY THE SURETY**

- 5.1 Payments under this bond shall be made free and clear of and without any deduction for any present or future taxes, levies, impost duties, fees, deductions, set off or withholding of any nature (unless required by law).

**6. NOTICES**

- 6.1 All demands notices and other communications provided for and permitted under this Deed which are required to be in writing shall be sent by registered mail with postage prepaid, by hand delivery, by facsimile or by courier as follows:

In the case of the Principal:

[ ]  
 [ ]  
 [ ]  
 [ ]  
 Telephone: [ ]  
 Facsimile: [ ]

In the case of the Surety:

[to be inserted in executed bond]  
 [ ]  
 Facsimile: [ ]

or to such other address or person as any party may specify by notice in writing to the others.

All such notices or communications shall be deemed to have been duly given or made:

- 3 days after being deposited in the mail by the sender with mail postage prepaid;
- on delivery when delivered by hand or by courier;
- if sent by facsimile when a completed transmission report is received by the sender unless a verifiable query as to material illegibility is promptly raised.

**7. GENERAL**

- 7.1 This Deed shall be governed by the laws of New Zealand. The Surety submits to the non-exclusive jurisdiction of the courts of New Zealand.

- 7.2 No waiver or any breach or failure to enforce any provision of this Deed at any time by the Principal shall in any way limit or waive the right of the Principal to subsequently exercise its rights under this Deed.
- 7.3 Capitalised expressions that are not defined in this bond shall have the meaning set out in the Contract.

## EXECUTION

Dated \_\_\_\_\_ 20[ ]].  
Signed as a deed by the Surety

\_\_\_\_\_  
in the presence of

Witness:

Occupation:

Address:

**NOTE:** This bond must be executed by the Surety in the manner required for execution of a deed. Any surety which is a company or body corporate must execute:

- (i) Where it is a company incorporated under the Companies Act 1993, in accordance with Section 180 of that Act; and
- (ii) Any party which is a body corporate other than a company must execute by in the same manner as a company by persons occupying a position that is comparable with that of a director of a company or otherwise in the manner required for the execution of deeds in New Zealand.

In the case of a Surety who is an individual, the party must sign and the signature must be witnessed by another person. The witness must not only sign by must also add his or her occupation and address.

**DEED OF GUARANTEE AND INDEMNITY**  
**re**  
**KERBSIDE COLLECTION SERVICES CONTRACT**  
CONTRACT NO. [INSERT CONTRACT NO.]

**[Parties]**

## PARTIES

---

[ ] (**Guarantor**)

[ ] (**Council**)

## BACKGROUND

---

**A** The Council has, at the request of the Guarantor, entered into a contract with [ ] (**Contractor**) dated [ ] (**Contract**) whereby the Contractor has agreed to provide [ ] services for the Council.

**B** In consideration of the Council entering into the Contract at the request of the Guarantor, the Guarantor has agreed to execute this deed in favour of the Council whereby the Guarantor guarantees the obligations of and the payment of all moneys by the Contractor to the Council under the Contract.

## OPERATIVE PROVISIONS

---

This deed witnesses and for the consideration set out above, the Guarantor covenants with the Council as follows.

### 1. **GUARANTEE AND INDEMNITY**

#### **Guarantee**

1.1 The Guarantor unconditionally and irrevocably guarantees the performance by the Contractor of the Guaranteed Obligations and the payment of all Guaranteed Moneys.

#### **Guarantor covenants**

1.2 The Guarantor covenants:

1.2.1 Whenever the Contractor defaults in the performance of any Guaranteed Obligations, the Guarantor will immediately, whether or not the Council has made demand as to performance by either the Contractor or the Guarantor, perform all such Guaranteed Obligations in respect of which the Contractor is in default; and

1.2.2 The Guarantor shall immediately on receipt of written demand from the Council, pay to the Council any Guaranteed Moneys not paid by the Contractor on its due date.

#### **Unconditional indemnity**

1.3 The Guarantor unconditionally and irrevocably indemnifies the Council against all damages, costs, loss or expenses incurred by the Council as a direct result of any breach by the Contractor of any of the Guaranteed Obligations and as a result of failure by the Contractor to pay any part of the Guaranteed Moneys and the Guarantor shall on demand immediately pay to the Council the amount of such damages, costs, loss or expenses so indemnified.

#### **Extent of Guarantor's liability**

1.4 The Guarantor's liability under clauses 1.1, 1.2 and 1.3 is payable on the same terms as the indemnity provided by and the obligations of the Contractor to the Council under the Contract and is limited (when aggregated with all amounts paid to the

Council by the Contractor by way of damages or indemnity under the Contract and by the Bond provider under the Bond required to be provided under the Contract) to the maximum amount of damages as specified in the Contract.

## **2. GUARANTOR'S LIABILITY AS PRINCIPAL DEBTOR**

- 2.1 Although as between the Guarantor and the Contractor the Guarantor may be a surety only, as between the Guarantor and the Council the Guarantor shall be deemed to be a principal debtor and liable on all of the Contractor's covenants with the Council. The Guarantor shall not be released by any act, matter or thing the happening of which would release one liable only as a surety and shall continue to remain liable to the Council notwithstanding that for any particular reason any covenant or obligation of the Contractor with or to the Council may, for the time being, be unenforceable by the Council against the Contractor.

## **3. GUARANTOR'S OBLIGATIONS TO CONTINUE UNAFFECTED**

- 3.1 The obligations and liabilities of the Guarantor and the rights of the Council under this deed continue and are not affected by:
- 3.1.1 the Council granting any time, waiver or other indulgence to the Contractor or any Covenantor;
  - 3.1.2 the Council consenting to any scheme of arrangement or assignment for the benefit of creditors by the Contractor or any Covenantor or compounding or compromising with or wholly or partially releasing or covenanting not to sue the Contractor or any Covenantor;
  - 3.1.3 laches, acquiescence, delay, acts, omissions, or mistakes by the Council or any other person;
  - 3.1.4 the Council taking, varying, wholly or partially discharging or otherwise dealing with or losing or impairing any rights to or security interest for the Guaranteed Money;
  - 3.1.5 any person who was intended to become a Covenantor not doing so or not doing so effectively or being discharged;
  - 3.1.6 the entry into novation, assignment, rescission, termination or variation of any contract or arrangement between the Council and the Contractor or any Covenantor;
  - 3.1.7 the insolvency, winding up or de-registration of the Contractor or any Covenantor;
  - 3.1.8 the granting of time by the Council, or the extension of time under the Contract;
  - 3.1.9 the entering into by the Contractor and the Council of, or the instructing of, any variation by the Council under the Contract;
  - 3.1.10 the amending or varying of the Contract or the rights or obligations of any party to the Contract;
  - 3.1.11 the making of payments by the Council to the Contractor in relation to the Contract, whether provided for in the Contract or not;
  - 3.1.12 the lack of notice by the Council to the Guarantor of any default or impending default or of any circumstances that may have lead to a default on the part of the Contractor;
  - 3.1.13 any alteration in the nature or extent of the services under the Contract;
  - 3.1.14 the failure by the Council to detect any error or omission or other defect in the performance of the services under the Contract;

- 3.1.15 the compromising of any dispute with the Contractor;
- 3.1.16 anything else which might at law or in equity has the effect of prejudicing or discharging the Guarantor's liability under this deed.

#### **4. DISCRETION IN ENFORCING SECURITIES**

- 4.1 The Guarantor agrees that the Council may enforce this deed irrespective of whether it has made a demand on or enforced any rights against the Contractor.

#### **5. SUSPENSION OF GUARANTOR'S RIGHTS**

- 5.1 As long as any Guaranteed Moneys are owing by the Contractor to the Council (whether or not the Guarantor has become liable for that money under this deed), the Guarantor shall not:
  - 5.1.1 make any claim or enforce any right against the Contractor or any Covenantor;
  - 5.1.2 prove in competition with the Council if any Contractor or Covenantor becomes insolvent, whether in respect of any amount paid by the Guarantor under this deed, in respect of any other amount (including the proceeds of any security interest) applied by the Council in reduction of the Guarantor's liability under this deed, or otherwise; or
  - 5.1.3 be entitled to the benefit of any security interest or guarantee or any share therein now or subsequently held by the Council in respect of the Secured Money; or
  - 5.1.4 take advantage of any defence available to the Contractor or the Guarantor against the Council.

#### **6. PAYMENT FOR SERVICES**

- 6.1 If the Guarantor performs any of the Guaranteed Obligations, the same conditions and consideration will apply as contained in the Contract, except that no consideration will be paid to the Guarantor for the performance of any Guaranteed Obligations for which the Contractor has been paid in accordance with the Contract. For the purposes of clarity, the parties acknowledge that this clause shall not operate to limit the Council's set off rights under the Contract.

#### **7. ACKNOWLEDGEMENTS BY GUARANTOR**

- 7.1 The Guarantor acknowledges that:
  - 7.1.1 there is no condition affecting the operation of the guarantee and indemnity recorded by this deed that is not contained in this deed;
  - 7.1.2 no person has any authority to vary the terms of this deed or to waive any of the Council's rights, except by an instrument in writing executed by the Council.

#### **8. CONTINUING SECURITY**

- 8.1 This deed shall be a continuing guarantee and indemnity and shall remain in full force and effect and shall not be deemed to have been released or discharged or in any way vacated until a final release of this deed is executed by the Council.

#### **9. NO RIGHT TO DISCONTINUE**

- 9.1 The Guarantor shall have no right to discontinue the guarantee and indemnity recorded by this deed.

#### **10. COLLATERAL SECURITIES**

- 10.1 This deed is given in addition to and not in substitution for any other security interest held by the Council. Neither this deed nor anything contained in this deed shall discharge, merge, abate or prejudice:

- 10.1.1 any other security interest now or in the future held by the Council for payment of the Guaranteed Moneys; or
- 10.1.2 any claim or rights the Council has or may have upon any guarantee, bill of exchange, promissory note, cheque or other instrument.

## **11. COSTS**

- 11.1 The Guarantor will pay on demand all external legal costs reasonably incurred by the Council in connection with and incidental to the exercise or attempted exercise by the Council of any of its powers or rights under this deed.

## **12. NOTICES**

### **Meaning of notice**

- 13.1 In this clause a 'notice' includes any demand, request, disclosure, notification or other communication which is required or permitted to be made, given or delivered by any party to any other party under this deed.

### **Writing**

- 13.2 All notices shall be in writing and sent by letter or facsimile.

### **When notice effective**

- 13.3 Without limiting any other form of service prescribed or permitted by law, no notice shall be effective unless properly sent to the recipient and until received by the recipient.

### **Deemed properly sent**

- 13.4 Unless otherwise expressly provided in this deed, any notice shall be deemed to have been properly sent if sent by prepaid post, delivered by hand or sent by facsimile to the address for service (which shall be in New Zealand) and marked for the attention of the person or office holder (if any) specified by the parties as provided in this deed.

### **Deemed receipt**

- 13.5 Without prejudice to any other mode of receipt, any properly sent notice shall be deemed to have been received by the recipient:
  - 13.5.1 if sent by post three working days after being put in the post; or
  - 13.5.2 if delivered by hand, when left at the address for service of the recipient; or
  - 13.5.3 if sent by facsimile, upon production of a transmission report by the machine from which the facsimile was transmitted which indicates that the facsimile was sent in its entirety to the recipient.

### **Initial addresses for service**

- 13.6 The initial address for service (which shall be in New Zealand), facsimile number and person or office holder (if any) specified by the parties are set out in the Schedule.

### **Deemed receipt on next working day**

- 13.7 Any notice delivered by hand, or sent by facsimile which is received by the recipient after 5:00pm (local time) on any working day or on a day which is not a working day, shall be deemed not to have been received by the party to which it was sent until 9:00am (local time) on the next working day.

### **Modification of address**

- 13.8 Any party may modify its address for service (which shall be in New Zealand), by giving 5 working days notice to the other party.

### **Validity**

- 13.9 No error or omission in a notice or demand shall affect its validity and the Guarantor shall not have any right of action, claim or demand against the Council by reason of such error or omission or by reason of the exercise or enforcement by the Council of its powers, rights and remedies under this deed whether express or implied.

## **GENERAL**

### **14. ASSIGNMENT BY GUARANTOR**

- 14.1 The Guarantor may not assign or transfer all or any of its rights, benefits and obligations under this deed.

### **15. GOVERNING LAW**

- 15.1 This deed shall in all respects be governed by and construed in accordance with the laws of New Zealand and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 15.2 The Guarantor agrees that the process by which any proceedings in New Zealand under this deed is begun may be served on it by delivery to the address for notices under the Schedule.

### **16. NO WAIVER**

- 16.1 No failure or delay by the Council to exercise any power, remedy or right in relation to this deed shall:
- 18.1.1 prejudice, limit or affect or operate as a waiver of that power, remedy or right; or
  - 18.1.2 be deemed to waive any default or breach of any obligation, liability or agreement by the Guarantor.
- 16.2 The exercise or partial exercise of any power, remedy or right shall be without prejudice to the Council's right to exercise that or any other power, remedy or right at the same time (except insofar as the exercise of any power, remedy or right is inconsistent with the exercise of any other power, remedy or right) or in the future.

### **17. SURVIVAL OF COVENANTS**

- 17.1 The covenants of the Guarantor contained in this deed shall survive the payment of the Guaranteed Moneys and any part thereof and the release of this deed and shall only be discharged when the Council is satisfied that the Guarantor or other person or persons making any repayment of the Guaranteed Moneys or any part thereof was solvent at the time of making such payment or after the period during which any such payment may become or be deemed to be avoided or voidable.

### **18. PARTIAL INVALIDITY/SEVERABILITY**

- 18.1 If one or more of the provisions or part of any provision of this deed is or becomes or is held to be or to have become illegal, invalid, unenforceable, void or voidable in any respect under any applicable law for any reason, it shall not affect the legality, validity or enforceability of the other provisions or other part of any provision of the deed, and shall be severed from this deed so that the remaining provisions or other part of any provision shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

### **19. REMEDIES CUMULATIVE**

- 19.1 The powers, remedies or rights conferred on the Council by this deed are cumulative and not exclusive of any powers, remedies or rights provided by law.



## 20. COUNTERPARTS

- 20.1 This deed may be executed in any number of counterparts each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

## 21. DEFINITIONS

- 21.1 In this deed, unless the context otherwise requires:

**Contractor** includes the Contractor's successors and permitted assigns and where more than one person is so described, means any two or greater number of those persons jointly and each of them severally.

**Covenantor** means any person other than the Guarantor who has guaranteed the Guaranteed Obligations to the Council and/or the payment of the Guaranteed Moneys to the Council or has agreed to indemnify the Council as to the same whether a party to this deed or not.

**Guaranteed Moneys** means all moneys payable by the Contractor to the Council under or arising from the Contract.

**Guaranteed Obligations** means all obligations (whether express or implied) of the Contractor to be observed or performed under the Contract.

- 21.2 In this deed, unless specifically stated, or the context otherwise requires, any reference shall be construed in the same way as in the Contract.

## 22. INTERPRETATION

- 22.1 Where a party comprises more than one person, the covenants and obligations expressed or implied in this deed bind those persons, and any two or more of them jointly and each of them severally;
- 22.2 This deed shall benefit and be binding upon the parties and their respective successors and personal representatives and any permitted assignees or transferee of their rights and references to the parties shall be construed accordingly;
- 22.3 Words importing one gender include the other genders and words importing the singular number include the plural and vice versa;
- 22.4 A 'person' includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, or agency of state, government department or municipal authority in each case whether or not having separate legal personality;
- 22.5 Unless otherwise specified, references to parts, sections, clauses, subclauses, schedules and appendices are references to sections, clauses, subclauses, schedules and appendices in this deed and references to parties are references to parties to this deed.
- 22.6 Terms and expressions defined in this deed and any other part of this deed (including the Schedules) shall unless expressly limited or where the context does not permit, have the same meaning in all parts and all schedules and appendices.
- 22.7 Any schedules or appendices to this deed shall have the same effect as if set out in the body of this deed;
- 22.8 Headings are inserted for the sake of convenience of reference only and do not affect the interpretation of this deed.
- 22.9 References to any statute refer also to any regulation, order and notice made under or pursuant to the statute or regulations made under the statute; and references to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to;

- 22.10 Any covenant not to do anything also constitutes an obligation not to suffer, permit or cause that thing to be done;
- 22.11 A right granted or reserved may be exercised from time to time and at all times;
- 22.12 Words and expressions defined are indicated by capital letters for convenience.
- 22.13 References in this deed to the consent or approval of any party for any purpose shall be construed to require that consent or approval for each separate occasion notwithstanding any prior consent or approval for the like purpose or purposes.
- 22.14 In this deed 'day' means a calendar day and 'year' means a calendar year unless used in the context of a calculation or pro rating when it shall mean a period of 365 days.
- 22.15 Reference to 'Dollars' or '\$' shall be a reference to New Zealand Dollars unless otherwise stated.
- 22.16 A 'law' includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty, permit, authorisation, consent, requirement or other legislative measure of any governmental or quasi governmental body or any local authority or other authority body or tribunal and in each case of any jurisdiction whatever and includes any future law, and 'lawful' and 'unlawful' shall be construed accordingly.
- 22.17 The language of this deed is English. All notices and communications of any kind required under or arising in connection with this deed shall be in English.

EXECUTION

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Executed as a deed

Date:

Signed by ) \_\_\_\_\_

**[Guarantor]** ) Director

in the presence of: ) \_\_\_\_\_

Director

Witness signature

Witness name:

Occupation:

Address:

THE COMMON SEAL of )

**[Council]** )

was affixed in the presence of:

\_\_\_\_\_  
Elected Member

\_\_\_\_\_  
Elected Member

## Schedule

Address for service in New Zealand

Guarantor

*[To be inserted in the executed Guarantee]*

Physical address:

Postal address:

Telephone:

Facsimile:

For the attention of:

Council

Postal address: [                    ]

PO Box

Telephone:

Facsimile:

For the attention of:

## **Annexure 9 – Further Contract objectives**

(Refer to clause 1.2.1)

*[Note to Author: This annexure relates to clause 1.2 of the contract. This annexure is an example only and can be amended to suit the individual contract requirements]*

The further aims and objectives of this Contract are as follows:

- (a) To minimise Waste volumes requiring disposal to landfill by providing kerbside collection of Organics and Recyclables;
- (b) to provide high standard collection services to form part of the Council's integrated waste and resource recovery initiative, based on "best practice" principles, which are complementary to national, and regional waste management policies, as well as the Council's own waste management and minimisation plan;
- (c) to achieve and maintain a high standard and continuity of performance in provision of the Services by the Contractor using best practice methods and systems;
- (d) to regularly assess the performance of the Contractor and to gain continual improvement to work practices and resource recovery;
- (e) to promote the health, safety and welfare of all persons engaged in or affected by the Services;
- (f) to ensure the provision of ongoing effective communication and cooperation between the Council and the Contractor and Council customers;
- (g) to facilitate a sustained effort to increase the type, quality and amount of organic and recyclable resources recovered from the waste stream;
- (h) to maximise and preserve the resource integrity and value of recoverable materials within the waste stream;]
- (i) to assist with the fulfilling by the Council of their obligations under legislation relating to provision of waste and resource recovery services;
- (j) to provide cost-effective Services that the community perceive as offering value for money;
- (k) to adopt sustainable concepts for the various activities;
- (l) to minimise the adverse environmental effects of the various activities.

## Annexure 10 – Operations and Procedures Plan

(Refer clause 6)

*[Note to Author: This annexure relates to clause 6 of the contract. This annexure is an example only and can be amended to suit the individual contract requirements]*

The Operations and Procedures Plan should include (but is not limited to):

- (a) Collection methodology;
- (b) Collection Vehicle presentation protocols and maintenance;
- (c) Procedures for spilt materials and liquids, hazardous materials and litter collection;
- (d) Procedures for quiet work practice strategy to minimise noise impacts;
- (e) **[Option]** Proposed methodology to comply with Nominated Facility Acceptance Protocols, including measurement and reporting of compaction levels of Recyclables and minimising of glass breakage;
- (f) Procedures for Collection Container repairs, maintenance and on-going Collection Container supply;
- (g) Procedures for rectification of complaints including Missed Services and collections outside the times of normal collection;
- (h) Procedures for Customer and Council notification related to non collection and Collection Container presentation problems;
- (i) Internal performance measures and methods used by the Contractor to monitor performance;
- (j) Contamination management strategy and procedures as required under the Specification;
- (k) Reporting procedures and schedule including all contract performance measures;
- (l) Staff structure and overall numbers, names, qualifications, experience and range of duties;
- (m) Communication protocol between the various operational areas, i.e. collection, Nominated Facilities, transport, etc;
- (n) Staff dress code and courtesy compliance;
- (o) Staff training policies.

## **Annexure 11 – Customer service and complaints**

(Refer to clause 10.7)

*[Note to Author: This annexure relates to clause 6 of the contract. This annexure is an example only and can be amended to suit the individual contract requirements]*

The Contractor shall implement and comply with the following Customer service and complaints procedures and requirements.

### **1. Council to receive initial complaints and enquiries**

- 1.1 The Council will be the primary point of contact for Customer enquiries and complaints about the Services. The Council will forward all Service complaints and/or instructions to the Contractor for investigation and rectification and on completion of rectification, reporting back to the Council.
- 1.2 The Contractor may accept complaints direct. Such direct complaints must be logged and reported as required in Annexure 13 – Reporting.

### **2. Enquiries re Collection Services**

- 2.1 All enquiries relating to the initial Collection Service options that can not be answered under “frequently asked questions” will be forwarded to the Contractor for response.
- 2.2 All requests for new Collection Services will be considered by the Council and an instruction forwarded to the Contractor by the Council.

### **3. Contractor Operations Office and Systems**

- 3.1 The Contractor is responsible for establishing an operations office that is staffed between the hours of 8.00 am and 5.00 pm on Collection Days. The Contractor shall develop systems that will allow information from the Council to be received twenty-four (24) hours a day every day of the year. The Contractor shall record and acknowledge that this information has been received and is to be actioned.
- 3.2 The Contractor must provide the Council with telephone numbers for the telephone and facsimile machine and the email/internet provider address for the Contractor's office six (6) months before the Services Commencement Date and must inform the Council of any changes to such numbers four (4) weeks prior to the change being made.

### **4. Emergency Contact Number**

- 4.1 When the Contractor's office is unattended, the Contractor will provide two (2) alternative after hours contact numbers. These telephone numbers are to be available twenty-four (24) hours a day, every day of the year.

### **5. Information from the Council**

- 5.1 The Contractor must accept from the Council any information from Customer enquiries and or complaints about Services. As a minimum requirement the Contractor must be able to accept complaints via an automated workflow system, telephone, facsimile, email, verbally or in writing.

This information may include but will not be limited to:

- 5.2 Enhanced Services, new Collection Containers, additional Collection Containers, , repairs, replacements, swapping of Collection Container sizes, Missed Services, litter, stolen Collection Containers, vandalism, noise and any Other Complaint or issue pertaining to the Collection Services. The information will also include enquiries from people prior to the initial Collection Containers delivery to confirm options for special collections, Enhanced Services, Multiple Occupied Premises, Infirm Services, etc.
- 5.3 The Council may make reasonable changes to the format of complaint notification from time to time during the Contract Term in consultation with the Contractor.
- 5.4 The Contractor will provide a system that will allow the registering and categorising of complaints and enquiries, tracking of complaint rectification progress and completion, and will prioritise complaints based on their urgency and as required under the Collection Specifications.

## **6. Urgent complaints**

- 6.1 In instances where a complaint is received that requires urgent attention, the Contractor must take steps to resolve the complaint immediately and must report to the Council in writing on the steps and time taken.
- 6.2 An urgent complaint includes, but is not limited to, a complaint that may impact on safety of any person(s) or property, traffic hazards, public or environmental health or repeated poor Service levels at a specific Service Entitled Premises.
- 6.3 If the urgent complaint is directed to the Contractor by the Council, it shall be marked as "URGENT".

## **7. Contractor rectification of complaints**

- 7.1 The Contractor must efficiently respond to and rectify all complaints in a timely manner.
- 7.2 The Contractor must investigate and attempt to resolve all complaints within the shift during which the complaint was received, or on the next Working Day, unless the complaint is urgent in which case it must be actioned immediately.
- 7.3 If the complaint is about spilt material(s) pursuant to the Collection Services, the Contractor must clean the spilt materials up immediately, or within a period of time agreed to by the Council.



## Annexure 12 – Council Provision Schedule

(Refer to clause 15.1.2)

*[Note to Author: This annexure relates to clause 6 of the contract. This annexure is an example only and can be amended to suit the individual contract requirements]*

### 1. Council Programmes

#### 1.1 Community communication, information and education

##### 1.1.1 Council to undertake programmes

- (a) The Council, intends to undertake and fund the development, implementation and evaluation of annual information and education programs as the Council shall require.
- (b) The Council, will undertake and fund the development and implementation of introductory Customer and community information. This may include an information booklet and collection calendar as well as other media promotional information via newspaper and radio.
- (c) As part of the above programmes the Council will provide information to the Customers about their rights, obligations and costs that may be recovered from them because of negligence.
- (d) The Contractor will be given the opportunity to suggest education programmes and to comment on the plan to be produced below and on the educational resources produced to assist in improved delivery of Collection Services.
- (e) Should the Council require involvement of the Contractor Representative, Contractor's personnel, Vehicles, Plant and Equipment or facilities for implementation of the education programmes, adequate notice will be given to the Contractor. The Contractor shall provide all reasonable assistance to the Council programmes.
- (f) **[OPTION]** The Contractor shall provide and deliver Collection Containers to locations as nominated by the Council for display and promotion as required by the Council after the Contract Commencement Date and prior to the Services Commencement Date.

##### 1.1.2 Information and education plan

- (a) The Council will prepare an Information and Education Plan. This plan may include:
  - o Ultimate and immediate outcomes of the plan;
  - o Details on how the plan will be evaluated including useful, feasible key performance indicators for the ultimate and immediate outcomes.
  - o Detailed timeline and responsibilities for activities;
  - o Proposed sustainable materials to be used.

##### 1.1.3 Collection Services

- (a) The Council shall be responsible for:
  - o Design and production of pre-Service information flyers for the Collection Services;
  - o The production of Customer information packages (which may include a days of Service calendar; information brochure; Council letter; envelope or plastic sleeve) The Contractor is responsible for delivery the information package to Service Entitled Premises;

- Other initiatives to assist Customers to correctly use the Collection Services.

#### 1.1.4 Amendments to the plan

- (a) The Council reserve the right to make amendments or additions to the Information and Education Plan in its discretion and at any time. The Council shall consult with the Contractor before making material amendments to the plan.

## Annexure 13 – Reporting

(Refer clause 3.6)

*[Note to Author: This annexure is an example only and can be amended to suit the individual contract requirements]*

The Contractor shall undertake regular reporting to The Council to enable the Council to monitor the Contractor's performance in the provision of the Services.

The frequency and nature of the reporting is detailed in this Annexure.

As a minimum requirement, the Contractor is required to provide the following reports and data for each Service as shown in the table below.

Services	
Timing	Reporting requirements
Daily notifications (Telephone and email)	<ul style="list-style-type: none"> <li>• <b><u>Urgent (within one (1) hour)</u></b> notify the Council of serious personal injury or damage to property,</li> <li>• <b><u>Urgent (within one (1) hour)</u></b> notify the Council of any significant interruption to the Collection Services for whatever cause;</li> <li>• <b><u>Immediate (within two (2) hours)</u></b> notify the Council of any major malfunction of Contractor's Vehicles, Plant and Equipment industrial situations, non-availability of facilities that has the potential to interrupt the provision of the Collection Services;</li> <li>• <b><u>Routine (within three (3) hours)</u></b> notify the Council of other Collection Service problems that Customer service staff may need to respond to Customer enquiries.</li> </ul>
Daily Report	Electronic summary of the telephone reports.
Weekly Report	Detail all Collection Service problems, industrial action, Early Start or serious complaints including complaints about Contractor health and safety, and Collection Services deficiencies that have occurred in the past week.
Monthly Report	<p>Set out for the past month:</p> <p><b>Collection Services</b></p> <ul style="list-style-type: none"> <li>• Quantities of materials collected, broken down by type including any known Contamination;</li> <li>• Baseline mass of materials collected;</li> <li>• Compaction rates of Recyclables including average, median, minimum and maximum; as well as over compacted loads;</li> <li>• Total number of Collection Containers emptied or collected</li> </ul>

Services	
Timing	Reporting requirements
	<p>for all Service types;</p> <ul style="list-style-type: none"> <li>• Number of Collection Containers emptied or picked up per town and collection areas;</li> <li>• Total number of enhanced or special Collection Services provided;</li> <li>• Presentation percentage of Collection Containers placed out to be emptied or picked up;</li> <li>• The number of Collection Containers stolen, damaged, repaired and/or replaced.</li> <li>• The details and number of retrieved Collection Containers, new and additional Collection Services provided;</li> <li>• Compliance with Collection Services Performance benchmarks and targets;</li> <li>• Contamination of Collection Containers: Collection Container loads rejected for Contamination reasons and Collection Containers encountered with some Contamination including Service Entitled Premises address for each Collection Container;</li> <li>• Any other relevant issues relating to the Collection Services;</li> <li>• Any issues that the Contractor becomes aware of that may affect Collection Services in future;</li> <li>• Graphical reports of Collection Service provision on a monthly basis over the preceding twelve (12) months, showing trends. The type and number of graphs required will be confirmed by the Council;</li> <li>• The number and type of enquiries and complaints received and/or resolved;</li> <li>• The time taken and the action implemented to resolve enquiries and complaints;</li> <li>• Health and Safety reporting requirements;</li> <li>• Quality audits conducted and outcomes;</li> <li>• Environmental compliance monitoring conducted and outcomes.</li> </ul>

Services	
Timing	Reporting requirements
After the first year of the Contract	<p>The Contractor shall implement methods to measure and calculate baseline levels after the first year of the Contract for:</p> <ul style="list-style-type: none"> <li>• Greenhouse gas emissions from Vehicles, Plant and Equipment which are used for Collection Services in CO<sub>2</sub>e units;</li> <li>• Fuel consumption and kilometres travelled by the Contractor; and</li> <li>• <b>[Option Carbon sequestration].</b></li> </ul>
Annually upon anniversary of the Services Commencement Date	<ul style="list-style-type: none"> <li>• Health and Safety Management System/Plan updates;</li> <li>• Emergency and Incident Plan updates;</li> <li>• Insurances review and update;</li> <li>• Traffic Management Plans</li> <li>• Customer Service Plan</li> <li>• Operations and Procedures Plan</li> </ul> <p>Review of Quality System and Quality Plan</p>
Upon expiry of the Contract (for any reason)	<ul style="list-style-type: none"> <li>• Final update of information required for records and reporting (including all changes to the expiry date.</li> <li>• Final monthly Report for the final month of the Contract</li> </ul>

## Annexure 14 – Contractor Records

(Refer to clause 3.7)

*[Note to Author: This annexure is an example only and can be amended to suit the individual contract requirements]*

The Contractor must maintain records of:

### Collection Services

- all complaints and queries received in respect of provision of the Collection Services, including (without limitation) Collection Container delivery and Collection Services, (e.g. missed Collection Container deliveries, faulty Collection Containers, repairs, vandalism, stolen, missed collections, early/late collections, noise, speed, etc);
- the results of all investigations into complaints;
- damage to property;
- any breach of statutory requirements or any other law;
- any breach of the requirements of the Contamination exclusion requirements of the Collection General Specification by a Customer in respect of presentation or Contamination.
- any accidents or other incidents where a possibility of injury to persons or property damage arose;
- any breach of the Collection Specifications by the Contractor;
- the weight of waste collected by each Collection Vehicle per day;
- non conforming and rejected loads, including photographic evidence if relevant;
- the number of Collection Containers emptied per day, by collection areas, days and zones.
- presentation rates of Collection Containers placed out for emptying for each Collection Vehicle and day;
- stock inventory for on-going Collection Containers and Alternative Container supply;
- details of Collection Containers and Alternative Containers supplied and retrieved;
- the number and locations of enhanced Collection Services provided;
- details of arrangements for collections which may differ from the standard Collection Service, e.g. Alternative Collection Points, Alternative Collection Systems, On-Property Services, Multiple Occupied Premises, etc;
- monthly summaries of information downloaded from Collection Vehicle data loggers;
- audits, reviews and information required for Quality Management, Environmental Management, Health and Safety, Operations Procedures Plan;
- vehicle maintenance;
- sustainability impacts; and
- any other information reasonably requested by the Council.

## **Annexure 15 – Information to be provided by the Council**

(Refer to clause 15.1.1)

eg: Notification of hazards that the Council is required to notify the Contractor of - being hazards that are know to the Council and which the Contractor would not be expected to be aware of.

[To be inserted]

**Annexure 16 - Specifications**

[To be inserted]



## Annexure 17 – Contractor’s Tender

[To be inserted]

## Annexure 18 – Request for Tender

[To be inserted]