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FOR YOUR INFORMATION - TO HELP YOU DECIDE WHETHER TO
PARTICIPATE IN THIS RFT AND THEN BECOME A PROSPECTIVE
TENDERER**

Please read and Note:

This file is provided on the Commerce tenders web site when the Request For Tender (RFT) document is issued in Dmax Lite format.

This file contains (below) a brief scope statement and extracts from the RFT documents, but is not a complete RFT document and does not contain the responsible questions.

To participate in this tendering process you MUST first return to the Commerce tenders web site:

<https://tenders.nsw.gov.au/commerce>

Then from the RFT web page (see RFT number below) download a full copy of the RFT documents, including the responsible components, and also any addenda issued to date; and also during the tender period.

Copy/Save the RFT documents to your own computer drive or network location – the blue “DOWNLOAD A SOFT COPY” link at the bottom provides access to the page from which you can do this.

DmAX Lite Software

You will need to have a current licensed copy of the Dmax Lite 5.1 software to read, complete, and respond to the RFT with your tender. If you do not currently have such a licensed copy it can be optionally purchased and downloaded when downloading the full RFT documents from the tenders web site.



**NSW Procurement – Contracting Services is a Business Unit of the NSW
Department of Commerce**

**NSW Procurement – Contracting Services invites this tender
for and on behalf of the
NSW Government State Contracts Control Board**

Request for Tender 0800629

Integrated Waste Management

**1 August 2008 to 31 July 2011
Plus 2x Options by up to 12 months each**

Tender Issue Date: 28 January 2009

Closing Date: 11 March 2008

Closing Time: 9:30 am Sydney Time

Note: In order to respond to this RFT tenderers must have a current licence for i-Tenders Supplier software. Licences can be purchased through NSW eTendering website: www.tenders.nsw.gov.au at a cost of \$110 (inclusive of GST) for a 12 month annual licence. This provides access to respond to tenders developed in the i-Tenders application. It is anticipated that most RFTs released by the Board and the NSW Government will be in this format.

For help on purchasing your software, or use of application, please contact NSW Procurement Client Support Centre on 1800 NSW BUY (679 289) or NSWP_Support@Commerce.nsw.gov.au.

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part B of this RFT.

Other matters should be directed to:

Group General Manager
NSW Procurement – Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 7504
Fax: (02) 9372 7533

Integrated Waste Management

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REQUEST FOR TENDER - PART A – OVERVIEW

1 Outcome

This Request for Tender (“RFT”) is made by the State Contracts Control Board (the “Board”) for the supply to Eligible Customers of the Services defined in the Statement of Requirements of this RFT.

The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services.

The key outcome of this RFT is to provide an innovative, purchasing and distribution framework (through the proposed Agreement) for the required Services which meet the needs of the Eligible Customers.

A primary objective in consolidating the three previous contracts is to provide a more integrated approach to the management of waste within NSW Government bodies. Previously waste and recycling services have been contracted with no focus on the inter-relationship between the two.

The purpose of this contract is to provide a focus on total resource management with a view to implementing active programs to reduce waste to landfill. The Contractor is encouraged to demonstrate how they will assist the Customer in achieving this objective and how the services can be managed so as to provide a more integrated approach.

The Department of Commerce will actively monitor performance of the Contractor against Performance Criteria. Contractors will be encouraged to demonstrate initiative and innovation.

Where Performance criteria are not being met by the Contractor and actions to rectify the situation are not being taken, this will be interpreted as a breach of contract. The Department of Commerce in this situation may at its discretion take appropriate actions as detailed in the contract terms and conditions.

2 Objectives

The NSW Government is committed to environmental sustainability in the management of its assets, including waste minimisation, recycling and a reduction in the volume of material going into landfill. Through this contract the NSW Government seeks to work with the contractor/s to implement environmental sustainability.

The aims and objectives of this contract are to provide the NSW Government and its agencies with efficient, cost effective and environmentally sound waste and recycling services. The objective includes but is not limited to the following:

- (a) Reduce the total cost of the Services;
- (b) Provide Services which are commercially competitive;
- (c) Establish a sustainable partnership between the Eligible Customers and the successful tenderer(s) to deliver quality Services;
- (d) Best practice through continual review of service delivery methods i.e. value-engineering;
- (e) Effective management of risks;
- (f) Compliance with all applicable laws, standards, codes and policies;
- (g) To drive automation in procurement for greater efficiency and information management.
- (h) a commitment to environmentally sound systems of resource recovery;
- (i) to apply best practice principles and provide cost-effective services that users perceive as offering value for money;
- (j) deliver services that complement national, state and local waste management policies, particularly the NSW Government’s Waste Reduction and Purchasing Policy (WRAPP);
- (k) provide data to assist Customers make improved decisions on future waste and recycling services.

3 Required Benefits

The required benefits to be achieved in delivering the objectives of the proposed Agreement are:

- (a) A sustainable, mutually beneficial supply chain partnership;
- (b) Savings and efficiency gains;
- (c) Reduced costs to NSW Government by value-engineering its delivery methods;
- (d) Increasing the number of Eligible Customers which procure the Services under the proposed Agreement;
- (e) Transparency of all transactions, including performance measurement, pricing and reporting;
- (f) Expanded utilisation of electronic procurement across NSW Government to drive efficiency and transparency through systems such as smartbuy®, e-Tendering, TenderMax etc.
- (g) Reduce waste and increase recycling
- (h) Improved service levels in both the metropolitan and regional areas
- (i) Comprehensive education program to increase contract awareness and the volume of waste being diverted for recycling.
- (j) Improved reporting framework that will, amongst other things, assist agencies complete their Waste Reduction and Purchasing Policy (WRAPP) reporting.
- (k) Reduce cost.

4 Scope of RFT

4.1 Introduction and scope of the Services

The Department of Commerce is amalgamating three current waste contracts these being: Contract 697 Waste Removal Services, Contract 6034 Recycling Services and Contract 6083 Secure Destruction Services, into the one contract.

Contract number 0800629 will cover the services as detailed in this General specification, Part 1, along with the Service Specifications following in Parts 2, 3 and 4 (refer Statement of Requirements –Part F of this document)

This General Specification applies to the following services:

- (a) General Solid Waste Collection and Disposal Service; (Part 2)
- (b) Recyclables Collection Service; (Part 3)
- (c) Secure Destruction Service,(Part 4)

in whole or in part to Service users of SCCB contracts, and must be read in conjunction with the applicable Parts to this documentation:

The Contractor must ensure that Services provided under this contract address the requirements of all parts of the Specification and comply with the NSW Government Waste Recycling and Purchasing Policy (WRAPP). The Contractor is to review these requirements annually and ensure any changes as issued by the Department of Environment and Climate Change (or designated agency) is incorporated into the reporting requirements of this contract. Information on WRAPP can be found at the following website <http://www.wrapp.nsw.gov.au/>

To the extent of any inconsistency between the General Specification and Service Specification, the Service Specification shall have precedence.

All services provided under this Contract are to comply with relevant Australian Standards, Industry Codes of Practice and NSW State and Federal Legislation.

The purchasing and distribution of the following Services are covered under the proposed Agreement:

A detailed description of the Services is described in the Statement of Requirements (RFT, Part F).

Contractors must be proactive in marketing their Services to Eligible Customers.

This contract covers the Services as detailed above for all Eligible Customers. It is however at the discretion of each such body to utilise this contract. The Department of Commerce can make no guarantees as to the level of take-up of this contract or to the quantities of waste specific to any service or region.

Further, some bodies under existing contracts for waste services may take-up only part of the services as covered by this contract.

4.2 Contract and Duration

The proposed Agreement which is in the form of a Deed of agreement (RFT, Part D) is between the Board and the successful tenderer(s).

It is envisaged that the term of the proposed Agreement will be of three (3) years, which may be extended for 2 x up to 12 months each at the discretion of the Board.

4.3 Current Scope and Expenditure

The current expenditure incurred by government agencies for the procurement of the Services is \$2.5 million/year. This amount is provided for information only and does not constitute a guarantee for future work through the proposed Agreement.

4.4 Engagement of Additional Contractors

The Board reserves the right to appoint more than one Contractor under the proposed Agreement.

The Board further reserves the right to issue a restricted RFT during the term of the Agreement to engage additional Contractors. Such RFTs will be restricted to those tenderers who have been awarded agreements for the supply of Services for Categories covered by this RFT but not included in the Agreement. The tenderers will have to meet the same terms and conditions and will be subjected to the same evaluation criteria as for this RFT.

4.5 NSW Government requirements

The successful tenderer must comply with NSW Government codes, guidelines, and Standards listed in Schedule 1 of Part D.

5 RFT Structure

This RFT is structured in the TenderMax Pro format. TenderMax Pro is an e-sourcing application designed to fully automate the traditional paper-based tendering process introducing best practice processes in electronic tender production, submission and evaluation to improve a tender submission, evaluation and award phases.

This RFT comprises 6 Parts as follows:

Overview – Part A

It is an executive summary of main outcomes, objectives, requirements and expectations for this Agreement as described in detail in the proposed Agreement and the Statement of Requirements. It provides the tenderer(s) with the essential information to make an informed decision on whether to tender or not.

Conditions of Tender – Part B

It provides the terms, conditions and processes governing the tender phase of the RFT.

Tender Response – Part C

These are response schedules which are required by the Board to evaluate the tenderers' offers. Tender responses to be completed by the tenderer(s) are in the TenderMax format.

Deed of Agreement - Part D

This is the conditions of contract to be executed between the successful tenderer/s and the Board.

Special Conditions – Part E

Not Used

Statement of Requirements – Part F

A detailed description of the Services to be provided by the successful tenderer/s including technical specification, service levels and performance framework. It will form part of the Agreement to be executed between the successful tenderer/s and the Board.

6 Best Price and Cost Structure

Tenderers are encouraged to provide their best price(s) with their tender. Whilst the Board reserves the right to negotiate pre award, such negotiations may not occur and it is not the Board's preference.

It is important that tenderers realise that they may not be short-listed for further consideration, if they do not provide their best price with their initial tender.

This RFT seeks transparency in the tenderer's Cost Structure in the Tender Schedules (RFT, Part C) and is required to be fully completed by tenderer/s to:

- Provide the Board with transparency of the tenderer's Cost Structure;
- Price future variations, if applicable.

The tenderer's Cost Structure will be linked to the performance framework under the proposed Agreement.

The Board expects the successful tenderer(s) to reduce its pricing during the term of the proposed Agreement by:

- (a) Continually improving delivery processes to improve efficiency;
- (b) Providing lower prices and discounts for large/bulk purchases;
- (c) Passing on the benefit of rebates received from its own suppliers to Eligible Customers;
- (d) Matching prices as identified/recommended from the benchmarking process, if applicable.
- (e) Other methods of savings identified during the term of the proposed Agreement;
- (f) Price matching as identified by customers;
- (g) Expanded utilisation of electronic procurement across NSW Government to drive efficiency and transparency through systems such as smartbuy®, e-Tendering, TenderMax etc.

7 Benchmarking

Not Used.

8 Performance Framework

The Board is committed to engaging contractors who are able and willing to continually improve their performance during the term of the proposed Agreement.

The performance framework within the proposed Agreement provides both incentives for good performance and sanctions for poor performance.

Performance incentives and sanctions are based on the Contractor's performance as measured by an Overall Performance Indicator (OPI). Both Contracting Services (monitor the Key Performance Indicators – KPI) and Customers (monitor the Agency Performance Indicators – API) will provide data to establish the OPI. The Statement of Requirements (RFT, Part F) describes the performance framework in detail and the measurement/targets of all performance indicators.

Typical incentives and sanctions that may be used by the Board include, but are not limited to :

- (a) Additional or reduced performance reporting requirements;
- (b) Temporary suspension of all or parts of a proposed Agreement for a period not exceeding 12 months;
- (c) Scope variation ie. inclusion of additional Services/reduction;
- (d) Extensions of the proposed Agreement (if available);
- (e) Non payment of price variations.

9 Customer Contract Formation

Eligible Customers will place orders against the proposed Agreement based on the contracted pricing and the Statement of Requirements. Each time an Eligible Customer places an order, a separate contract will be formed.

Eligible Customers will provide feedback to the Board on the performance of all Contractors.

10 Electronic Business

The use of electronic commerce is a mandatory requirement under this Agreement. Further details are included in the sample Agreement (RFT, Part D) and the Statement of Requirements (RFT, Part F).

The use of NSW government electronic procurement systems (smartbuy®, e-Tendering, TenderMax) is a mandatory requirement under this Agreement. Tenderers are encouraged to present similar electronic solutions that can further support expanding adoption of electronic procurement by NSW government agencies and their suppliers.

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PART B Conditions of Tender

1 Definitions

Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below.

“ABN” means an Australian Business Number as provided in GST law.

“Addendum” means an addition to this RFT made by the Board made before Closing Date and Time.

“Agreement” means an agreement made by a tenderer with the Board pursuant to the RFT under which there is an agreement for the provision of Services on the order of any Customer for whom the Board has arranged the contract. The Agreement will be embodied in a Deed of Agreement between the Board and the Contractor in the form of Part D to this RFT.

“Alternative Tender”

A Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the requirement.

“Board”

The State Contracts Control Board established under the *Public Sector Employment and Management Act 2002* whose responsibilities include:

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) On-going contract administration and management,

and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

“Category” means generic categories comprising of multiple types of Services.

“Closing Date and Closing Time” means the Closing Date and Time for receipt of tenders specified in the cover sheet of this RFT.

“Code” means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The Code can be viewed and downloaded from: http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

“Conforming Tender” means a tender that conforms in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D
- (c) other Parts of this RFT
- (d) is in the prescribed form.

“Contractor” means a tenderer who has entered into an Agreement with the Board.

“Cost Structure” means the individual tenderer’s cost breakdown for the Services specified in Part C. Such breakdown must equate to 100% of the tenderer’s cost for the supply of the Services.

“Customer Contract” means the contract that is made between the Contractor and an Eligible Customer, on the terms and conditions stated in clause 3.3 of Part D, by means of the placing of an order by the Eligible Customer with the Contractor.

“Deed” means a form in which a contract can be recorded which requires execution under the parties’ seal.

“Eligible Customer” means

- (a) An entity listed in Schedule 1 to the *Public Sector Employment and Management Act 2002* as amended from time to time;

A public body as defined by clause 18(4) of the *Public Sector Management (Goods and Services) Regulation 2000* being:

- (i) a government trading enterprise (including a State owned corporation),
- (ii) a public or private hospital (including an area health service),
- (iii) a local government agency,
- (iv) a charity or other community non-profit organisation,
- (v) a public or private school or a college or university,
- (vi) a public authority of this State, the Commonwealth or any other State or Territory
- (vii) a contractor to a public authority (but only in respect of things done as such a contractor).

- (b) a Nominee Purchaser provided that it satisfies the requirements of clause 3.7 of Part D (Agreement) and

- (c) such other persons or entities, which the Board may from time to time in its discretion, determine through a customer registration process.

“GST” is a goods and services tax and has the same meaning as in the GST Law.

“GST Law” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (C’th) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

“GST Free Supplies” and **“Input Taxed Supplies”** have the same meaning as in the GST Law.

“Nominee Purchaser” means a contractor to an Eligible Customer, nominated by the Eligible Customer to be authorised to place orders under Agreements and registered by NSW Procurement – Contracting Services.

“Non-Conforming Tender” means a tender that does not conform in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

“NSW Procurement - Contracting Services” A business unit of the NSW Department of Commerce representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“Services” means the services covered by this RFT inclusive of any associated products.

“smartbuy®” means an electronic market place, consisting of an internet web site and associated databases and applications, maintained on behalf of the NSW Government, located at <http://smartbuy.nsw.gov.au> and associated domains.

“Statement of Requirements” means the detailed description of the Services contained in Part F, (Specification).

“State Contracts Control Board” is the Board.

2 Tender Preparation

2.1 Tenderer to inform itself

Before submitting its tender, a tenderer must:

- 2.1.2 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender;
- 2.1.3 Carry out an adequate inspection of the premises/asset, their physical condition, type and nature, means of access and other physical restrictions which may affect Agreement performance and /or costing; and
- 2.1.4 Satisfy itself:
 - (a) that the tender, including the tender price is correct; and
 - (b) that it is financially and practically viable for it to enter into and perform the proposed Agreement.

2.2 Assumptions made by Tenderer

Where a tenderer has made assumptions in preparing its tender, such assumptions must be set out in a supporting statement and submitted with the tender.

2.3 Information Supplied in Part F

The information contained in Part F has been provided with due care for the tenderer's guidance, but is not guaranteed as being completely accurate. The Board shall not be held liable for any errors or omissions contained in Part F.

3 Eligibility to Tender

3.1 Legal Entity of Tenderer

- 3.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Board will only enter into an Agreement with such legal entity or entities.
- 3.1.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.

3.2 Financial Capability of Tenderer

- 3.2.1 The Board reserves the right to reject any tender if the Board judges the tenderer not to have appropriate financial capability.
- 3.2.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

3.3 ABN Requirements

- 3.3.1 The Board will not enter into an agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their tender.
- 3.3.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an agreement with the Board. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

4 Tender Process

4.1 Provisional RFT Program

Given below is the Board's provisional RFT Program. The Board may, at its absolute discretion, amend the provisional RFT program.

Milestone	(dd/mm/yy)
RFT issue	28 Jan 2009
Tenderer briefing	11 Feb 2009
RFT Close Date	11 Mar 2009
Execution of Agreement (approximate)	15 June 2009
Transitioning requirements completed (e.g. smartbuy integration) (Approximate)	30 June 2009
Commencement of supply of Deliverables	01 Aug 2009

4.2 Tenderer Briefing

- 4.2.1 A tenderer briefing will be held on the date, time, and place, indicated below. The contact officer/s of NSW Procurement – will be available at that time to answer any queries regarding this RFT and the tender process generally. Names of persons attending the tenderer briefing must be provided to the Contact Officer 3 working days prior to the date. No more than 2 persons from each tenderer will be permitted to attend the tenderer briefing.

Location: Level 4 McKell Building, 2 -24 Rawson Place, Sydney, NSW 2000
Date: 11 Feb 2009
Time: 9am

4.3 Contact Officer

- 4.3.1 Tenderers should refer requests for information or advice regarding this RFT to:

Name: NSW Procurement Client Support Centre
Telephone: 1800 NSW BUY (1800 679 289)
Facsimile: 02 9372 7799
E-mail: nswbuy@commerce.nsw.gov.au

- 4.3.2 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer over other tenderers.

4.4 Pre-Tender Access to Prospective Nominee Purchasers

- 4.4.1 A tenderer who wishes to become a Nominee Purchaser to an Eligible Customer under any existing NSW State Contracts Control Board Agreement, must apply to that Eligible Customer to be granted temporary viewing access to view the relevant Board Agreements on smartbuy®. The procedure is described in the link below. The purpose of such pre tender access is to enable tenderers who wish to do so, to price the Services at Board rates and confer any benefit in their tender to the Eligible Customer. The information must not be used for any other purpose.
- 4.4.2 A tenderer seeking pre tender access must complete the Pre-Tender Access Application Form indicated through the link below. The Eligible Customer will determine, in its sole discretion, whether the tenderer's application will be recommended. In the exercise of this discretion, the Eligible Customer will ensure that decisions made are applied consistently to all applicants. Recommended applications will be submitted by the Eligible Customer to NSW – Contracting Services for approval.
- 4.4.3 If the tenderer is successful in its tender, it must apply to become a Nominee Purchaser. <http://www.contractservices.nswp.commerce.nsw.gov.au/Publications/Forms.htm#nominee>

4.5 Conformity of Tenders

- 4.5.1 The Board seeks Conforming Tenders.
- 4.5.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

4.6 Alternative Tenders

- 4.6.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender".

4.7 Submission of Tenders

- 4.7.1 Prices, responses and other information provided in the tender are to be in writing and in English.
- 4.7.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.
- 4.7.3 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.
- 4.7.4 All tenders must be provided in the TenderMax Pro format, using the DMax Lite software. The tender responses in Part C must be included in one or more files with an extension of *.dtr. The DMax Lite software is only supported on a Microsoft Windows 9X and above operating system; other operating systems are not compatible. Tenderers must ensure access to a Microsoft Windows compatible computer is used to prepare the tender.
- 4.7.5 When submitting an electronic tender with Supporting Items:
 - (a) The complete tender, including the Supporting Items must be submitted by Closing Date and Closing Time, and
 - (b) Supporting Items should be clearly designated as Supporting Items to the RFT to which they relate and be forwarded to the Contact Officer indicated in clause 4.3 of this RFT in a sealed envelope.
- 4.7.6 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the Contract Officer prior to lodgment of the tender.

4.8 Electronic Tenders to the NSW Department of Commerce *eTendering* website

- 4.8.1 A tenderer is required, to lodge its tender electronically through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than tenders lodged by other means.
- 4.8.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the Conditions and rules on the NSW Department of Commerce *eTendering* website.
- 4.8.3 A tenderer must follow the following directions:
 - (a) A RFT for which electronic lodgment is available through the website can be identified by the blue "Lodge a Response" link on the web pages for the RFT.
 - (b) To lodge a tender electronically, the files containing the tenderer's response must be up-loaded through the website. Access to the up-loading process is through the blue "Lodge a Response" link, then following the steps and instructions on the NSW Department of Commerce *eTendering* website and any instructions which may have been supplied with the RFT.
- 4.8.4 A tenderer must observe the following format for lodgements:

-
- (a) An electronically lodged tender must be lodged in a file format required by the RFT.
 - (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.
 - (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.
 - (d) The file/s name/s must have an extension and not have invalid characters or file names/loading pathnames too long for the system, as detailed on the NSW Department of Commerce *eTendering* website.
 - 4.8.5 Signatures are not required for a tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a tender response is authorised by the person or persons who may do so on behalf of the tenderer and appropriately identify the person and indicate the person's approval of the information communicated.
 - 4.8.6 Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:
 - (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response.
 - (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
 - 4.8.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce *eTendering* website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
 - (a) If there is a defect or failure of the NSW Department of Commerce *eTendering* website and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
 - (b) Tenders must be fully received by the Closing Date and Closing Time.
 - 4.8.8 A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. In this case tenderers may break down the lodgement into smaller packages if clearly identified eg. package 1 of 3; 2 of 3; 3 of 3.
 - 4.8.9 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated.
 - 4.9 Tender Validity Period**
 - 4.9.1 The Tender will remain open for acceptance by the Board for a period of six (6) months from the Closing Date and Time for tenders.
 - 4.10 Late Tenders**
 - 4.10.1 Late tenders should not be considered, except where the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Board.
 - 4.11 Extension of Closing Date and Time**
 - 4.11.1 The Board may, in its discretion, extend the Closing Date and Time.

4.12 Corruption or Unethical Conduct

4.12.1 Tenderers must comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below and must disclose any conflicts of interests in Part C.

4.12.2 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:

- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, Customer or the NSW Government in connection with this RFT or the submitted tender;
- (b) committed corrupt conduct in the meaning of the *Independent Commission Against Corruption Act 1988*;
- (c) a record or alleged record of unethical behaviour; or not complied with the requirements of Commerce Business Ethics Statement available at: <http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm>;

this may result in the tender not receiving further consideration.

4.12.3 The Board may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

4.12.4 If the Board becomes aware of improper conflict of interests by a successful tenderer after Agreement has been executed, then the Board reserves the right to terminate the Agreement and any Customer Contract that has been made under it.

4.13 Code of Practice for Procurement

4.13.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.

4.13.2 Failure to comply with the Code may be taken into account by the Board when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

4.14 Prescribed Form of Tender

The tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.

4.15 Addenda to RFT

4.15.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Time, an Addendum will be issued.

4.15.2 In each case, an Addendum becomes part of the RFT.

4.15.3 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any addenda were issued prior to the closing date, even if a tender has already been submitted.

4.15.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

4.16 Tenderer's Costs

The tenderer acknowledges that the Board will not be liable to it for any expenses or costs incurred by it as a result of its participation in this RFT, including where the RFT has been discontinued.

4.17 Custody of Tenders after Receipt

4.17.1 Tenders lodged electronically to the NSW Department of Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000* (NSW) and given no lesser level of confidentiality, probity and attention than tenders lodged by other means.

-
- 4.17.2 On receipt of tenders lodged electronically to the NSW Department of Commerce eTendering website, Tenders are encrypted and stored in a secure “electronic tender box.”
- 4.17.3 For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
- 4.17.4 The e-mail receipt that is sent to the tenderer after successfully up-loading and lodging the tender electronically is the only evidence of tender lodgement provided.

4.18 Ownership of Tenders

- 4.18.1 All tenders become the property of the Board on submission.
- 4.18.2 The Board may make copies of the tenders for any purpose related to this RFT.

4.19 Discontinuance of Tender Process

- 4.19.1 Where the Board determines that awarding a contract would not be in the public interest, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of tenders.

4.20 Variations to Tenders

- 4.20.1 At any time after the Closing Date of tenders and before the Board accepts any tender received in response to this RFT, a tenderer may, subject to clause 4.20.2, vary its tender:
- (a) by providing the Board with further information by way of explanation or clarification;
 - (b) by correcting a mistake or anomaly; or
 - (c) by documenting agreed changes to the tender negotiated under clause 5.5 of this Part B.
- 4.20.2 Such a variation may be made either:
- (a) at the request of the Board, or
 - (b) with the consent of the Board at the request of the tenderer; but only if,
 - (i) in the case of a variation requested by the tenderer under clause 4.20.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
 - (ii) in the case of a variation under clause 4.20.1(c), the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 4.20.3 If a tender is varied in accordance with clause 4.20.1(a) or (b), the Board will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.
- 4.20.4 A variation of a tender under clause 4.20.1 will not be permitted if in the Board’s view:
- (a) it would substantially alter the original tender; or
 - (b) in the case of variation under clause 4.20.1(a) or (b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

5 Evaluation Process

- 5.1.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or to be given equal weight.

-
- 5.1.2 The evaluation criteria for this RFT that do not relate to price will account for 100% of the total evaluation score. The selection criteria for this RFT that relate to price will account for 0% of the total evaluation score.
- 5.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the evaluation criteria listed in this RFT.
- 5.1.4 Tenders that do not include a fully completed Part C, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.
- 5.1.5 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

5.2 Evaluation Criteria

The evaluation criteria for this RFT (which include but are not limited to) are:

- (a) Understanding of contract objectives
- (b) Acceptance of Integrated Pricing Model
- (c) Customer Service including:
 - (i) One state-wide customer service number
 - (ii) State –wide customer service centre
 - (iii) Detailed customer service reporting
- (d) Invoicing including:
 - (i) Consolidated electronic invoicing on a site by site basis
 - (ii) Details of streams, quantities and cost
 - (iii) Clear, easy to interpret and accrual
- (e) Experience in resource recovery sector including:
 - (i) Provide details of customer base
 - (ii) Operation of own MRF, Access to secondary recovery facility
- (f) Capacity to perform the Agreement including:
 - (i) State-wide capacity for all services including remote areas
 - (ii) Experience in managing & servicing large contracts
 - (iii) Financial capacity and stability;
 - (iv) Maintenance and support service levels including availability of Help Desk for repair and help calls;
 - (v) Quality assurance systems;
 - (vi) Suitability of own fleet and/or sub-contractors;
 - (vii) Previous experience and performance on similar Agreement Agreements for the products and services covered in this RFT or other products and services, including performance of management fee obligations;
 - (viii) Record of ethical behaviour in service delivery;
 - (ix) Compliance with other Board requirements, (including ability to market the proposed Agreement).
- (g) Contract Management including:
 - (i) Human resource capacity, qualifications, skills and experience;

-
- (ii) Management structure
 - (h) Innovations in resource management including:
 - (i) Details of how waste to landfill will be reduced and resource recovery maximised – secondary recovery
 - (ii) Reference sites where this has been achieved
 - (i) Demonstrated knowledge of WRAPP and other Government reporting requirements including:
 - (i) Examples of existing waste reporting
 - (ii) Evidence of knowledge of WRAPP
 - (j) Green procurement policy including:
 - (i) Green fleet program
 - (ii) Purchasing policy
 - (k) Educational programs including:
 - (i) Details of educational program and materials
 - (ii) Innovation in delivering information
 - (iii) Experience in effective solution
 - (l) Compliance with the proposed conditions of Part D.
 - (m) Compliance with NSW Government procurement policy and other applicable NSW Government policies, including:
 - (i) SME involvement;
 - (ii) Regional development activity;
 - (iii) Existing industry development activity and proposed new investment;
 - (iv) Innovation, research and development;
 - (v) Workforce development;
 - (vi) Compliance with OHS&R requirements;
 - (vii) Compliance with NSW Government Environmental Management Systems Guidelines.
 - (n) Compliance with relevant legislation and standards.
 - (o) Capacity and capability to facilitate electronic commerce through smartbuy®.
 - (p) Compliance with the Statement of Requirements.

5.3 Presentations by Tenderer

- 5.3.1 The Board may in its discretion, and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender.
- 5.3.2 Receiving a presentation by a tenderer in no way represents a commitment by the Board to accept any aspect of the tender.

5.4 Inspection of the Tenderer's Facilities

- 5.4.1 As part of the evaluation process, the Board may need to undertake inspections of facilities and equipment of the tenderer, including but not limited to, waste treatment and disposal stations, vehicles, infrastructure and support systems, including help desk facilities. The tenderer must accommodate such request, if made by the Board.

5.5 Acceptance or Rejection of Tenders

- 5.5.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.

-
- 5.5.2 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
- (a) Any Alternative Tender or part of an Alternative Tender, when submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.
- 5.5.3 The Board is not bound to accept the lowest tender.
- 5.5.4 If the Board rejects all the tenders received it may invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).
- 5.6 Post Tender Negotiations**
- 5.6.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiations with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes.
- 5.6.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part D.
- 5.6.3 If the Board considers that none of the tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation.
- 5.6.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 5.5.3 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.
- 5.7 Exchange of Information between Government Agencies**
- 5.7.1 Lodgement of a tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 5.7.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 30 of the *Defamation Act 2005* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication
- 5.7.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 5.7.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause 5.6.
- 5.7.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which obliges disclosure of the contract documents resulting from the tender and may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies, including tenders held by the

Board. A summary of the provisions is contained in the Annexure to Part B (Disclosure Information).

6 Method of Acceptance

- 6.1.1 Acceptance of a tender or part tender will be subject to the execution of a formal Deed of Agreement in the terms of Part D. Until the Board and the successful tenderer(s) execute a formal Deed or Deeds there will be no legally enforceable agreement concluded between them.

7 Disclosure Information

- 7.1.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their tenders.
- 7.1.2 Details of tenderers and the outcome of the tender process will be disclosed in accordance with the *Freedom of Information Act 1989* and the NSW Government Tendering Guidelines, available at:
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>
- 7.1.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

8 Complaints Procedure

It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the Conditions in Part D and/or Part E, or the Statement of Requirements in Part F, it is invited to write to:

Chairperson
State Contracts Control Board
Level 15, McKell Building
2-24 Rawson Place
Sydney NSW 2000

ANNEXURE 1 TO PART B (Disclosure of Information)

Disclosure of information concerning tenderers and outcome of the tender process

1. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	As a minimum: <ul style="list-style-type: none">a concise description of the proposed works, goods or services the subject of the tender call;the date responses to the tender call close and where responses are lodged; andlocation of the tender call documents. The names and addresses of all entities which submit responses.	Routine public disclosure at the time tender calls are advertised. Routine public disclosure within 7 days of the date tender calls closed.
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2 above, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
Class 1 contracts All government contracts with estimated value \$150,000 or above).	<ul style="list-style-type: none">a) The name and business address of the contractor;b) Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract;c) The date on which the contract became effective and the duration of the contract;d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract;e) The estimated amount payable to the contractor under the contract;f) A description of any provisions under which	Routine public disclosure within 60 days after the contract becomes effective.

	<p>the amount payable to the contractor may be varied;</p> <p>g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and</p> <p>i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.</p>	
<p>Class 2 contracts Class 1 contracts (i.e. government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> - result from a direct negotiation where there has not been a tender process; or - have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or - involve operation or maintenance obligations for 10 years or longer; or - involve a privately financed project as defined by relevant Treasury guidelines; or - involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency. 	<p>The information required for class 1 contracts and</p> <p>a) Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer;</p> <p>b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</p> <p>c) The results of any cost-benefit analysis of the contract conducted by the agency;</p> <p>d) The components and quantum of the public sector comparator if used;</p> <p>e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);</p> <p>f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</p> <p>g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and</p> <p>h) Particulars of any other key elements of the contract.</p>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
<p>Class 3 contracts Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p>	<p>The information for class 1 and 2 contracts and the complete contract, less confidential information.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose:</p> <ul style="list-style-type: none"> • the reasons for not publishing the contract 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

	or provisions; <ul style="list-style-type: none"> • a statement as to whether the contract or provisions will be published and, if so, when; and • where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published. 	
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3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information contained in schedules 1 or 2, or for a copy of a contract, which is not required to be routinely disclosed under section 15A of the Freedom of Information Act 1989 ("FOI Act"). The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

Where a copy of a contract has been requested and some or all of the contract is not provided for reasons of confidentiality, the State Contracts Control Board will disclose:

- the reasons for not providing;
- a statement as to whether the contract or provisions will be provided and, if so, when; and
- where some but not all of the provisions of the contract have been provided, a general description of the types of provisions that have not been provided.

4. Disclosure of amendments or variations to contract information under the FOI Act

The FOI Act requires that, if there is an amendment to the contract terms or a material variation made under the contract that changes information already routinely disclosed under the FOI Act, the State Contracts Control Board must ensure that the information concerning the change is routinely disclosed within 60 days after such amendment or variation becomes effective, less any confidential information. In the case of class 3 contracts, the full amendment or material variation, less any confidential information, must be disclosed within the 60 day timeframe.

5. Confidential information

None of the disclosure obligations contained in the FOI Act, or the requirements for disclosing tender information or a copy of a contract or information in relation to a contract under these guidelines, require the disclosure of:

- the commercial-in-confidence provisions of a contract (as defined in schedule 3 to the FOI Act) (the contractor's financing arrangements; the contractor's cost structure or profit margins; the contractor's full base case financial model; any intellectual property in which the contractor has an interest; or any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.);
- details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the FOI Act.

Where such confidential information is withheld, the State Contracts Control Board must inform the requesting person that access to that information may be sought in accordance with the FOI Act. This will enable a person seeking the information to have the appeal rights available under the FOI Act.

6. Tenderers are invited to nominate items they consider are confidential and why.



**NSW Procurement – Contracting Services is a Business Unit of the NSW
Department of Commerce**

Dated: <Insert Date>

NSW STATE CONTRACTS CONTROL BOARD

and

<Insert Contractor name>

AGREEMENT (REQUEST FOR TENDER, PART D) FOR

RFT 0800629 – Integrated Waste Management

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part B of this RFT.

Other matters should be directed to:

Group General Manager
NSW Procurement – Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 7504
Fax: (02) 9372 7533

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THIS AGREEMENT executed by DEED is made on the _____ day of _____ 20__

BETWEEN

NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD for and on behalf of the Crown in right of the State of New South Wales, of McKell Building, 2-24 Rawson Place, Sydney, in the State of New South Wales ("the Board").

AND

[.....name of contractor.....] of [.....address.....] in the State of [.....] ("the Contractor").

BACKGROUND

- A. The Board issued the Request for Tender for the supply of the Services.
- B. The Contractor submitted a tender that was accepted by the Board.
- C. The Board and the Contractor have agreed to enter into an Agreement for the supply of the Services in the form of this Deed.

NOW THE PARTIES AGREE:

1 Interpretation

1.1 Definitions

"Administrators" means Personnel of the Contractor who are responsible for managing Authorised Users within its organisation and receiving notices sent by the Board for purposes of complying with the Contractor's smartbuy® obligations.

"Agreement" means this Deed of Agreement including the Schedules and Part E, Special Conditions of Agreement, where applicable.

Agency Performance Indicator (API) means performance indicators in respect of the Contractor's performance of this Agreement and which are scored by the Customers.

"Applicable Discount" means an applicable discount in Schedule 3 Pricing, as varied from time to time in accordance with this Agreement, or any other Applicable Discount which may be offered by the Contractor from time to time.

"Authorised Users" means Personnel who the Contractor authorises to access and use smartbuy® on its behalf and who are given access to do so by the Board.

"Benchmark" means the independent company providing price benchmarking services in accordance with clause 5.6 and whose details are indicated in Schedule 1 item 4.

"Board's Material" means any material, document, or Information supplied by the Board, a Customer or any department or agency of the Crown to the Contractor by whatever means.

"Board's Delegate" means the Board's employee named in Schedule 1 item 11 responsible for the overall administration of this Agreement on behalf of the Board.

"Catalogue Information" means details and information about the Services and pricing contained in a catalogue placed on smartbuy® by the Contractor or provided by the Contractor to the Board for such placement.

"Change in Control" means a circumstance in which control is or may be exercised over the Contractor:

- (a) through removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least 15% of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

"Circumstances Beyond the Control of the Contractor" include:

- (a) acts of God;
- (b) fire, flood, or earthquake;
- (c) national emergency (including terrorist acts) or war; or
- (d) a serious industrial dispute.

“Confidential Information” means, in relation to a Party, information that:

- (e) is by its nature confidential;
- (f) is designated by that Party as confidential; or
- (g) the other Party knows or ought to know is confidential.

“Consequential Loss” means any loss recoverable at law (other than loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business;
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

“Contract Material” means New Contract Material and Existing Contract Material.

“Contract Price” means the total amount payable by the Customer to the Contractor for the Services ordered under a Customer Contract and calculated in accordance with clause 5.2.

“Contractor Information” means the information that must be provided by the Contractor in smartbuy® covering its own organisation and that of its Designated and Nominated Subcontractors and includes names, addresses and contact details.

“Contractor’s Cost Structure” means the Contractor’s overall cost structure comprising of individual cost components for each Service Classification listed in Schedule 3.

“Contractor’s Insolvency” means any of the following:

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Agreement or any Customer Contract;
- (c) an application for winding up is made and not stayed within 14 days;
- (d) a winding up order is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters the possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

“Customer” means the Eligible Customer that places the order with the Contractor under the Agreement.

“Customer Contract” means the contract that is made between the Contractor and a Customer when that Customer places an order.

“Customer’s Authorised Person” means the officer nominated by each Customer in its Customer Service Level Agreement with the Contractor to be responsible for overseeing the performance of this Agreement on behalf of that Customer.

“Deed” means a form in which a contract or agreement can be recorded which requires execution under the parties’ seal.

Part D –Agreement

“Designated Subcontractor” means the comprehensive list of subcontractors, resellers and distributors that the Contractor will use for the purposes of this Agreement and named in smartbuy® as such.

“Eligible Customer” means

- (a) any public sector service agency employing staff appointed under the *Public Sector Employment and Management Act 2002* as amended from time to time;
- (b) a public body as defined by clause 18(4) of the *Public Sector Management (Goods and Services) Regulation 2000* being:
 - (i) a government trading enterprise (including a State owned corporation);
 - (ii) a public or private hospital (including an area health service);
 - (iii) a local government agency;
 - (iv) a charity or other community non-profit organisation;
 - (v) a public or private school or a college or university;
 - (vi) a public authority of this State, the Commonwealth or of any other State or Territory;
 - (vii) a contractor to a public authority (but only in respect of things done as such a contractor);
- (c) a Nominee Purchaser provided that it satisfies the requirements of clause 3.7; and
- (d) such other persons or entities, which the Board may from time to time in its discretion, determine through a customer registration process.

“Environmental Management Plan” means a plan for managing environmental matters in relation to this Agreement which are based (to the extent applicable to a whole of government situation), on the NSW Government Environmental Management Systems Guidelines.

“Existing Contract Material” means any material which is existing at the date of this Agreement and which may be incorporated in to the New Contract Material.

“Externally Hosted Catalogue” means Catalogue Information hosted in a system other than smartbuy®’s physical infrastructure which is accessible via smartbuy®.

“Financial Security” means the security in the amount and form specified by the Board set out in item 10 of Schedule 1.

“Industrial Relations Plan” means a plan for managing industrial relations matters in relation to this Agreement which are based (to the extent applicable to a whole of government situation) on the NSW Government Industrial Relations Systems Guidelines.

“Information” includes information in the form of data, text or images.

“Intellectual Property” includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the date of this Agreement.

“Key Performance Indicators” means performance indicators in respect of the Contractor’s performance of this Agreement, and which are scored by the Board.

“Key Personnel” means the personnel of the Contractor specified in Schedule 1 item 13.

“Management Fee” means the fee payable by the Contractor to the Board in accordance with clause 9.

“New Contract Material” means any material brought into existence as part of, or for the purpose of providing the Services including records, documents and Information stored by any means.

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“Nominated Subcontractors” means a subcontractor nominated by the Board that must be used by the Contractor and indicated in smartbuy® as such.

“Nominee Purchaser” means a contractor to a Public Sector Service agency, nominated by the Public Sector Service agency authorised to place Customer Contracts under Agreements for things done as such a contractor and registered by NSW Procurement – Contracting Services.

“NSW Procurement – Contracting Services” means a business unit of the NSW Department of Commerce, representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“Occupational Health & Safety Management Plan” means a plan for managing occupational health & safety matters in relation to this Agreement which are based (to the extent applicable to a whole of government situation) on the NSW Government Occupational Health & Safety Systems Guidelines.

“Overall Performance Indicators” means the holistic performance indicators used by the Board to measure the performance of the Contractor under this Agreement and comprise indicators scored by the Customers (ie.API) and the Board (KPI).

“Payment Period” means each period nominated in item 6 of Schedule 1 or where this Agreement expires or is terminated before the conclusion of one such period, the period up to and including the date of expiration or termination.

“Parties” means the Board, Contractor, and the Customer.

“Personnel” of a Party means;

- (a) the officers, employees, agents and contractors of the Board and the Customer,
- (b) in the case of the Contractor, includes subcontractors, resellers, distributors, i.e. Designated Sub-Contractors and Nominated Subcontractors in smartbuy®; and

“Price” means the price payable for a Service as set out in Schedule 3 and, where relevant, means the price inclusive of any Applicable Discount specified in Schedule 3.

“Price Schedule” means Schedule 3 to this Agreement and/or variations made to it in accordance with this Agreement.

“Public Service” has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

“Public Sector Service” has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

“Relationship Manager” means the Contractor’s employee named in Schedule 1 item 13.

“Request for Tender” means the request for tender issued by the Board, consequent to which this Agreement was awarded to the Contractor for the supply of the Services.

“Schedule” means a schedule to this Agreement.

“Services” means the Services to be supplied by the Contractor under this Agreement (inclusive of their individual Service Classifications) described in Schedules 2, 3, and 10.

“Service Classification” means individual types of Services as described in Schedules 2, 3, and 10.

“Service Levels” means the service levels which need to be met by the Contractor under this Agreement in accordance with Schedule 8.

“Service Period” means the time for the supply of the Services as specified in Schedule 2 of this Agreement, or such earlier time as may be agreed by the Customer and the Contractor.

Part D –Agreement

“Service Site” means the place where the Service is to be performed, which place is specified in the Customer Contract.

smartbuy® CONNECT means the electronic document exchange providing the security, connectivity, transformation, and trading partner management services.

“smartbuy® TRADE means an entry level product for organisations new to eProcurement. It delivers a single source, easy to use, electronic product and ordering system.

“Statement of Requirements” means the detailed description/specification of the Services to be provided under this Agreement in Schedule 2.

“Standards” means Australian Standards, where such exist and are applicable to the Services, and includes international standards in the event of the lack of an applicable Australian Standard.

“State Contracts Control Board” means the State Contracts Control Board established by the *Public Sector Employment and Management Act 2002* and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

“State of New South Wales” means the Crown in right of the State of New South Wales.

“Statutory Requirements” means the laws relating to the performance of this Agreement or the lawful requirements of any authority with respect to the performance of this Agreement.

“Substantial Breach” means:

- (a) in the case of this Agreement and a Customer Contract, a substantial breach of a condition of this Agreement or a Customer Contract by the Contractor and includes any breach of the following clauses:
 - (i) clause 3.7.3 (Nominee Purchaser),
 - (ii) clauses 5.1 to 5.10 (Pricing),
 - (iii) clause 8.3 (Punctual Delivery) without being granted an extension of time under clause 8.4,
 - (iv) clause 9 (Management Fee),
 - (v) clause 10 (Confidentiality),
 - (vi) clauses 12.5 (Compliance with Laws, Standards, and NSW Government Requirements),
 - (vii) clause 12.11 (Minimum Insurance Requirements),
 - (viii) clause 12.17 (Financial Security),
 - (ix) clause 12.20 (Child Protection),
 - (x) clause 13.1 (Service Levels),
 - (xi) clause 13.5.1 (minimal or nil sales returns),
 - (xii) clause 18.1 (No Assignment or Novation); and
 - (xiii) clause 18.2 (Conflicts of Interest).

“Term” means the period of this Agreement, set out in item 2 Schedule 1 and any extension of the Term in accordance with clause 2.2.

“Transaction” means any use of smartbuy® including sale or purchase of Services available through smartbuy®.

“Transaction Data” means any data created or generated or derived from the use of smartbuy® by any participant in smartbuy® including any data about the purchase or sale of Services that any participant in smartbuy® makes available or transmits to or through smartbuy® and includes any information which may identify the Customer from the smartbuy® database.

“Transition Plan” means the Contractor’s plan in Schedule 2 for ensuring successful transition into and out of this Agreement.

“UNSPSC” means United Nations Standards Products & Services Code, being a coding system which classifies both products and services for use on a global basis.

“Warranty Period” means, in relation to a particular Product, the period of warranty of that Product specified in Schedule 2.

1.2 Rules for interpreting this Agreement

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

1.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) software, document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) any thing (including a right, obligation or concept) includes each part of it.

1.2.3 Where:

- (a) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
- (b) an obligation, representation or warranty made by the Contractor in this Agreement shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in this Agreement.

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

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

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

1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.

1.2.8 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:

- (a) Schedule 10,
- (b) Part E, Special Conditions to this Agreement, if applicable,
- (c) Schedule 6 to this Agreement;
- (d) The terms and conditions of this Agreement;
- (e) Schedule 1 and 2 to this Agreement;
- (f) The Customer Contract;
- (g) Customer Service Level Agreements between each Customer and the Contractor;
- (h) Any other Schedules.

2 Term

2.1 Duration

- 2.1.1 This Agreement commences on the commencement date specified in item 2 of Schedule 1 and expires on the expiry date specified in the same item 2, unless sooner terminated in accordance with this Agreement.

2.2 Extension

- 2.2.1 The Board may in its sole discretion extend this Agreement for the period or periods specified in item 2 of Schedule 1.

3 Formation

3.1 Nature of the Agreement between the Board and the Contractor

- 3.1.1 This Agreement describes the terms and conditions between the Board and the Contractor under which the Contractor agrees with the Board that it will supply the Services to Customers.
- 3.1.2 This Agreement together with Part E, Special Conditions constitutes the entire Agreement between the Parties. Any prior arrangements, Agreements, representations or undertakings are superseded.
- 3.1.3 The Parties agree that any Customer, although not a Party to this Agreement, may take the benefit of, and enforce, this Agreement in its own name.

3.2 No Assurance of Orders and Non-Exclusive Supply

- 3.2.1 This Agreement does not:
- (a) imply that the Contractor will receive any orders for the Services,
 - (b) imply that the Contractor is the exclusive provider of the Services to the Customer; or
 - (c) oblige any Customer to place a Customer Contract for the Services with the Contractor.
- 3.2.2 The Contractor acknowledges that the Board may, from time to time, in its discretion, appoint other suppliers under an agreement to supply the Services and that the Contractor will make no objection to such appointment.

3.3 Customer Contract

- 3.3.1 The Contractor agrees that each time a Customer places an order a separate Customer Contract is formed. The terms and conditions of the Customer Contract are those appearing in:
- (a) this Agreement, any variations thereto, including any Schedules; and
 - (b) the order.

3.4 Provisions of Agreement to apply to the Customer Contract

- 3.4.1 The provisions of this Agreement apply to the Customer Contract as if they were repeated in the Customer Contract.
- 3.4.2 Provided that in respect of the Customer Contract, "Agreement" and "Board" wherever appearing in the clauses described above shall be read as "Customer Contract" and "Customer" respectively.

3.5 Customer Service Level Agreements

- 3.5.1 Each Customer may enter into a Customer Service Level Agreement in accordance with the format in Schedule 8 in respect of the Service Levels applicable to its own organisation. Where a Customer Service Level Agreement exists, it will take precedence over the Service Level Agreement in Schedule 8.
- 3.5.2 Prior to entering into any Customer Service Level Agreement with a Customer, the Contractor must notify the Board of the proposed Customer Service Level Agreement, and obtain its prior approval to do so.

Part D –Agreement

- 3.5.3 Where the Customer does not have the capacity to enter into agreements, the Minister, or the relevant departmental head or authorised delegate is the proper Party to the Customer Service Level Agreement.
- 3.5.4 Contractors and Customers that enter a Customer Service Level Agreement must do so under the terms and conditions of this Agreement.
- 3.5.5 The Customer Service Level Agreement can take effect at any time within the Term of this Agreement as agreed between the Contractor and the Customer. The extension of the Customer Service Level Agreement shall be at the discretion of the Customer and the Contractor, but must not in any circumstances exceed the Term of this Agreement. Once this Agreement has expired, or is terminated for any reason, any existing Customer Service Level Agreements will also automatically terminate.
- 3.5.6 The Customer Service Level Agreement is not to be used as a means to renegotiate the Prices in Schedule 3 applicable between the Customers and the Contractor. However the discount amounts within the discount structures in Schedule 3 are negotiable between the Contractor and the Customer.
- 3.5.7 The Customer Service Level Agreement may only contain clauses in relation to the following matters:
- (a) Identification of the parties to the Customer Service Level Agreement, ie. the Customer and the Contractor;
 - (b) A clear reference to be made to the Customer Service Level Agreement being entered into under the auspices of this Agreement;
 - (c) The period of the Customer Service Level Agreement;
 - (d) Specific amounts of discounts that apply between the parties, which must be based on the overall discount structures in Schedule 3, and the conditions that must be met for them to apply;
 - (e) Administrative matters such as:
 - (i) Addresses of the parties;
 - (ii) Contact arrangements (including the Customer's Authorised Person);
 - (iii) List of the Customer's authorised users;
 - (iv) Ordering and payment procedures;
 - (v) Range of Services to be purchased by the Customer;
 - (vi) The Customer's organisational policies the Contractor must comply with;
 - (vii) Attendance and certification of the Contractor's staff in the Customer's site induction programs;
 - (viii) Service Site access requirements;
 - (ix) Service Levels and performance indicators.
- 3.6 Contractor must supply to all Customers**
- 3.6.1 If a Customer enters into a Customer Contract with the Contractor during the Term, the Contractor must supply the required Services to the Customer on the terms and conditions of the Customer Contract and in accordance with this Agreement.
- 3.7 Nominee Purchasers**
- 3.7.1 Subject to clause 3.7.3, the Contractor must satisfy any Customer Contract placed under this Agreement by a Nominee Purchaser, provided that the Nominee Purchaser provides in its Customer Contract:
- (a) its NSW Procurement – Contracting Services Registration Number;
 - (b) the identity of the Eligible Customer nominating it;
 - (c) the Agreement Number, name and location of the contract in respect of which the purchase is being made;

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- (d) a statement that the Services ordered are related to carrying out its obligations with the Eligible Customer; and
 - (e) any other requirements in clause 8.1.2 of this Agreement applicable to Nominee Purchasers as determined by the Eligible Customer.
- 3.7.2 If at any time during the Term of this Agreement, the Contractor wishes to restrict its dealings with a Nominee Purchaser, the Contractor shall so request in writing to the Board. The Board may approve the request if there are genuine commercial reasons for the Contractor's request. If approved by the Board, the details of the restrictions will be included in item 3, Schedule 1.
- 3.7.3 Where the Board does not approve a request of the Contractor under clause 3.7.2 and the Contractor refuses to deal with a Nominee Purchaser, the Board may consider it a Substantial Breach of this Agreement.
- 3.7.4 The Contractor may at any time lift the restrictions it has sought to be placed on its dealings with a Nominee Purchaser and shall notify the Board accordingly.
- 3.7.5 If the Contractor makes a supply under the Agreement to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under this Agreement.

3.8 Supply through Designated and Nominated Subcontractors

- 3.8.1 The Contractor must supply the Services directly to Eligible Customers or through the Designated and Nominated Subcontractors indicated in smartbuy® in accordance with Schedule 6.
- 3.8.2 If an order is placed by a Customer on a Designated or Nominated Subcontractor, the Contractor is deemed to have entered into a Contract with the Customer.
- 3.8.3 The Contractor must ensure that its Designated and Nominated Subcontractors supply the Services in accordance with the terms of this Agreement.
- 3.8.4 The Contractor must ensure that the Designated Subcontractors in smartbuy® are current and up to date. In the event of a change being required to smartbuy®, as a result of an addition or deletion of a Designated Subcontractor, the Contractor must give notice to the Board within 7 days of such event, in order that smartbuy® can be updated in a manner and format as required by the Board.
- 3.8.5 The Contractor's obligations under this Agreement are not affected in any way by the supply through Designated and Nominated Subcontractors.

4 The Services

4.1 List of Categories

- 4.1.1 The Services to be supplied by the Contractor under this Agreement are listed in Schedules 2 and 10, and includes all labour, materials, plant and equipment necessary to perform the Services.

4.2 Performance of the Services

- 4.2.1 The Contractor must perform the Services at the Service Site/s and within the Service Period.
- 4.2.2 The Customer may reject Services which are not in accordance with the Customer Contract.
- 4.2.3 Performance will be required as soon as possible within the Service Period, after placement of orders.

4.3 Provision of Facilities by Customers

- 4.3.1 The Contractor may request the Customer's Authorised Person to provide storage space for the Contractor's equipment and materials and the Customer's Authorised Person will endeavour to do so. Equipment and materials so stored are at the Contractor's risk. It is the Contractor's responsibility to keep this storage space in a clean, tidy and safe condition.

4.4 Variation of Service Description

- 4.4.1 The Contractor must notify NSW Procurement – Contracting Services in writing as soon as practicable of any variation to the description of a Service offered in Schedule 3.
- 4.4.2 A variation under clause 4.4.1 may include a variation to the description of the number or name of the Service but excludes a variation:
- (a) to the Price of the Service;
 - (b) that modifies or upgrades the Service; or
 - (c) that introduces a new Service to the Price Schedule.
- 4.4.3 NSW Procurement – Contracting Services will notify the Contractor of its acceptance or rejection of the variation to the description of a Service. If the variation is accepted, it shall be taken to be incorporated into Schedule 3.

4.5 Improvements to Services

- 4.5.1 If during the Term the Contractor makes available on a general commercial basis Services that are modified versions or upgrades of a Service, the Contractor must offer the Board the same Service and/or Product under this Agreement within 30 days of such Service being available on a general commercial basis.
- 4.5.2 The Services offered by the Contractor under clause 4.5.1 will form part of Schedule 3 when the Board notifies its acceptance of the offer. Prior to accepting or rejecting the Contractor's offer, the Board may request the Contractor to provide any further data reasonably required within 14 days to enable the making of an informed decision on the offer. The Contractor must supply the data within the nominated time frame.
- 4.5.3 In the event that the Board has not notified the Contractor of its acceptance of the Contractor's offer within 30 days, the offer will be deemed not to have been accepted by the Board.

4.6 Access to Service Sites

- 4.6.1 The Customer shall allow the Contractor reasonable access to its Service Site/s for the purpose of meeting its obligations under the Customer Contract.

4.7 Suspension of the Services by the Customer's Authorised Person

- 4.7.1 The Customer's Authorised Person may at any time give written notice the Contractor to suspend the performance of all or any part of the Services and may include in that notice details of the extent to which it requires the Contractor to:
- (a) Keep its Personnel and equipment on standby; and
 - (b) comply with any safety and operational requirements.
- 4.7.2 If the Contractor receives a written notice from a Customer's Authorised Person under clause 4.7.1, the Contractor must immediately, or as soon as practicable (having regard to any safety and operational requirements), suspend the performance of the Services, or the relevant part.
- 4.7.3 Subject to clause 4.7.5, the Customer shall pay the Contractor compensation for the suspension of the Services, or the relevant part, on such basis as the Parties may reasonably agree to compensate the Contractor for keeping its Personnel and equipment on standby to the extent stated in the written notice in clause 4.7.1.
- 4.7.4 The Contractor must resume carrying out the Services when instructed by the Customer's Authorised Person.
- 4.7.5 If the need for the suspension arose from the Customer's act or omission, then the Contractor will be entitled to reasonable direct costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs. The Contractor has no other remedies in connection with the suspension.

5 Pricing

5.1 Contractor's Obligations

5.1.1 The Contractor must supply the Services on the basis of the Prices in Schedule 3.

5.2 Calculating the Contract Price

5.2.1 The Pricing for the Services in Schedule 3, includes all applicable levies, duties, taxes, insurances, packaging, imposts, overheads and profits, any Applicable Discounts, but is exclusive of GST.

5.3 Conduct of Price Negotiations

5.3.1 The Contractor will not conduct or participate in price negotiations with any Customer to supply the Services at Prices different from those in this Agreement. All negotiations with the Contractor relating to Prices under this Agreement will be conducted by the Board.

5.4 Price Variation

5.4.1 The Contractor may not seek to vary the Price of a Service listed in Schedule 3 except in accordance with the frequencies and methodology indicated in Schedule 10. Subject to the Contractor having provided the Board with sufficient documentation to justify the application and subject to clause 13.1.2 (a), the Board may in writing, approve the application within 30 days of lodgement. (Price variations approved by the Board shall apply to all Customer Contracts made on or after the date upon which the Board publishes the varied price on smartbuy®.

5.4.2 Where the Price variation is accepted, Schedule 3 will include the varied Price. The varied Price becomes the basis from which any future applications for Price variations will be calculated.

5.4.3 The Board reserves the right to delete a Service from Schedule 3 if it considers a Price variation application to be unreasonable.

5.4.4 Notwithstanding any other provision in this Agreement, the Contractor may apply in writing to the Board to decrease its Prices at any time without any supporting documentation.

5.5 Transparency of the Contractor's Cost Structure

5.5.1 The Parties acknowledge that this Agreement is based on a transparent and open approach to the Contractor's Cost Structure. Where the Contractor's Cost Structure of any Service undergoes any change to that specified in Schedule 3, the Contractor must notify the Board within 15 days of the change.

5.5.2 If requested by the Board, the Contractor must provide details of its cost prices and margins, and copies of invoices from its own subcontractors (including any sub suppliers) for specified Services during a specified period and the Contractor must ensure that the Contractor is able to comply with this clause for the Term (including not entering into any confidentiality agreements which prevent compliance with this clause).

5.6 Benchmarking – Not Used

5.7 Rebates

5.7.1 The Contractor warrants that if at any time during the Term of this Agreement, it receives any rebate, discount, commission or other subsidy on any Service that it purchases from its subcontractors or other third party suppliers, the benefit of such rebate, discount, commission or subsidy will be directly passed on to Customers under this Agreement.

5.8 Bulk Purchase Discounts

5.8.1 If the volume to be purchased by Customers of any Service under this Agreement increases or is anticipated to increase, the Board may negotiate a Price reduction or an increase in the Applicable Discount from the Contractor.

5.8.2 The Parties agree that the new Price or the new Applicable Discount under clause 5.8.1 shall be taken to be a variation of the Agreement in accordance with clause 7.

5.9 Continuous Best Price

- 5.9.1 Notwithstanding any other clause in this Agreement, where the Board has been able to confirm that the external market pricing for any Service in Schedule 3 is consistently more competitive than under this Agreement, the Board will provide the Contractor with reasonable evidence of such market situation and request the Contractor vary its Prices to align with the market.
- 5.9.2 Where the Contractor offers more favourable prices to any other purchaser of similar Services in NSW purchased in similar circumstances, including volumes (where Price is volume dependent), timing and terms and conditions where they have a substantial impact on price, it must promptly make the more favourable price available to all Customers entitled to the benefit of this Agreement for future orders, and amend Schedule 3 accordingly. The Contractor must further update its catalogue in smartbuy® to reflect the favourable price.

5.10 Goods and Services Tax

- 5.10.1 In this clause and Agreement:
- “**Consideration**”, “**Tax Invoice**”, “**Taxable Supply**” and “**Supply**” have the same meaning as provided for in the GST Law.
- “**GST**” is a goods and services tax and has the same meaning as in the GST Law.
- “**GST Law**” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.
- 5.10.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 5.10.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice is received.
- 5.10.4 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor’s net dollar margin for the Supply remains the same.
- 5.10.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 5.10.4.
- 5.10.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Board.

6 Payment

6.1 Payment of Contract Price

- 6.1.1 In consideration of the Contractor providing the Services under this Agreement, the Customer shall, subject to the terms and conditions of the Customer Contract, pay the Contractor the Contract Price in the amounts set out in the Customer Contract.
- 6.1.2 Failure by any Customer to pay the Contract Price at the due time will not be grounds to avoid performance of the Customer Contract.

6.2 Invoices and Time for Payment

- 6.2.1 All claims for payment made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Customer, including consolidated monthly invoicing on behalf of its branches/business units.
- 6.2.2 Subject to this clause 6.2, the Customer shall make payment within 30 days from the end of the month after receipt of a valid Tax Invoice and documents necessary to evidence delivery to the Customer.

- 6.2.3 The Parties agree the making of a payment is not intended to be an acknowledgment that the Services have been supplied in accordance with the Customer Contract.
- 6.2.4 If the Customer disputes an invoice amount the Customer shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with the Customer Contract.
- 6.2.5 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by any Customer of money becoming due for the supply of the Services.

6.3 Set-Off/Money Recoverable by Customer

- 6.3.1 The Customer may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Customer in connection with the supply of the Services.
- 6.3.2 Without limiting clause 6.3.1, any damages, costs and expenses recoverable by the Customer from the Contractor in consequence of the Contractor's breach of the Customer Contract may be deducted from money then due to the Contractor under the Customer Contract. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Customer and may be:
- (a) set off against any other money due to the Contractor by the Customer under this or any other Agreement between the Customer and the Contractor; or
 - (b) recovered from the Contractor by the Customer in an appropriate court.
- 6.3.3 For the purposes of this clause, the Board may act for and on behalf of any Customer for the purpose of assessing and certifying any damages, losses, costs and expenses sustained or incurred by the Customer as a result of the breach of the Customer Contract.

6.4 Suspension of Payments

Should the Contractor refuse or neglect to carry out the instructions or requirements of the Board in regard to any matter connected with this Agreement, a Customer may, when directed by the Board, suspend all payments to the Contractor until such instructions or requirements have been complied with by the Contractor and in complying with a direction of the Board, the Customer shall not be in breach of this Agreement or any Customer Contract.

7 Variations

7.1 Variations to Agreement

- 7.1.1 This Agreement may not be varied except in writing signed by both the Board and the Contractor. Where a variation has been agreed by the Parties, all variations will be incorporated in Schedule 10. All such variations will override the relevant terms and conditions in the Agreement to the extent of any inconsistency.
- 7.1.2 At any time during the Term of this Agreement, the Board may, as variations to this Agreement, negotiate with the Contractor to include component aspects of Service Classifications in Schedule 3, being logical inclusions to the overall Services covered by this Agreement but were not included in the Board's Request for Tender.

7.2 Restricted Tenders to Increase Contractors

- 7.2.1 The Board may at any time during the Term of this Agreement, conduct a restricted tender for the purpose of increasing the number of Contractors for Service Classifications covered by the Request for Tender, but not included in this Agreement. Evaluation criteria for such restricted tender will be similar to those used to evaluate the Request for Tender. Should the Contractor be successful in being awarded additional Service Classifications, it will be treated as a variation to this Agreement.
- 7.2.2 Nothing in clause 7.1.2 allows the variation of this Agreement by the adding of new Service Classifications, if such Service Classification was not included in the Board's Request for Tender.

8 Service Delivery

8.1 Customer Contracts

8.1.1 The Contractor must not supply the Services unless the Customer issues a Customer Contract. Such Customer Contracts may be made by:

- (a) Written request to the Contractor by facsimile, email or by hand, containing the details outlined in clause 8.1.2;
- (b) Electronic issue in accordance with the Customer's and/or the Contractor's ordering system and this Agreement;
- (c) Any other method required by the Customer which is in keeping with the NSW Government's financial and audit policies.

8.1.2 A Customer Contract in whichever form it is issued, must provide the following details:

- (a) a description of the Services;
- (b) the Price for the Services;
- (c) this Agreement reference number;
- (d) delivery date;
- (e) Service Site for supply of the Services;
- (f) name of officer placing the Customer Contract;
- (g) NSW Commerce Customer Number; and
- (h) address to which the Contractor's invoice is to be sent for payment.

8.1.3 If the Customer Contract is issued in incomplete form, the Contractor must notify the officer placing the Customer Contract of the details required under clause 8.1.2 that have not been provided prior to supply of the Services which are the subject of the Customer Contract.

8.2 Contractor to Fulfil all Customer Contracts

8.2.1 The Contractor must fulfil all Customer Contracts placed by Eligible Customers during the Term in accordance with this Agreement and the Customer Contract.

8.2.2 A Customer may place a single Customer Contract for the Services to be supplied in a single delivery, or a single Customer Contract to be supplied in multiple deliveries, ie. "Blanket Orders".

8.3 Punctual Performance

8.3.1 The Contractor must deliver the Services within the specified Service Periods in Schedule 2 and Schedule 10, or by the times specified in the Customer Contract.

8.3.2 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Contractor must notify the Customer in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay.

8.4 Extension of Time

8.4.1 Where there is likely to be a delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:

- (a) within 3 days of becoming aware of the possibility of such a delay, notify the Customer, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
- (b) request a reasonable extension of time.

- 8.4.2 The Customer may consent to a request for extension of time under this clause 8.4.2 provided that:
- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
 - (b) where appropriate, the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond its Control.
- 8.4.3 The Customer may terminate the Customer Contract in accordance with clause 17.1 if the delay continues beyond the time consented to in this clause 8.4.
- 8.4.4 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

8.5 Notification to the Customer's Authorised Person

- 8.5.1 The Contractor must immediately inform the Customer's Authorised Person in writing of any overall problems or issues which may have an adverse impact on the performance of Services under this Agreement on behalf of such Customer, which includes industrial relations, occupational health, and environmental management matters, together with any contingency plans to manage such problems or issues.

8.6 Alternative Supplier

- 8.6.1 If the Contractor is unable to provide the Services for any reason, the Contractor must arrange for the supply of equivalent services from an alternative supplier within the Service Period. The Contractor is to liaise with the Customer to ensure that the alternative service is acceptable and meets the Customer's needs. Any additional cost in arranging an alternative supply is to be borne by the Contractor.

8.7 Rejection of Services

- 8.7.1 The Customer may reject Services which are not in accordance with the Customer Contract.
- 8.7.2 Upon rejection of any Services the Customer shall notify the Contractor and may direct that the rejected Services be replaced or rectified at the Contractor's risk and expense within such reasonable time as the Customer may direct.
- 8.7.3 If the Contractor fails to replace or rectify the rejected Services within the time directed, the Customer may have the rejected Services re-performed at the Contractor's risk and expense.
- 8.7.4 Where the Contractor fails to provide the Services within the Service Period, or such other time agreed by the Customer, or where Services are rejected and the Contractor fails to replace the rejected Services in conformity with the Agreement, the Customer may:
- (a) purchase from another supplier substitute Services of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another supplier substitute Services of the kind and quality ordered, the Customer may purchase Services of a superior kind and quality to the Services under this Agreement.
- 8.7.5 In both cases listed in clause 8.7.4 any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Customer.

9 Management Fee

9.1 Administration of Management Fee

- 9.1.1 The Contractor must pay to the Board a Management Fee in accordance with this clause.
- 9.1.2 The Contractor shall act in good faith in respect of all its obligations under this clause 9.1 and shall use its best endeavours to ensure that the obligations imposed on it in relation to the Management Fee are met.

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- 9.1.3 The Management Fee is the GST-exclusive cost of the Services supplied to a Customer, multiplied by the percentage shown in Item 5 of Schedule 1 (the Management Fee Rate), plus the GST payable on this amount. The Management Fee is payable where the supply of Services to the Customer was or should have been made under this Agreement.
- 9.1.4 The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice to a Customer.
- 9.1.5 The Contractor agrees to take all reasonable steps to ensure that where, Eligible Customers purchase Services from the Contractor and its Designated and Nominated Subcontractors, the purchases are made under this Agreement. Notwithstanding clause 8.1, the Contractor agrees that the Board may treat all purchases of Services by Eligible Customers as purchases under this Agreement, unless the Contractor can provide evidence, to the satisfaction of the Board, that the purchase was made under some other contract between that Eligible Customer and the Contractor.
- 9.1.6 The Contractor agrees that the Management Fee payable has been allowed for in the Prices specified in the Price Schedule together with all costs associated with its calculation and proof of payment.
- 9.1.7 At the end of each Payment Period, the Board shall forward to the Contractor a request for a sales report ("the Report") which relates to the relevant Payment Period and which requires the Contractor to report the:
- (a) total amount, exclusive of GST, all Customers are liable to pay in respect of all Services invoiced by the Contractor, its Designated and Nominated Subcontractors, to Customers under the Agreement; and
 - (b) the sales information as set out in Item 7 of Schedule 1 ("the sales information"), or as the Board requests in writing from time to time;
 - (c) such other relevant information as the Board may reasonably require.
- 9.1.8
- (a) The Contractor shall, within 30 days, from receipt of the Board's request complete the Report for the relevant Payment Period and return it to the Board electronically through smartbuy®.
 - (b) In the event that the Contractor does not complete the Report within 30 days, the Contractor:
 - (i) is liable to pay to the Board the cost to the Board of ensuring compliance by the Contractor with its obligations under this clause, (which would likely include the number of hours multiplied by the hourly rate for staff of the Board), and
 - (ii) will be liable for interest at the rate specified in item 8 of Schedule 1 Agreement Details, on the Management Fee payable which (had this clause been complied with) would have been invoiced to the Contractor under clause 9.1.9, calculated from 60 days after the expiry of the relevant Payment Period.
- 9.1.9
- (a) After receipt of the completed Report from the Contractor, the Board shall then compile a Tax Invoice for the Management Fee payable based on the Report and forward that Tax Invoice to the Contractor.
 - (b) The Contractor shall then forward payment to the Board in accordance with the Tax Invoice compiled by the Board within sixty days of the conclusion of the Payment Period.
 - (c) In the event that the Contractor does not provide payment within sixty days:
 - (i) the Contractor shall be liable to pay, to the Board the cost to the Board of ensuring the compliance by the Contractor with its obligations under this clause, (which would likely include the number of hours multiplied by the hourly rate for staff of the Board), and

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- (ii) will be liable for interest in accordance with item 8 of Schedule 1 on the invoiced amount, calculated from 60 days after the expiry of the relevant Payment Period.
- 9.1.10 The Tax Invoice referred to in clause 9.1.9 will set out the Management Fee payable by the Contractor to the Board and the GST payable on the Management Fee.
- 9.1.11 The Board may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the Term.
- 9.1.12 Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable during a Payment Period is required, it should advise the Board in writing. The Parties may then agree on the amount of any adjustment.
- 9.1.13 Where the Contractor has not issued any invoice to a Customer during a relevant Payment Period the Contractor must provide, within 30 days of the conclusion of that Payment Period, a report stating that no Services were provided by the Contractor to any Eligible Customer during the Payment Period.
- 9.1.14 The Contractor must set up and maintain a system which:
 - (a) to the reasonable satisfaction of the Board is suitable for identifying all purchasers of the Services under the Agreement that are Eligible Customers whether pursuant to Customer Contracts or otherwise; and
 - (b) enables monitoring by the Board of the Customer Contracts placed with, and invoices issued by, the Contractor and its Designated and Nominated Subcontractors, and for the provision of the sales information; and
 - (c) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Services.

9.1.15

- (a) The Board may, at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor and its Designated and Nominated Subcontractors have paid the correct amount of Management Fee due to the Board and the Contractor agrees to cooperate with the Board.
- (b) If the Board appoints an auditor, the Board will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with any auditor appointed by the Board, including providing access within 10 working days of the written notification from the Board that an audit will take place and providing information about all sales of Services made to Eligible Customers (whether pursuant to an order or otherwise), copies of all contracts, orders and invoices between the Contractor and any Eligible Customers. The Contractor agrees to provide the auditor appointed by the Board access on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement in the form set out in Schedule 5.

9.1.16 If the measures taken in clause 9.1.15 verify that the Contractor has not paid in full the Management Fee that is actually due to the Board, the Contractor:

- (a) must pay the difference between the Management Fee paid to the Board and the Management Fee actually due to the Board within 30 days of a written direction from the Board; and
- (b) will be liable for interest at the rate specified in item 8 of Schedule 1, on the additional amount calculated from 60 days after the expiry of the relevant Payment Period, and
- (c) will, at the discretion of the Board, reimburse the Board's costs and expenses of the measures taken (including any auditor's fees) under clause 9.1.15 to the Board in accordance with the sliding scale set out below to compensate the Board for the cost incurred in ensuring the correct Management Fee is paid:

Difference between management fee paid and payable:

- (a) 99% or more of management fee was paid
- (b) 90-98% of management fee paid
- (c) 75-89% of management fee paid
- (d) 50-74% of management fee paid
- (e) less than 50% of payable management fee paid

Portion of Audit costs to be borne:

- (a) \$0
- (b) 25% of audit and other costs
- (c) 50% of audit and other costs
- (d) 75% of audit and other costs
- (e) 100% of audit and other costs.

9.1.17 The Contractor shall during the Term of this Agreement and for a 12 month period after the Agreement has expired or is terminated, keep secure all relevant documents and information for the purposes of this clause and give any auditor appointed by the Board access to those documents and information at all reasonable times.

9.1.18 The parties agree that a breach of this clause (including without limitation, a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 9.1.15) shall be a Substantial Breach of this Agreement which will entitle the Board to terminate this Agreement pursuant to clause 16.1.1 and this right of termination shall be in addition to the right of the Board to recover from the Contractor any sums

payable to the Board under this Agreement or otherwise, or the right of the Board to deduct those sums from any money that may be or become payable by the Board to the Contractor on any other account.

10 Confidentiality

10.1 Obligations of Parties

- 10.1.1 Except to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement or a Customer Contract, unless the other Party gives its prior written consent.
- 10.1.2 Each Party may disclose Confidential Information to its officers, employees and sub-contractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement or a Customer Contract.
- 10.1.3 Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement or a Customer Contract.
- 10.1.4 The Board or the Customer may at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement or a Customer Contract to execute without delay a Deed of Confidentiality, substantially in the form of Schedule 4.
- 10.1.5 This clause will survive the termination of this Agreement.

11 Intellectual Property

11.1 Ownership

- 11.1.1 Intellectual Property created in relation to New Contract Material will be owned by the Contractor upon their creation.
- 11.1.2 The Contractor irrevocably grants to the Customer a non-exclusive royalty free transferable licence to use the Intellectual Property in the New Contract Material for so long as the Customer may require.
- 11.1.3 The Parties acknowledge and agree that the Parties or, where applicable, particular third parties, are the sole owners of their Intellectual Property rights in or in relation to the Existing Contract Material.
- 11.1.4 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services.
- 11.1.5 Upon completion of the Customer Contract, or at such other time as the Customer may require, the Contractor must fully and promptly disclose to the Customer all New Contract Material created or developed under or in connection with this Agreement.

12 Specific Obligations of Contractor

12.1 Contract Transition Requirements

- 12.1.1 The Contractor must ensure that it has complied with the requirements of the Transition Plan in Schedule 10 of this Agreement in accordance with the dates indicated therein.

12.2 Marketing by the Contractor

- 12.2.1 The Contractor is responsible for the proactive marketing of its organisation's capability to Customers.

12.3 Provision of Catalogue Information for E-commerce Initiatives

- 12.3.1 From time to time the Board may request the Contractor to supply information in the nature of catalogue information for use in e-commerce initiatives in NSW Government contracting.
- 12.3.2 The Contractor must promptly supply any such information that is reasonably requested by the Board in the format, and using the method of delivery, specified by the Board at the time of the request.
- 12.3.3 The Contractor consents to the use of such information, including any personal information, in any catalogue created by the NSW Department of Commerce to facilitate e-commerce in NSW Government contracting.

12.4 Licences and Approvals

- 12.4.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement.

12.5 Compliance with Laws, Standards and NSW Government Requirements

- 12.5.1 The Contractor must, in carrying out this Agreement, comply with:
- (a) all applicable Statutory Requirements;
 - (b) the NSW Government codes, policies, guidelines and Standards listed in item 9 of Schedule 1 or any other codes, policies, guidelines and Standards specified in writing by the Board to the Contractor; and
 - (c) a particular Standard which has been agreed between the Contractor and the Board, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.
- 12.5.2 At least 14 days before commencing the Services under this Agreement, the Contractor must document, submit, and implement the following which complies with applicable legislation and Schedules 2 and 10 of this Agreement:
- (a) An Industrial Relations Plan;
 - (b) An Environmental Management Plan;
 - (c) An Occupational Health & Safety Management Plan.
- 12.5.3 The Contractor must demonstrate to the Board or to a Customer, whenever requested, that it has met and is meeting its obligations under this clause.

12.6 Access to Service Sites by the Contractor

- 12.6.1 Access to Service Sites covered by this Agreement must be arranged with each Customer. In accessing Service Sites, the Contractor must comply with the Customer's policies and procedures as to their use, including access times.

12.7 Uniforms and Personal Protective Equipment

- 12.7.1 All Personnel deployed by the Contractor on Customer's Service Sites under this Agreement must be supplied with uniforms clearly identifying the Contractor's organisation and appropriate safety footwear at the Contractor's cost. Personal Protective Equipment (PPE) must be supplied by the Contractor to the Contractor's Personnel deployed under this Agreement in accordance with Schedules 2 and 10, applicable Standards, and legislation.

12.8 Material Safety Data Sheets (MSDSs)

- 12.8.1 The chemicals and other material used by the Contractor under this Agreement must comply with Schedules 2 and 10. Any revised MSDSs must be submitted to the Customer's Authorised Person for review and approval.

12.9 Plant and Equipment and Maintenance

- 12.9.1 The Contractor is required to provide suitably maintained and operational plant and equipment to carry out the Services which must conform to applicable Standards.

12.10 Support Centre

- 12.10.1 The Contractor is required to maintain a staffed support centre to provide a support service under this Agreement, to be available on a 24 hour 7 day basis in order to answer any queries raised by Customers.

12.11 Notification to Customer's Authorised Person

- 12.11.1 The Contractor must immediately inform the Customer's Authorised Person in writing of any problems or issues which prevent, may prevent, or have an impact on the performance of Services under the Customer Contract which may include matters pertaining to industrial relations, occupational health & safety, and environmental management.

12.12 Minimum Insurance Requirements

- 12.12.1 The Contractor must hold and maintain, and must ensure that all subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
- (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in item 12(a) of Schedule 1 in respect of each claim; and
 - (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
 - (c) such other insurances as are specified in Schedule 1 item 12 of the Agreement Details.
- 12.12.2 All policies of insurance must be effected with an insurer rated A or better by AM Best or an equivalent rating organisation.
- 12.12.3 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Board.
- 12.12.4 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Board in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Board is kept fully informed of subsequent action and developments concerning the claim.
- 12.12.5 The Contractor must, when requested in writing by the Board, arrange for its insurer to complete a "Certificate of Currency of Insurance Obtained".
- 12.12.6 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.
- 12.12.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

12.13 General Indemnity

- 12.13.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Board and the Customers and their officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement.
- 12.13.2 The Contractor's liability in respect of, and indemnity given in, clause 12.7.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Board, its officers, employees or agents caused or contributed to the loss.

12.14 Contractor's Warranties (General)

- 12.14.1 The Contractor warrants:

- (a) that the Services do not infringe the Intellectual Property rights of a third party; and
- (b) the Services shall conform to any legally applicable Australian Standards;
- (c) it has capacity to enter into this Customer Contract and perform the obligations imposed on the Contractor; and
- (d) the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of the Customer Contract by the Contractor.

12.15 Third Party Warranties

- 12.15.1 Where the Contractor supplies Services that have been procured from third parties, the Contractor agrees to assign to the Customer, to the extent permitted by law, the benefits of any warranties given by the third parties.
- 12.15.2 The parties agree that the assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Customer Contract and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

12.16 Financial Security

- 12.16.1 If requested by the Board, the Contractor must provide Financial Security within 7 days of such request. The Financial Security must be substantially in the form set out in Schedule 7 and must be issued by a financial institution acceptable to the Board. The Board will hold the Financial Security as security for the due and proper performance of all the obligations of the Contractor under this Agreement and any Customer Contract.
- 12.16.2 If the Financial Security is not sufficient to meet payment of all the loss or damage suffered by the Board and any Customer, the balance remaining will be a debt due and owing from the Contractor to the Board or Customer and may be recovered in any appropriate court.
- 12.16.3 The Contractor agrees that the Board will have no liability to the Contractor for any loss or damage suffered or incurred by the Contractor where the Board exercises its rights under this clause in good faith.
- 12.16.4 The Contractor must not take any action to injunct or otherwise prevent the Board from making a claim or receiving a payment under the Financial Security. This clause does not prevent the Contractor from taking action to recover from the Board any amount invalidly received by the Board under any such Financial Security.
- 12.16.5 The Board must release the Financial Security to the Contractor (or to whom the Contractor directs) if in the reasonable opinion of the Board;
- (a) there is no prospect that money or damages will become owing (whether actually or contingent) to the Board or any Customer; and
 - (b) no payment by the Contractor or the provider of the Financial Security is likely to be void, voidable or refundable under any law, including without limitation any law relating to insolvency.

12.17 Mistakes in Information

- 12.17.1 The Contractor must pay for any additional costs incurred by the Board or any Customer for errors or omissions in material or other Information supplied by it, even though that material or Information may have been approved by the Board.

12.18 Notification of Change in Control or Transfer of Ownership

- 12.18.1 During the Term, the Contractor must immediately notify the Board and any Customers under an existing Customer Contract in writing of any Change in Control or other action to reconstruct or amalgamate itself.

12.19 Notification of Contractor's Insolvency

- 12.19.1 The Contractor must immediately notify the Board in writing of the Contractor's Insolvency and disclose the details of any:

- (a) Action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement and any Customer Contracts;
 - (b) Existing Customer Contracts which the Contractor has entered into under this Agreement.
- 12.19.2 The Contractor must immediately notify all Customers under an existing Customer Contract of the Contractor's Insolvency.

12.20 Child Protection

- 12.20.1 If any Customer Contract involves child-related employment, the Contractor must ensure that:
- (a) it complies with, and ensures that its sub-contractors comply with, the NSW Department of Commerce Code of Behaviour for the Protection of Children and other Vulnerable People,
 - (b) it complies with its obligations, and ensures that its sub-contractors comply with their obligations, as an employer under the Child Protection (Prohibited Employment) Act 1998 ("Prohibited Employment Act") and the Commission for Children and Young People Act 1998 ("Children and Young People Act").
- 12.20.2 Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called "the working with children check." The guidelines are available at www.kids.nsw.gov.au.
- 12.20.3 Without affecting the obligations imposed by the Prohibited Employment Act and the Children and Young People Act:
- (a) if any work under a Customer Contract is "child-related employment" under the Prohibited Employment Act (employment of specified kinds that primarily involves direct contact with children where that contact is not directly supervised), the Contractor,
 - (i) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and
 - (ii) must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
 - (b) if any work under a Customer Contract is "child-related employment" under the Children and Young People Act (any employment that involves direct contact with children where the contact is not directly supervised) the Contractor must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
- 12.20.4 The Contractor must not, and must ensure that its sub-contractors do not, engage any person who is a "prohibited person" under the Prohibited Employment Act (persons who have committed a serious sex offence within the meaning of that Act) to perform work under any Customer Contract that is "child-related employment" under that Act.
- 12.20.5 If the work involves access to Department of Education sites, additional requirements relating to community expectations concerning child protection may be imposed as a condition of entry to that site.
- 12.20.6 The Board may require the immediate removal of a "prohibited person" or a person who is the subject of a child abuse allegation or investigation from performance of child-related employment under the relevant Customer Contract.

13 Performance Management

13.1 Service Levels

- 13.1.1 The Contractor must meet the specified Service Levels in Schedule 8 during the Term of this Agreement. Performance against the Service Levels must be tracked by the Contractor and reported to the Board's Delegate in accordance with the frequencies and formats in Schedule 8.

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13.1.2 Where the Contractor does not meet the Service Levels in Schedule 8, the Board may, at its discretion, take one or more of the following actions in relation to the Contractor:

- (a) refuse to agree to all or a portion of the price variation requested by the Contractor under clause 5.4.1,
- (b) temporarily suspend the use of all or parts of this Agreement by all Customers, for a period not exceeding 12 months; and
- (c) require the Contractor to undertake more frequent performance reporting in addition to those specified in Schedule 8, to ensure performance is improved;

until such time as the Contractor has demonstrated its ability to meet the Service Levels in accordance with Schedule 8.

13.1.3 The remedies in clause 13.1.2 are in addition to any other provisions available to the Board to deal with the inability of the Contractor to meet its Service Level obligations under this Agreement and at law.

13.1.4 The measurements and tolerances in the Service Levels specified in Schedule 8 may be amended, added to, or deleted by the Board and the Contractor in writing during the Term of this Agreement.

13.2 Board's Delegate

13.2.1 The Board has nominated the Board's Delegate in Schedule 1 item 11 to oversee the performance of this Agreement. The Board may, by notice in writing to the Contractor, nominate a replacement Board Delegate.

13.3 Contractor's Relationship Manager

13.3.1 For the purpose of ensuring an efficient relationship with the Board the Contractor has appointed the Relationship Manager indicated in Schedule 1 item 13. The Relationship Manager must:

- (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;
- (b) serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;
- (c) have the authority to implement such actions (including issuing of directives through the Contractor's organisation), as may be required for the Contractor to comply with this Agreement;
- (d) meet with the Board's Delegate at least once each month to provide information regarding the Contractor's performance under this Agreement, with particular reference to the Service Levels in clause 13.1.1; and
- (e) answer the Board's queries and work with the Board to address issues relating to matters deemed urgent by the Board arising out of this Agreement.

13.3.2 The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Board's Delegate to meet with the Board's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement or a Customer Contract.

13.3.3 The Relationship Manager must be supported by the Key Personnel in Schedule 1 item 13 in respect of Customers. The Relationship Manager and/or the Key Personnel named in Schedule 1 item 13 must be available to attend periodic meetings as required by Customers.

13.4 Innovation and Continuous Improvement

13.4.1 The Contractor must identify innovative solutions for mutual value enhancement in connection with this Agreement, with a view to achieving continuous improvement. NSW Government and agencies are looking for integrated waste management solutions for a variety of materials (eg; computers, batteries, oils, organics etc). The

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Contractor is encouraged to identify and develop re-use, recycling and disposal services for additional materials other than those specified in this Agreement.

- 13.4.2 The Contractor must submit in writing to the Board, at its own cost, detailed proposals for changes to the Services and associated supply chain solutions which are likely to offer significant (including repeated and long term) benefits to the Board in accordance with the requirements of Schedule 2.
- 13.4.3 The Contractor must ensure that such solutions do not include anything which might adversely affect the quality of the Services and that any proposed changes are consistent with the purpose and intent of this Agreement.
- 13.4.4 The Board must consider the Contractor's proposals, but is not bound to accept any proposal. The Board may also accept the proposed changes subject to conditions. The Contractor shall have no claim arising out of the Board's failure to accept any proposal or proposed changes.
- 13.4.5 If the Board accepts any changes proposed by the Contractor, any direct savings in the cost to the Contractor of supplying the Services will be for the benefit of the Customer.
- 13.4.6 For the purposes of monitoring performance and providing incentives for the Contractor to improve its performance level, the Board will construct and maintain an Overall Performance Indicator (OPI).
- 13.4.7 Data input into the OPI will be provided by the Board which will monitor the Key Performance Indicators (KPI) and by the Customer which will monitor the Agency Performance Indicator (API).
- 13.4.8 The performance framework and the performance indicators are set out in Schedule 8.
- 13.4.9 Where the Contractor has consistently met the levels set out in Schedule 8, the Board, may in its absolute discretion:
 - (a) extend the period of the Agreement with the Contractor subject to the original term and any relevant policy consideration, and/or
 - (b) reduce the level and frequency of the Board's reporting requirements.

13.5 Contractor Performance Monitoring

- 13.5.1 The Board will monitor the sales performance of the Contractor under this Agreement. Where after 12 months of operation of this Agreement the:
 - (a) sales of the Contractor are minimal, or
 - (b) the Contractor consistently has nil returns,it may be treated as unacceptable performance of this Agreement by the Board.

13.6 Exchange of Information Between Government Agencies

- 13.6.1 The Contractor authorises the Board and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Board and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 13.6.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.
- 13.6.3 The Board regards the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- 13.6.4 The Contractor releases and indemnifies the Board and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Board and the State of New South Wales from any claim it may have for any loss to the Contractor

arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

14 Personnel

14.1 The Contractor's Personnel

- 14.1.1 The Contractor warrants that all personnel engaged in the provision of the Services are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and the Key Personnel.
- 14.1.2 The Contractor must:
 - (a) employ only such persons as are careful, skilled and experienced in the provision of the Services or similar Services; and
 - (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.
- 14.1.3 The Board may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who has been guilty of neglect, or other improper behaviour. Such named personnel so removed may not be re-employed by the Contractor under this Agreement.
- 14.1.4 Any replacement Key Personnel provided by the Contractor must be approved by the Board.

15 Conduct and Dispute Management

15.1 Co-operation

- 15.1.1 The Parties must do all they reasonably can to co-operate in matters relating to this Agreement and/or the Customer Contract, but their rights and responsibilities under the Agreement and/or the Customer Contract remain unchanged unless the Parties agree in writing to vary them.

15.2 Duty not to Hinder Performance

- 15.2.1 Each Party must do all it reasonably can to avoid hindering the performance of the other under the Agreement and the Customer Contract.

15.3 General

- 15.3.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below is to be followed:
 - (a) Amicable Resolution (clause 15.4.);
 - (b) Expert Determination (clause 15.5)

15.4 Amicable Resolution

- 15.4.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of the Agreement, Customer Contract or about any matter arising under or out of the Customer Contract. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 15.4.2 The Party submitting the Issue Notice must submit it to the other Party's authorised representative, which in the case of the Board is to the Board's Delegate, and in the case of the Contractor is the Relationship Manager.
- 15.4.3 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 15.4.4 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.

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- 15.4.5 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.
- 15.4.6 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided (“the Referral Notice”).
- 15.4.7 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Customer and the Board.
- 15.4.8 If the Party giving the Referral Notice is the Customer, it must give the Referral Notice to the Contractor and the Board.
- 15.4.9 If a Referral Notice has not been given to the person or persons specified within 28 days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

15.5 Expert Determination

- 15.5.1 If a Referral Notice is given under clause 15.4, the expert is to be agreed between the Board and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 15.5.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the parties;
 - (b) a person who has been connected with the Agreement or the Customer Contract as the case may be; or
 - (c) a person who the Parties have been unable to agree on.
- 15.5.3 When the person to be the expert has been agreed or nominated, the Board, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination;
 - (b) the expert’s fees;
 - (c) the procedure for determination set out in Schedule 9;
 - (d) any other matter which is relevant to the engagement.
- 15.5.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 15.5.5 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Item 14 Schedule 1 (calculating the amount without including interest on it, and after allowing for set offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 15.5.6 Unless a party has a right to commence litigation under clause 15.5.5:
- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

16 Termination by the Board

16.1 Termination for Cause

- 16.1.1 Without prejudice to its rights at common law, the Board may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor (“Notice of Termination for Cause”):
- (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;

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- (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
- (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;
- (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Board requiring it to do so (“Notice of Breach”), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Board may reasonably allow;
- (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts the Customer Contract except in accordance with this Agreement;
- (f) in the case of the Contractor’s Insolvency;
- (g) where the Contractor has not for three consecutive Payment Periods issued any invoice to a Customer or received any order; or
- (h) if in the Board’s view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement.

16.2 Effect of Termination for Cause

16.2.1 If the Board terminates this Agreement for cause the Board may:

- (a) contract with any other person to complete the provision of the Services including but not limited to any order remaining to be filled;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by a Customer under any Customer Contract (which may be ascertained and certified by the Board), from any money due, or which may become due to the Contractor (whether under this Agreement or any Customer Contract) and/or from the Financial Security (if any); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Board.

16.2.2 The Board’s termination under this clause will not affect any Customer Contract unless the context requires it.

16.3 Termination for the Board’s Convenience

16.3.1 The Board may terminate this Agreement in whole or in part for its convenience by giving 14 days written notice (“Notice of Termination for Convenience”) with effect from the date stated in the notice and without the need to provide reasons.

16.4 Effect of Termination for Convenience

16.4.1 The Board’s termination under this clause will not affect any Customer Contract unless the context requires it.

16.4.2 The Board shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:

- (a) must be supported by written evidence of the costs claimed;
- (b) will be in total satisfaction of the liability of the Board to the Contractor in respect of this Agreement and its termination.

16.4.3 The Board shall not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Board.

17 Termination by Customer

17.1 Termination of Customer Contract

17.1.1 Without prejudice to its rights at common law, the Customer may immediately terminate the Customer Contract, by written notice to the Contractor ("Notice of Termination"):

- (a) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
- (b) where the Contractor commits a Substantial Breach of the Customer Contract that is not capable of remedy;
- (c) where the Contractor commits a Substantial Breach of the Customer Contract in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so ("Notice of Breach"), or such further time as the Customer may reasonably allow;
- (d) where the Contractor assigns its rights and/or obligations, or subcontracts the Customer Contract otherwise than in accordance with the Customer Contract; or
- (e) in the case of the Contractor's Insolvency.

17.2 Effect of Termination of Customer Contract

17.2.1 In the event of termination, the Customer:

- (a) may procure from any other source a reasonably similar alternative to the Services suitable to the Customer and the Contractor shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;
- (b) shall be liable under the Customer Contract to pay only for the Services performed and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Contract; and
- (c) may recover from the Contractor the amount of any loss or damage suffered by the Customer as a result of the termination.

17.2.2 This clause will survive the termination of the Customer Contract.

17.2.3 If the Customer terminates this Customer Contract the Customer may:

- (a) deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due to the Contractor and/or from the Financial Security (if any); and
- (b) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Customer.

17.2.4 The Customer's termination under this clause will not affect the Agreement, unless the context requires it.

17.2.5 Any termination by the Customer is without prejudice to any accrued rights or remedies of the Customer under the Customer Contract.

18 General

18.1 No Assignment or Novation

18.1.1 The Contractor must not assign or novate this Agreement or a Customer Contract without first obtaining the prior written consent of the Board or the Customer as applicable, which consent may be withheld at their absolute discretion.

18.1.2 The Contractor acknowledges that the Board may make financial checks and due diligence checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

18.2 Conflicts of Interest

18.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.

18.2.2 The Contractor must:

- (a) notify in writing, and consult with, the Board immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
- (b) comply with any direction given by the Board in relation to those circumstances designed to manage that conflict of interest.

18.2.3 For the purposes of this clause, a “conflict of interest” includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Agreement.

18.3 Records and Access to Records

18.3.1 The Contractor must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice.

18.3.2 During the Term, the Contractor must, within a reasonable time of a request from the Board, give the Board access to, and copies of, any material relevant to the performance of the Contractor’s obligations under this Agreement, and any financial information, that the Board reasonably requires.

18.4 Waiver

18.4.1 A waiver in respect of a breach of a term of this Agreement by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

18.5 Severability

18.5.1 If any part of this Agreement is void or voidable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

18.6 Notices

18.6.1 Notices must be sent to the other Party at the address shown in items 15 or 16 of Schedule 1, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor’s registered office.

18.6.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.

18.6.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

18.7 Counterparts

18.7.1 If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

18.8 Applicable Law

18.8.1 This Agreement is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the Commonwealth of Australia.

18.9 No agency/no employment/no partnership

18.9.1 The Contractor agrees that the Contractor will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Board.

18.10 Disengagement Period

18.10.1 For 6 months following the expiry or termination of a Customer Contract (or part thereof) the Contractor will provide such assistance as is reasonably requested by the Customer for the supply of the Services to continue without interruption to

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facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer. Such assistance includes (without limitation):

- (a) providing reasonable co-operation with a third party supplier nominated by the Customer, and
- (b) providing the Customer data, information and materials that may be required to enable transacting with a new provider as requested by the Board or Customer.

Schedule 1 Agreement Details

Item 1	Contractor's Name
Item 2	Term: (clause 2.1.1) Commencement Date: Expiry Date: Period of extended term (if any): (clause 2.2.1) Commencement Date: Expiry Date:
Item 3	Restrictions on Nominee Purchasers (clause 3.7)
Item 4	Benchmark (clause 5.6) – Not Used
Item 5	Management Fee Rate (clause 9.1.3) 2.5%
Item 6	Payment Period of Management Fee (clause 9.1.7) Quarterly
Item 7	Sales Information (clause 9.1.7)
Item 8	Interest for Late Payment of Management Fee (clause 9.1.8, 9.1.9 and 9.1.16) Interest of 5% per annum shall be payable by the Contractor on any Management Fee not remitted to the Board in accordance with the clause 9.1.8, 9.1.9 and 9.1.16.
Item 9	Codes and Standards and NSW Government Requirements (clause 12.5.1) 1. Code of Practice for Procurement 2. Implementation Guidelines NSW Government Procurement 1999 3. Environmental Management Systems Guidelines 4. Occupational Health and Safety Management Systems Guidelines 5. Code of Behaviour (for the protection of children and other vulnerable people) 6. NSW Government Industrial Relations Management Guidelines.
Item 10	Financial Security (clause 12.12): Amount: Form:
Item 11	Board's Delegate (clause 13.2)
Item 12	Insurances (clause 12.6) a) Broad Form Insurance Policy Amount: \$5Million Broadform – General Solid Waste \$5Million Broadform – Recycling \$10Million Broadform – Secure Destruction
Item 13	Key Personnel (clause 14.1.1) Relationship Manager (clause 13.3.1) Name:

	Address: Position: Telephone: Facsimile:
Item 14	Expert Determination Amount (clause 15.5.5): Guide Note: If this Agreement is worth more than \$50M annually, the Expert Determination Amount should be \$1.0M. If it is worth less than this, the Expert Determination Amount should be \$100,000. AUD:
Item 15	Notices to: (clause 18.6) The Contractor's contact name and address: Name: Address: Position: Telephone: Facsimile:
Item 16	The Board's contact name and address: Name: Chairman, SCCB Address: Level 15 McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000 Telephone: 9372 8818 Facsimile: 9372 8803

Schedule 2 **Not Used**

Schedule 3 of Services

Pricing, Price Variation Mechanism, and List

Pricing and List of Services

Price Variation Mechanism

If Price variation is based on CPI, the following formula will apply:

CPI Option

$$RP = OP * \frac{L}{L_o}$$

(Note: * = means multiplication)

Where:

RP =	Revised Contract Price.
OP =	Original Contract Prices.
L =	CPI at price variation date.
L _o =	CPI at the Base Date.

Schedule 4 Deed of Confidentiality

THIS DEED DATED THE _____ day of _____ 200__

BETWEEN (insert name of Principal) of (insert address of Principal), in the State of New South Wales ("the Principal")

AND (insert name and address of Contractor) ("the Contractor ")

RECITALS:

- A. In the course of the Contractor supplying certain Services to the Principal (whether directly or indirectly) pursuant to the Agreement, the Contractor will have access to and may become aware of Confidential Information belonging to or in the possession of the Principal.
- B. Improper use or disclosure of the Confidential Information would severely damage the Principal's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the NSW Government.
- C. The Principal requires, and the Contractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Principal's Confidential Information is kept confidential and that the Contractor provides the Services faithfully and without any conflicting interest.
- D. This Deed sets out the terms on which the Contractor will have access to the Confidential Information

OPERATIVE PROVISIONS:

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

2. Interpretation

2.1 Definitions

In the interpretation of this Deed unless a contrary intention appears requires the following expressions will have the following meanings:

"Agreement" means the Agreement between the Board and the Contractor dated [insert date] for the supply of the Services as defined in the Agreement.

"Board" means the State Contracts Control Board established by the Public Sector Employment & Management Act 2002 and includes duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

"Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or
- (c) the Contractor knows or ought to know is confidential;

and includes but is in no way limited to:

- (d) the Contract Material;
- (e) The Principal's Material including the financial information, the corporate information and the commercial information of the Principal;
- (f) any material which relates to the affairs of a third party;
- (g) information relating to the policies, strategies, practices and procedures of the NSW Government and any information in the Contractor's possession relating to the NSW Public Service.

"Contractor" means *[insert name of Contractor]*

"Contract Material" means:

- (a) any material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including but not in any way limited to all Records, working papers, programs, flow charts, reports, including documents, equipment and information and data stored by any means ("New Contract Material");
- (b) any material which is existing at the date of this Agreement and which is incorporated with the New Contract Material ("Existing Contract Material").

"Express Purpose" means the Contractor performing the obligations under the Agreement.

"Intellectual Property Rights" includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the date of this Agreement;

"Notice" means notice in writing given in accordance with this Deed;

"Principal" means *[insert name of Principal]*.

"Principal's Material" means any documentation, information or material supplied by or on behalf of the Principal to the Contractor, and

"Records" includes the Contract Material and any other information, documents or data brought into existence by any means and stored by any means in connection with the performance of the Agreement;

2.2 General

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

- 2.2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.2.3 If this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.2.4 A singular word includes the plural, and vice versa.
- 2.2.5 A word which suggests one gender includes the other genders.
- 2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

- 3.1.1 The Contractor must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.1.2 The Principal may grant or withhold its consent in its discretion.
- 3.1.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Contractor procure the execution of a Deed in these terms by the person to whom the Contractor proposes to disclose the Confidential Information.
- 3.1.4 If the Principal grants consent subject to conditions, the Contractor must comply with those conditions.
- 3.1.5 Despite clause.3.1.1, the Contractor may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Contractor or in accordance with this Deed.
- 3.1.6 Before disclosing the Confidential Information to a permitted recipient, the Contractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.1.7 The Confidential Information must not be copied or reproduced by the Contractor or the permitted recipients without the expressed prior written permission of the Principal, except as for such copies as may be reasonably required for the purposes of this Deed.

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- 3.1.8 The Principal may at any time require the Contractor to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.1.9 If any person being any director, officer, contractor or employee of the Contractor, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Contractor then the Contractor will ensure that that person does not do or permit to be done anything which, if done or permitted to be done by the Contractor, would be a breach of the obligations of the Contractor under this Deed.
- 3.1.10 The requirements of this Deed do not affect the obligation of the Contractor to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

- 4.1 The Contractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Principal use the Confidential Information for any purpose other than the Express Purpose.
- 4.2 The Contractor must, unless otherwise authorised by the prior written consent of the Principal:
- (a) treat as confidential and secret all of the Confidential Information which the Contractor has already acquired or will acquire from the Principal;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
 - (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

This Deed will survive the termination or expiry of the Agreement.

6. Rights of the Principal

6.1 Production of Documents

- 6.1.1 The Principal may demand the delivery up to the Principal of all documents in the possession or control of the Contractor containing the Confidential Information.
- 6.1.2 The Contractor must immediately comply with a demand under this Clause 6.

6.1.3 If the Principal makes a demand under this clause 6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.

6.1.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

The Principal may take legal proceeding against the Contractor or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Indemnity and release

7.1 The Contractor is liable for and agrees to indemnify and keep indemnified the Principal in respect of any claim, damage, loss, liability, cost, expense, or payment which the Principal suffers or incurs as a result of:

- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
- (b) the disclosure or use of the Confidential Information by the Contractor or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9. Waiver

9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.

9.2 None of the provisions of this Deed will be taken to have been varied, waived, discharged or released by the Principal unless by its express consent in writing.

10. Remedies Cumulative

10.1 Cumulative

The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

10.2 Other Instruments

Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other deed or agreement to which they are parties.

11. Variations and amendments

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No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

12. Applicable law

This Deed will be governed and construed in accordance with the law of New South Wales and the Commonwealth of Australia.

13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

Executed as a Deed

SIGNED, SEALED AND DELIVERED

by [*name and position of person signing*]

for and on behalf of the (insert name of Principal))

(signature of the Principal)

In the presence of

[insert name of Witness]

(signature of Witness)

SIGNED, SEALED AND DELIVERED

by

[insert name of Contractor]

(signature of Contractor)

in the presence of

[insert name of Witness]

(signature of Witness)

Schedule 5 Management Fee Audit Confidential Disclosure Deed of Agreement

Effective Date:

Auditor (Company):

This Confidential Disclosure Deed of Agreement is entered into by and between the Contractor ("Contractor") ABN and the "Auditor", which has been engaged by the State Contracts Control Board ("Board") under an Agreement with the Contractor to carry out a review of the Contractor's records and systems in connection with the Agreement dated.....for the supply of.....

1. In accordance with the clause 9 of the Agreement the Contractor will disclose to the Auditor all information that the Auditor may reasonably require to enable the Auditor to determine the amount of the Management Fee payable by the Contractor.
2. **Representatives.** The officer(s) responsible for disclosing or receiving Confidential Information are:
 On behalf of the Contractor:
 Name:
 Title:
 The Contractor's address:
 Other officer:
 On behalf of Auditor:
 Name: -----and any other partner or employee of the Auditor who is involved in the Audit or has a need to know in connection with the Audit.
 Title:
 Work Address of Auditor's representative above:
3. **Definition of Confidential Information.** The "Confidential Information" disclosed under this Agreement is all information in any form received in connection with the Audit. A recipient of Confidential Information under this Agreement shall have a duty to protect all such Confidential Information whether expressly disclosed as Confidential Information or not.
4. **Disclosure Period and Term.** The information disclosed by the Contractor to the Auditor will remain confidential for a period of 2 years from the date of this Deed.
5. **Use of Confidential Information.** The Auditor shall use, and shall ensure that any of its employees or contractors use, the Confidential Information for the sole purpose of fulfilling the Auditor's obligations to the Board in relation to the Audit.
6. **Protection of Confidential Information.** The Auditor shall not disclose the Confidential Information to a third party other than the Board, and solely for the purposes for which the Confidential Information was disclosed. The Auditor shall take all reasonable steps to prevent the unauthorised use, dissemination or publication of the Confidential Information. For the avoidance of doubt, the Auditor's partners and employees referred to in clause 2 are not third parties for the purposes of this clause.
7. **Exclusions.** This Agreement imposes no obligation upon a Recipient of the Auditor with respect to the Confidential Information which:
 - (a) is or becomes a matter of public knowledge through no fault of the Recipient;
 - (b) is required to be disclosed under operation of law; or
 - (c) is disclosed by the Recipient with the Discloser's prior written approval; or
 - (d) is disclosed to a party's legal adviser in connection with the Audit or this Deed of Agreement.
8. **Proprietary Rights.** Neither party to this Deed of Agreement acquires any intellectual property rights or any other rights under this Deed of Agreement except the limited right to use set out in paragraph 5 above.

Part D –Agreement

9. **General.** The parties do not intend that any agency or partnership relationship be created between them by this Deed of Agreement. This Agreement sets forth the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous agreements concerning such Confidential Information, whether written or oral. All additions or modifications to this Deed of Agreement must be made in writing and must be signed by both parties.

This Deed of Agreement shall be governed by the laws of the State of New South Wales and shall be subject to the jurisdiction of the Courts in Sydney, Australia.

Signed sealed and delivered by the parties:

CONTRACTOR:	AUDITOR:
ABN/ACN:	ABN/ACN:
Authorised Signature: _____	Authorised Signature: _____
Name: _____	Name: _____
Title : _____	Title : _____
Date: _____	Date: _____

Schedule 6 smartbuy® Requirements

1. smartbuy® Licence

- 1.1 The Board grants to the Contractor a non-exclusive, non-transferable, revocable licence to use smartbuy® for the performance of its obligations under this Agreement.

2. Authorised User

- 2.1 The Board may approve a person nominated by the Contractor and allow such person to access or use smartbuy® and become an Authorised User or an Administrator.
- 2.2 The Board may in its discretion decline to accept a person nominated by the Contractor as an Authorised User or an Administrator, without stating its reasons.

3. Contractor Obligations

- 3.1 The Contractor must provide any information that is reasonably required by the Board to make smartbuy® available including Contractor Information. The Contractor must ensure that all information provided to the Board (including maintaining information in the smartbuy® system) is current, correct, and complete at all times. The Contractor must immediately notify the Board of any changes required to the Contractor Information.
- 3.2 The Contractor agrees that Contractor Information will be published on smartbuy® by the Board. Contractors are responsible to ensure that Designated and Nominated Sub-Contractors are aware that their information will be published by the Board on smartbuy® as a part of Contractor Information.
- 3.3 The Contractor must:
- a) conform to the Board's current password policies;
 - b) comply with all directions given by the Board in relation to the Contractor's access and/or use of smartbuy®; and
 - c) ensure that Transactions are only made for and on behalf of the Contractor and in accordance with this Agreement
 - d) provide the Board with an appropriate number of dedicated personnel to ensure the appropriate use of smartbuy®.

4. Catalogues

- 4.1 The Board requires the Contractor (unless otherwise specified by the Board) to take responsibility to update and actively maintain Catalogue Information provided by the Contractor on smartbuy®.
- 4.2 The Contractor is responsible for the accuracy and completeness of Catalogue Information including any images supplied by the Contractor.
- 4.3 The Contractor is required to provide Catalogue Information to an acceptable data standard, approved by the Board. Catalogue Information must include all required item attributes including United Nations Standards Products & Services Codes (UNSPSC). The Contractor may either provide developed Catalogue Information to the Board or may request the Board to provide it with assistance, at a fee.
- 4.4 The Board may transform data provided by the Contractor in order to load it into smartbuy® however the values and meaning of the data will not be modified without the prior agreement of the Contractor.
- 4.5 If the Board produces formatted Catalogue Information for the Contractor, then the Contractor must ensure that the formatted Catalogue Information is current, correct, and complies with its obligations under this Agreement.
- 4.6 The Board may review any Catalogue Information and require the Contractor from time to time to update or take off-line its existing Catalogue Information, add new Catalogue Information and/or verify that the Catalogue Information is accurate,

current and in accordance with its obligations under this Agreement or applicable Codes and Standards.

- 4.7 The Board reserves the right to audit the Contractor's Catalogue Information from time to time for compliance with this Agreement.
- 4.8 The Contractor may only make available information or data, including any Catalogue Information in an Externally Hosted Catalogue with the Board's prior written consent. Where such approval is given the Contractor will provide the Board with administrator access to its Externally Hosted Catalogue to enable the Board to conduct audits as required.
- 4.9 When approved to connect an Externally Hosted Catalogue, the Contractor must set up accounts for Eligible Customers within two working days from receipt of lodgement of a completed request and ensure that all Eligible Customers can access Catalogue Information.
- 4.10 Externally Hosted Catalogues shall not provide functionality that allows Eligible Customers to directly place orders for Services. The Contractor agrees that, after an Eligible Customer has finished its browse activities, the Customer Contract for the Services in Externally Hosted Catalogues must be transmitted via smartbuy®.
- 4.11 The Contractor's Externally Hosted Catalogue(s) should be available 7 days a week excluding any scheduled maintenance. Contractors must, in relation to their Externally Hosted Catalogues, give the Board reasonable prior notice of any scheduled maintenance and the time it will occur. The Contractor agrees to monitor the performance of its system and notify the Board immediately of any outage of its Externally Hosted Catalogue, except for any scheduled maintenance that the Contractor has notified the Board about.
- 4.12 The Contractor agrees to nominate in writing to the Board within 2 days of entry into this Agreement a person who can be contacted between 9am and 5pm during normal business days to receive and respond to enquiries relating to its Externally Hosted Catalogues.
- 4.13 The Contractor agrees to include on its webpage a customised error message confirming that the error is with the Externally Hosted Catalogue and not with smartbuy®.

5. Provision and Updating of Catalogue Information

- 5.1 The Contractor is required to provide electronic Catalogue Information in a smartbuy® format acceptable to the Board no later than 30 days from the commencement of this Agreement, inclusive of Catalogue Information specific to particular Eligible Customers.
- 5.2 All Catalogue Information including that pertaining to particular Eligible Customers must be updated in strict accordance with the frequency and conditions outlined in this document from the date on which the Catalogue Information is initially hosted on smartbuy® as per clause 4 above.

6. Availability

- 6.1 The Board may in its discretion limit or suspend the Contractor's access or use of smartbuy® during the Term of this Agreement.
- 6.2 Unless otherwise notified by the Board, smartbuy® will be accessible 7 days a week except during any necessary scheduled maintenance, unscheduled maintenance or unavailability caused by a circumstance beyond the reasonable control of the Board or its third party suppliers.
- 6.3 The Board will endeavour where reasonably practicable to notify the Contractor of any:
 - a) changes or upgrades to smartbuy®'s functionality that materially affect the Contractor's use of smartbuy®;
 - b) changes in equipment or configuration requirements of smartbuy® that materially affects the Contractor's ability to access and use smartbuy®.

- 6.4 The Board agrees to make available the NSW Procurement Client Support Centre to assist the Contractor in relation to any defects it experiences in the operation or functionality of smartbuy®. The Contractor agrees to report any issues or defects to the Client Support Centre on 1800 NSW BUY (679 289) or *NSWP_Support@commerce.nsw.gov.au* Unless the Contractor is otherwise notified by the Board, the Client Support Centre will be available from 8.30 am to 5.00 pm Monday to Friday, excluding public holidays. The Board may change the times during which the Client Support Centre is available from time to time.

7. smartbuy® Security

- 7.1 smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy.
- 7.2 Key elements of the security regime include:
- a) Data Centre certified to BS7799, ASIO T4 rating and Suntone 2 Accreditation;
 - b) Robust firewalls;
 - c) Multi level system design;
 - d) Virus protection using Sophos Anti Virus software;
 - e) Password protection and restricted access permissions;
 - f) Intrusion detection systems;
 - g) Audit trails of user activities;
 - h) Where encryption is used, HTTPS protocol with 128 bit technology has been selected;
 - i) Programme of system upgrades to ensure security compliance.
- 7.3 The Contractor must:
- a) have in place procedures to prevent any unauthorised use of smartbuy® by any person on its behalf (including Administrators, Authorised Users or an unauthorised third party) and these procedures must include provision to ensure its Administrators and Authorised Users are prevented from accessing or using smartbuy® upon them ceasing to be authorised to do so;
 - b) make all reasonable efforts to ensure that any information (including documents) that it transmits via smartbuy® will be free from viruses, worms or trojan horses or any other malicious program that is capable of causing damage to smartbuy® or smartbuy®'s users;
 - c) make all reasonable efforts to ensure that its systems are secure and are kept up to date with adequate anti-virus software;
 - d) notify the Board immediately of any significant security breaches that it suffers or threats that it is aware of.
- 7.4 The Contractor acknowledges that user logins and passwords used to access smartbuy® are transmitted using HTTPS protocol. Delivery of business documents (such as purchase orders and/or Invoices) is done through the following mechanisms, depending on the election of the Contractor:
- a) Facsimile;
 - b) unencrypted emails;
 - c) FTP: File Transfer Protocol over Secure Sockets Layer (SSL) (Secure Shell (SSH) available on request);
 - d) HTTPS protocol: Hypertext Transport Protocol over Secure Sockets Layer (SSL).
- 7.5 While the Board will make reasonable endeavours at all times to make smartbuy® secure, the Board does not guarantee:
- a) the security of smartbuy®, the internet, and any other system, including the system used by the Board to access or use smartbuy®;
 - b) that the delivery of business documents will be uninterrupted or secure;

- c) that smartbuy® will be uninterrupted, timely, secure or error-free;
- d) that smartbuy®, the internet, and any other system, including the system used by the Contractor, will be free of viruses or errors.

The Contractor must immediately notify the Board if it suspects, becomes aware, or has knowledge of any unauthorised use of smartbuy® by another person.

- 7.6 The Board may provide access and password details ("Passwords"):
- a) to Administrators to be supplied to Authorised Users; and/or
 - b) directly to the e-mail addresses of Authorised Users who are acceptable to the Board.
- 7.7 The Contractor must take all reasonable steps to protect and keep secret any Passwords that the Board provides to it as per clause 7.6. The Contractor acknowledges and agrees that Board will rely on their use of a Password as conclusive evidence of their identity and authority, without further investigation. The Contractor must immediately notify the Board if it suspects, knows about or has knowledge that a Password has become compromised or known to another person and/or of any unauthorised use of a Password by another person has occurred.

8. Minimum Configuration

- 8.1 To access and use smartbuy® TRADE the Contractor must have the following minimum configuration and the Contractor warrants that it has:
- a) Windows 95, 98, 2000 or XP, IE 5.5 or later, a recommended video resolution of 1024X768; and
 - b) will configure its web browser to use SSL3.0 and ensure that the auto-complete or similar function is switched off for "Contractor name and passwords on forms".
- 8.2 These configurations may be varied by the Board due to changes or upgrades to smartbuy® from time to time. The Board will, wherever practicable, notify the Contractor of any variations to the configurations. The Contractor acknowledges that any access speed to smartbuy® and the performance of smartbuy® is limited by the Contractor's Internet service or other infrastructure and equipment.
- 8.3 If the Contractor has any queries in relation to these configuration requirements it may contact the Client Support Centre .

9. Improper Use of smartbuy®

- 9.1 The Contractor must not intentionally, recklessly or negligently interfere with any other parties' use of smartbuy®. The Contractor must not use smartbuy® or any service provided by the Board to post or transmit any information or provide a link to any third party website that:
- a) defames, threatens or menaces any person;
 - b) breaches any law or regulation or infringes a third party's rights;
 - c) is indecent, pornographic or obscene;
 - d) knowingly transmits any virus, computer programme, code, device, product, components or other disabling feature that prevents, inhibits or impairs the performance of smartbuy®;
 - e) is an unsolicited commercial electronic message promoting the supply of goods or services.
- 9.2 The Contractor must ensure that its employees, officers and agents view or access any material published or made available on smartbuy® TRADE and/or smartbuy® CONNECT in accordance with this Agreement.
- 9.3 The Contractor must not use smartbuy® to sell, buy or dispose of, or attempt to sell, buy or dispose of any goods or services that are not specified by the Board under this contract, are unlawful or unauthorised.

10. Disclaimer

- 10.1 The Board makes no warranties in relation to the condition, fitness, merchantability, quality and title of the Services purchased by the Customer using smartbuy®. To the extent permitted by law, the Board expressly excludes all conditions, warranties and terms whether express, implied, or statutory, which would otherwise be implied by law, conduct or otherwise into this Agreement.

11. Privacy

- 11.1 The Contractor warrants, in respect of any personal information provided in connection with the use of smartbuy®, that the information is accurate, up to date and complete, and that individuals to which the personal information refers authorise its collection and are aware:
- a) that personal information is being collected, and will be held by the Board at the address shown in smartbuy® or by its third party suppliers;
 - b) that the information is being collected for the purpose of managing smartbuy®, and the administration of this Agreement, and may be made available to Eligible Customers for those purposes;
 - c) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided; and
 - d) of the existence of any right of access to, and correction of, the information.
- 11.2 The Contractor acknowledges that its use of smartbuy® indicates its knowledge and acceptance of the privacy policy displayed on smartbuy®. smartbuy® may contain links to other websites. The Board is not responsible for the privacy practices or the content of such sites. The Board requires the Contractor to read the privacy statements in these linked sites, as their privacy policies may differ from those of the Board.

12. Integration with smartbuy® CONNECT

- 12.1 All electronic documents transmitted through smartbuy® TRADE are routed via smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Eligible Customers and Contractors, without passing through the smartbuy® TRADE.
- 12.2 The following Transmission Types and Document Types are supported by smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel:

Transmission Type	Document Type	Trading Channel
HTTPS	xCBL3.0 (XML)	HTTPS/xCBL3.0
FTP	CSV	FTP/CSV
Email (SMTP)	PDF	Email/PDF
Fax	PDF	Fax/PDF

- 12.3 smartbuy® CONNECT supports the following business documents via the Trading Channels outlined above.
- a) PO
 - b) PO Change
 - c) PO Acknowledgement
 - d) Receipt
 - e) Receipt Change
 - f) Advanced Shipping Notice
 - g) Invoice

h) Technical Message Acknowledgement

- 12.4 Contractors must adhere to the smartbuy® Transmission specifications and smartbuy® Document specifications for the Trading Channel selected (specifications available on request. If you require more information contact the NSW Procurement Client Support Centre on 1800 NSW BUY (679 289) or *NSWP_Support@commerce.nsw.gov.au*). For all documents implemented, Contractors must be capable of reading and actioning all mandatory and optional fields as defined in the document specifications.
- 12.5 The Board may assist in the development of an estimate of the costs of any integration to smartbuy® CONNECT. Firm pricing cannot be determined until the conclusion of a specific implementation planning study. Costs will vary depending upon the level of integration and their capability. Any integration of their systems with smartbuy®, including any Externally Hosted Catalogues may only take place with the Board's prior consent. The Contractor acknowledges that they will support and fund the establishment, maintenance and regular content update costs associated with integrating their systems with smartbuy® CONNECT. The Contractor is responsible and liable for any damage or claim that the Board suffers or incurs resulting from or in connection with the integration or interoperation of their systems with smartbuy®.

13 Invoices

- 13.1 It is a requirement that the Contractor provides electronic invoices to smartbuy® for all purchases by all NSW Government agencies against this Agreement - irrespective of how the purchase order is received (for example, via fax, telephone, mail, vendor online ordering system, etc). Contractors must send invoices via one of two channels:
- a). Via the HTTPS/xCBL3.0 Trading Channel adhering to the smartbuy® HTTPS Channel Specification and the smartbuy® xCBL3.0 Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.
 - b). Via the SFTP/CSV Trading Channel adhering to the smartbuy® SFTP Channel Specification and the smartbuy® CSV Invoice Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.
 - c). Via a hosted web-portal provided by smartbuy® that allows Contractors to enter invoices online. If this option is selected, Contractors will also receive Purchase Order and Purchase Order Change documents from smartbuy® via this channel.

14 Externally Hosted Catalogues

- 14.1 Where Contractors are required to provide an Externally Hosted Catalogue the catalogue must utilise the OCI v3.0 protocol over HTTPS for both inbound and outbound requests.

Schedule 7 Financial Security

Procedures Circular 235 recommends that NSW Department of Commerce only accepts Undertakings from financial institutions supervised by the Australian Prudential Regulation Authority (APRA). For approved financial institutions, please visit the APRA website: <http://www.apra.gov.au/adi/ADIList.cfm>. The list of Authorized Deposit-Taking Institutions indicates acceptable institutions. If you receive an Undertaking from an organization not on the list, please bring it to your Unit Manager's attention.

THIS DEED is made the day of20...

BETWEEN [Name, ACN and address of financial institution])(**“Provider”**)

AND [STATE CONTRACTS CONTROL BOARD for and on behalf of the Crown in the right of the State of New South Wales] (**“Beneficiary”**)

IT IS AGREED

At the request of Insert name of the Contractor's Company Name, trading as “Insert Contractor's Trading Name,” ACN Number (Insert ACN Number) (**“Customer”**) and in consideration of, the Beneficiary accepting this undertaking in connection with *[describe contract]*, the Provider unconditionally undertakes to pay to the Beneficiary on demand in writing any sum or sums from time to time up to a maximum aggregate sum of *[amount in words]* (\$[]) (**“Sum”**). The Provider unconditionally and irrevocably agrees to pay such moneys to the Beneficiary immediately without reference to the Customer and regardless of any notice given by the Customer to the Provider not to pay.

This undertaking is to continue until a notification has been received from the Beneficiary that the Sum is no longer required by the Beneficiary or until this undertaking is returned to the Provider or until payment to the Beneficiary by the Provider of the whole of the Sum or such part as the Beneficiary may require.

The Provider may at any time without being required to do so pay to the Beneficiary the Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required by the Beneficiary and thereupon the Provider shall cease to be liable.

This deed is governed by and must be construed in accordance with the laws of *[insert applicable State or Territory]*.

EXECUTED AS A DEED

Guide Note: For the Form of Undertaking to be effective, it must be executed as a deed. Like Part D, the Execution of a Deed requires the form to be executed by Supply and the financial institution providing the undertaking.

SIGNED, SEALED AND DELIVERED by *<insert name and position of person signing>*)
For and)
on behalf of the **NEW SOUTH WALES STATE**)
CONTRACTS CONTROL BOARD for and on
behalf of the Crown in right of the State of New
South Wales but not so as to incur any personal
liability in the presence of:

**Witness*

Signatory

Print Name

Print Name

*Delete whichever is not applicable.

Financial Institution/Company

Contract Officers are no longer required to obtain the Company common seal when dealing with a company. However, you are required to obtain the signatures of one of two combinations:

- 1) *the Corporate Secretary and a Director, or*
- 2) *two Directors, or*

SIGNED by [insert party name]*<insert name of company>*, ACN *<insert ACN number>*, a)
prudentially supervised institution by the)
Australian Prudential Regulation Authority
(APRA), and in accordance with section 127 of
the Corporations Act and in the presence of:

*<*Director/Secretary>*

Director

Print Name

Print Name

Schedule 8 Performance Management

For the purpose of monitoring performance under this Contract, if a Service Level Agreement is not entered into between the Customer and the Contractor the following performance criteria will be used;

Standard	Performance Criteria
Compliance	<p>Satisfaction of the objectives of the Contract, specifically:</p> <p>provision of an integrated approach to the management of waste</p> <p>a primary focus on diversion of waste from landfill as evidenced by the introduction of a range of recycling/reuse streams</p> <p>implementation of the “integrated pricing model”</p> <p>Compliance with all terms of the Contract.</p> <p>Compliance with Monitoring and Reporting requirements of the Contract</p> <p>Compliance with the approved Quality Plan.</p> <p>Compliance with the Occupational Health and Safety Management System.</p> <p>Achievement of diversion targets.</p> <p>Compliance with quiet work practice strategy in the Quality Plan.</p> <p>Specific recovered material streams are delivered to the processing facility in the intended condition. This will be measured by the overall diversion rate achieved by the facility and any complaints received from the facility in relation to quality of loads.</p> <p>No materials are spilt during collection.</p> <p>Surveys, where undertaken by the Department of Commerce, show at least ninety-five percent (95%) Customer satisfaction level.</p> <p>Customer Complaints resolved within the specified timeframes.</p> <p>Reporting information enables the Customer to easily feed waste and recycling information into their WRAPP report.</p>

Standard	Performance Criteria
Non Compliance	<p>Failure to satisfy the Objectives of the Contract.</p> <p>Failure to satisfy Monitoring and Reporting requirements of the Contract</p> <p>Lack of compliance with any of the terms of the Contract.</p> <p>Lack of Compliance with quiet work practice strategy.</p> <p>Services not provided on the scheduled day.</p> <p>Bins not correctly replaced after emptying.</p> <p>Materials Spilt are not cleaned up within the specified timeframes.</p> <p>Recyclables rejected at the Material Recovery Facility due to over compaction or breakage.</p> <p>Recyclables repeatedly rejected at Material Recovery Facility due to contamination.</p> <p>Diversion targets not achieved.</p> <p>Surveys, where undertaken by the Department of Commerce, show less than ninety-five percent (95%) satisfaction level.</p> <p>Customer complaints not resolved within the specified time frames.</p> <p>Waste reporting data not provided or not provided in the detail required to be included in the WRAPP report.</p>

Actions in the Event of Non Compliance

In the event of any non-compliance with the performance criteria or deviation from the specified service conditions, provided that the Contractor takes all steps required to implement corrective action such that the non-compliance or deviation is corrected immediately and in a satisfactory manner, the Department of Commerce will take no action other than to record the non-compliance.

Failure to adequately address a non-compliance is a breach of contract and the Department of Commerce may take appropriate action.

Investigation of Problems

Apart from undertaking immediate corrective action to rectify particular problems, all instances of non-compliance with the performance criteria of this General Specification, must be investigated to determine the causes for the non-compliance and to bring about full and ongoing compliance with the requirements of the Contract.

The Department of Commerce may audit, or engage third parties to audit, the performance of any of the services at any time without notice to the Contractor.

The Contractor must provide any assistance requested by the Department of Commerce, or a third party engaged for this purpose.

Establishment of Committees

A Performance Management Committee shall be established and comprise of Department of Commerce Vendor Management staff and /or its delegates and/or Customers as deemed appropriate.

Functions of the Committee

The Committee will monitor the Services and seek co-operatively to identify and investigate:

- (a) problems in delivery of Services;
- (b) non compliance with service standards specified in this General Specification;
- (c) existence of trends in contamination, resource recovery, glass breakage and disposal of materials;
- (d) measures that may be taken to increase and maintain resource recovery;
- (e) technological developments and other possible improvements;
- (f) new markets for recyclables;
- (g) evaluation of and potential improvements to contamination management procedures as specified in the Recyclables Specification;
- (h) potential improvements to the efficiency, quality and productivity of Services;
- (i) promoting safer work practices;
- (j) promoting quieter work practices;
- (k) potential improvements to the efficiency, quality and productivity of Services;
- (l) performance targets for Service(s); and,
- (m) any other improvements that could be made to Services.

Establishment of Service Level Agreements

The Contractor and the Customer are free to enter into Service Level Agreements in accordance with this contract. Any such agreement is to be in writing and agreed between the parties.

When a Service Level Agreement is entered into, Contractor performance will be managed by a set of Key Performance Indicators within the Service Level Agreement.

Where no Service Level Agreement is established, the performance measures in this contract shall be used to measure Contractor performance.

Reporting Requirements

The Contractor will be required to provide the following reports and data for each service unless varied by Service Level Agreement:

Timing	Reporting Requirements
Daily (Telephone, SMS, with confirmation via email)	<p>Urgent (within one (1) hour) notifying the Customer of serious personal injury or damage to property, or any significant interruption to the Services for whatever cause include contamination incident whilst unloading</p> <p>Immediate (within two (2) hours) notifying the Customer of any major malfunction of Contractor's equipment, industrial situations, non-availability of facilities that has the potential to interrupt service;</p> <p>Routine (within three (3) hours) notifying the Customer of other service problems that Customer service staff may need to respond to such as non-collection.</p>
Weekly	Notifying the Customer of any service problems, industrial action, early start or serious complaints including complaints about Contractor Occupational Health and Safety, and service deficiencies that have occurred in the past week.
Monthly	<p>Monthly waste reporting as detailed in Clause 17</p> <p>Occupational Health and Safety reporting requirements;</p> <p>Any other relevant issues relating to the past month's Services;</p> <p>Any issues that the Contractor becomes aware of that may affect Services in future;</p> <p>Graphical reports of service provision over the preceding twelve (12) months, showing trends;</p> <p>The number of Bins repaired and/or replaced during the quarter;</p> <p>The details and number of new and additional services provided within the month;</p> <p>Customer Service Centre and Complaints reporting.</p>

Part D –Agreement

Timing	Reporting Requirements
Quarterly	<p>Notify the Department of Commerce and each customer (as required) in writing of:-</p> <p>Any relevant issues relating to the past quarter's service delivery including contamination levels</p> <p>Any issues that the Contractor becomes aware of that may affect the services in future</p> <p>Date and type non compliant material was collected from customer</p> <p>Average Recyclables Contamination rates as observed by the Contractor, (note the Customer may request an audit to verify this information);</p> <p>Details of contamination of recycling streams.</p>
Six Monthly	<p>Average recyclables composition, where requested by the Customer (% percentage by material type)</p> <p>Emissions reporting – detailing emissions relating to fleet engaged in servicing this contract. Any other emissions the contractor is required to measure and report as they relate to the servicing of this contract.</p>
Annually upon anniversary of Services Commencement Date	<p>Recyclables MRF audit results (and 'sorting rate' of facility as verified by third party);</p> <p>Occupational Health and Safety Management System/updates;</p> <p>Emergency Plan/updates;</p> <p>Insurances review and update;</p> <p>Revised Annual Education Plans.</p>

Schedule 9 Expert Determination Procedure

1. Questions to be determined by the Expert

- 1.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - 1.1.1 Is there an event, act or omission which gives the claimant a right to compensation:
under the Agreement:
 - (a) for damages for breach of the Agreement, or
 - (b) otherwise in law?
 - 1.1.2 If so:
what is the event, act or omission?
 - (a) on what date did the event, act or omission occur?
 - (b) what is the legal right which gives rise to the liability to compensation?
 - (c) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
 - 1.1.3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
 - (a) What compensation, if any, is due from one Party to the other and when did it fall due?
 - (b) What interest, if any, is due when the expert determines that compensation?
- 1.2 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

2. Submissions

- 2.1 The procedure for submissions to the expert is as follows:
- 2.2 The Party to the Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 15.5.3 of the Agreement.
- 2.3 The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Party referred to in clause 2.2 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
- 2.5 The other Party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- 2.6 The expert must ignore any submission, response, reply, or comment not made within the time given in clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.

Part D –Agreement

- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

- 3.1 The expert may request a conference with both Parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 3.2 The Parties agree that such a conference is considered not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

4. Role of Expert

4.1 The Expert:

- 4.1.1 acts as an expert and not as an arbitrator;
- 4.1.2 must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise; and
- 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 15.5.3 of the Agreement.
- 4.1.4 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Schedule 10 **Variations to the Agreement and Tender**

PART F – STATEMENT OF REQUIREMENTS - RFT 0800629 – Integrated Waste Management

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PART ONE – General Specifications

Introduction and scope

The Department of Commerce is amalgamating three current waste contracts these being: Contract 697 Waste Removal Services, Contract 6034 Recycling Services and Contract 6083 Secure Destruction Services, into the one contract.

Contract number 0800629 will cover the services as detailed in this General specification along with the Service Specifications following in Parts 2, 3 and 4.

This General Specification applies to the following services:

- (a) General Solid Waste Collection and Disposal Service; (Part 2)
- (b) Recyclables Collection Service; (Part 3)
- (c) Secure Destruction Service,(Part 4)

in whole or in part to Service users of SCCB contracts, and must be read in conjunction with the applicable Parts to this documentation:

The Contractor must ensure that Services provided under this contract address the requirements of all parts of the Specification and comply with the NSW Government Waste Recycling and Purchasing Policy (WRAPP), current requirements are attached as Appendix A. The Contractor is to review these requirements annually and ensure any changes as issued by the Department of Environment and Climate Change (or designated agency) is incorporated into the reporting requirements of this contract. Information on WRAPP can be found at the following website <http://www.wrapp.nsw.gov.au/>

To the extent of any inconsistency between the General Specification and Service Specification, the Service Specification shall have precedence.

All services provided under this Contract are to comply with relevant Australian Standards, Industry Codes of Practice and NSW State and Federal Legislation.

Definitions

In this General Specification and the particular Service Specifications the following terms will, unless inconsistent with the context, have the meanings indicated:

"Awards" has the same meaning attributed to it in the *Workplace Relations Act 1996* (Commonwealth).

"Bin(s)" means an appropriately designed container which may be used in connection with any of the Services, that meets all requirements under the particular Service Specification, and includes, but is not limited to mobile garbage bins, bulk bins, recycling bins; secure destruction bins and desk side/under desk paper recycling containers.

"Collection Vehicles" means a vehicle or vehicles used by the Contractor to perform the Services.

"Commingled" means bins containing but not limited to recyclable: glass containers, aluminium materials, metal materials, PET containers, High Density Polyethylene (HPDE), Liquid Paperboard (LPB), foil and food trays.

"Contamination" means all materials which are not Recyclables as defined in this Specification. Contaminants can have a detrimental impact on the quality of recycled materials and can spoil the potential for resource recovery.

"Contractor" means the organisation that undertakes the provision of all or any of the Services specified in this Contract.

Customer” means the Eligible Customer that places the order with the Contractor under the Agreement.

“Customer Contract” means the contract that is made between the Contractor and a Customer when that Customer places an order.

“Eligible Customer” means

- (a) any public sector service agency employing staff appointed under the Public Sector Employment and Management Act 2002 as amended from time to time;
- (b) a public body as defined by clause 18(4) of the Public Sector Management (Goods and Services) Regulation 2000 being:
 - (i) a government trading enterprise (including a State owned corporation);
 - (ii) a public or private hospital (including an area health service);
 - (iii) a local government agency;
 - (iv) a charity or other community non-profit organisation;
 - (v) a public or private school or a college or university;
 - (vi) a public authority of this State, the Commonwealth or of any other State or Territory;
 - (vii) a contractor to a public authority (but only in respect of things done as such a contractor);
- (c) a Nominee Purchaser provided that it satisfies the requirements of this clause and
- (d) such other persons or entities, which the Board may from time to time in its discretion, determine through a customer registration process.

.

“**Emergency Plan**” means a step-by-step plan to cover any occupational health and safety emergencies, or other emergencies, that may affect the Services.

“**Environmental Management Plan**” means the management plan specified in clause 25.1 of this General Specification.

“**Expiry Date**” means the date on which the Contract Term ends.

“**General Waste**” is the residual solid fraction of the waste stream remaining after the removal of recoverable materials. It excludes building and demolition¹ wastes, Hazardous Wastes¹, Special wastes¹ and liquid wastes¹.

“**Gross Contamination**” means all materials which are not Recyclables as defined in the General Specification, where it is evident upon visual inspection that excessive amounts of these materials are present within the Bin.

“**Incident**” includes an accident, injury, property damage or environmental damage. May also refer to an act of contamination of waste.

“**Industrial Action**” has the same meaning attributed to it in the *Workplace Relations Act 1996 (Commonwealth)*.

¹ As defined in the Protection of the Environment Operations Act, 1997.

"Industrial Instruments" includes federal or state awards, notional agreements preserving State Awards, preserved collective State agreements, certified agreements, enterprise agreements, workplace agreements.

"Industrial Relations and Workforce Plan" means a plan dealing with the Contractor's industrial relations and resourcing issues relevant to the Services and as set out in clause 17 of this General Specification.

"Materials Recovery Facility" or **"MRF"** means a facility for the receipt, processing, handling, sorting and transfer of waste/recyclable materials.

"Missed Service" means the failure by the Contractor to collect Waste from any Bin on the specified day of collection.

"Mobile Bin(s)" means an appropriately designed container with wheels which may be used in connection with any of the Services, with 80, 120, 140, 240, 660 or 1,100 litres capacity, that meets all requirements of this General Specification and any additional requirements under the particular Service Specification.

"Notional Agreements Preserving State Awards" has the same meaning attributed to it in the *Workplace Relations Act 1996 (Commonwealth)*.

"Occupational Health and Safety Management System" means a structural systematic means for managing occupational health and safety risks and maintaining a safe work environment, which as a minimum complies with AS/NZS 4804:2001.

"Performance Criteria" means those standards that the department of Commerce and the Customer shall use to measure the contractors achievement of contract terms. Non-compliance with Performance Criteria shall be treated as a breach of contract terms.

"Post Consumer" means materials that have been used by consumers and recovered for re-use as raw materials to make new products

"Preserved Collective State Agreements" has the same meaning attributed to it in the *Workplace Relations Act 1996 (Commonwealth)*.

"Recoverable Materials" means materials/items that can be diverted from the general waste stream for re-use; reprocessing or recycling. It also incorporates the process of energy recovery .

"Recyclables" means those materials that can be reprocessed into new items. It includes but is not limited to the following containers, packaging, and products emanating from Service-Entitled Locations:

- Recyclable Paper and Cardboard as defined below;
- Liquid paperboard cartons;
- Glass bottles and jars;
- Aluminium rigid and semi-rigid packaging;
- PET (1), HDPE (2) and PVC (3) rigid plastic packaging;
- Other rigid plastic packaging including LDPE (4), PP (5), PS (6), Other (7);
- Steel rigid packaging, including aerosol cans;
- Green waste
- Food Waste
- Electronic consumables and,
- Any other recyclables as agreed under this Contract.

"Recyclable Paper and Cardboard" includes but is not limited to:

- Newspapers;
- Magazines;
- Junk mail;
- Stationery;
- Office paper;
- Envelopes;
- Telephone books
- Cardboard.
- Other disposable paper products (for example paper towels)

“Schedule” means a schedule attached to a Section of these Specifications.

“Service(s)” means all or any of the services to be performed by the Contractor as described in the Contract Documents.

“Services Commencement Date” means the date upon which the Contractor begins providing the Services to the NSW government under this Contract.

“Service Specification” means the specification for a particular type of service as specified in the Parts to this Specification.

“ Significant Contract Term” means any requirement of the contract, the non-compliance with which is a breach of contract and may result in subsequent actions by the Department of Commerce.

“Stream” refers to the waste and recycling systems in place at each site. This may include the “General Waste Stream” ; “Paper Recycling Stream”; Cardboard Recycling Stream”; “Co-mingled Recycling Stream”. The term “stream” does not refer to a specific material, but to the overall management system in place for one or more materials as defined by that system.

“Waste” means any material put out for collection as part of any of the Services provided as part this Contract, and includes General waste, Recyclables, and Secure Destruction.

“Waste Disposal Facility” refers to a licensed facility able to accept for consolidation prior to final disposal, or for final disposal of general waste as defined under this contract.

"Workplace Agreements" has the same meaning attributed to it in the *Workplace Relations Act 1996 (Commonwealth)*.

Where a word or expression is not defined in Clause 2 , above, but is defined in the Contract it shall have the meaning attributed to it in the Contract.

Aims and Objectives

The NSW Government is committed to environmental sustainability in the management of its assets, including waste minimisation, recycling and a reduction in the volume of material going into landfill. Through this contract the NSW Government seeks to work with the contractor/s to implement environmental sustainability.

The aims and objectives of this contract are to provide the NSW Government and its agencies with efficient, cost effective and environmentally sound waste and recycling services. This includes:

- a commitment to environmentally sound systems of resource recovery;
- to apply best practice principles and provide cost-effective services that users perceive as offering value for money;
- deliver services that complement national, state and local waste management policies, particularly the NSW Government's Waste Reduction and Purchasing Policy (WRAPP);
- provide data to assist Customers make improved decisions on future waste and recycling services.

This will allow the NSW Government and its agencies to meet their environmental reporting and monitoring obligations including the WRAPP and the NSW Environmental Education Plan 2007-10 Learning for Sustainability.

Contract Scope

This contract covers the Services as detailed in Clause 1 for all Eligible Customers. It is however at the discretion of each such body to utilise this contract. The Department of Commerce can make no guarantees as to the level of take-up of this contract or to the quantities of waste specific to any service or region.

Further, some bodies under existing contracts for waste services may take-up only part of the services as covered by this contract.

For the benefit of Contractors in preparing this document it is noted that the existing contracts covering the three services have a current annual total value of approx. \$2.8million

Contract Management

A primary objective in consolidating the three previous contracts is to provide a more integrated approach to the management of waste within NSW Government bodies. Previously waste and recycling services have been contracted with no focus on the inter-relationship between the two.

The purpose of this contract is to provide a focus on total resource management with a view to implementing active programs to reduce waste to landfill. The Contractor is encouraged to demonstrate how they will assist the Customer in achieving this objective and how the services can be managed so as to provide a more integrated approach.

The Department of Commerce will actively monitor performance of the Contractor against Performance Criteria. Contractors will be encouraged to demonstrate initiative and innovation.

Where Performance criteria are not being met by the Contractor and actions to rectify the situation are not being taken, this will be interpreted as a breach of contract. The department of Commerce in this situation may at its discretion take appropriate actions as detailed in the contract terms and conditions.

Pricing

Geographic Regions

The pricing schedules are included as an attachment to this document.. Pricing is to be provided for each of the three sections, being:

- General solid waste
- Recycling
- Secure Document Destruction,

for each of the Areas as detailed below.

The pricing schedules are to be completed for each of the following geographic regions:

Area	Regional Name	Description
1	<i>Central West (CW)</i>	In the centre of the region is the Bathurst-Orange area and to the east the Blue Mountains. The western area extends to the Lachlan river and the town of Condobolin. The region also contains the urban areas of Parkes, Forbes and Cowra.
2	<i>Far West (FW)</i>	This vast region containing the unincorporated area of NSW is bounded by the Queensland and South Australian borders. Included is the City of Broken Hill and the Darling River passes through the region from the north-east to the south.
3	<i>Hunter (HT)</i>	The Hunter Region contains the Hunter River and its tributaries with highland areas to the north and south. The Hunter Valley is one of the largest river valleys on the NSW coast.
4	<i>Illawarra (IL)</i>	The Illawarra Region contains the urban areas of Wollongong and Nowra, and the

		<p>Minnamurra and Shoalhaven river valleys. To the west of the coastal plain is a long escarpment that leads to very rugged terrain in the Shoalhaven area.</p>
5	<i>Murrumbidgee (MG)</i>	<p>The region is traversed by the Murrumbidgee River and contains the Murrumbidgee and other irrigation areas. Wagga Wagga is the major urban centre in the region.</p>
6	<i>Murray (MR)</i>	<p>The Murray River on the NSW border forms the southern boundary of the region. The terrain varies from flat in the western and central areas to very rugged on the eastern border. The main urban centre in the region is Albury.</p>
7	<i>Mid - North Coast (NC)</i>	<p>The Mid-North Coast Region covers a coastal strip of NSW and includes the Manning, Hastings, Clarence and Macleay river valleys.</p>
8	<i>Northern (NR)</i>	<p>The region contains the Northern Tablelands, the northern slopes to the west of the tablelands, and the north central plains.</p>
9	<i>North Western (NW)</i>	<p>This large region contains diverse topography, with flat plains to the west, undulating slopes in the centre and elevated areas extending from the Central Tablelands in the east. The region includes the Bogan, Macquarie and Castlereagh river basins.</p>

10	<i>Richmond - Tweed (RT)</i>	The Richmond and Tweed coastal river basins and the Upper Clarence River valley dominate this region. To the west is the New England Plateau and to the north the McPherson Range.
11	<i>South Eastern (SE)</i>	Comprises the far south coast of NSW, the southern tablelands and the Snowy Mountains. The region contains the Clyde, Moruya, Tuross and Bega river valleys.
12	<i>Sydney Inner (SI)</i>	Inner Suburbs of Sydney
13	<i>Sydney Outer (SO)</i>	Outer Suburbs of Sydney
14	<i>Sydney Surrounds (SS)</i>	Areas around Sydney Metropolitan

Non-Serviceable Areas

Contractors are to state in their submissions if there are any areas that they cannot service, or any areas where some services cannot be provided. It is a key objective of this contract that waste and recycling services will be provided throughout all NSW. Contractors are to state their willingness to seek alternative solutions for these areas.

Within three months of awarding of this contract, the successful Contractor is to provide to the Department of Commerce a plan detailing how the services will be provided to these areas. Where the contractor has no capacity to service these areas, or where the Contractor cannot provide a competitive quote to service these areas, alternative options are to be provided to the Department. These may include use of local service providers; access to local council services or other solutions. Any such option is to provide details of how the Contractor will manage these options and ensure a seamless provision of services.

Provision of this plan and agreement by the Department is considered a key performance indicator.

Integrated Pricing Model

The Department of Commerce, through this tender, wishes to achieve a more integrated approach to the management of waste. However due to the existing lack of detailed information on quantities of waste and recycling, requesting contractors to submit an integrated pricing schedule would not be practical or possible.

The approach taken, therefore is one of a phased in integrated pricing model.

Stage 1 – Service Fee.

Contractors are required to complete the pricing schedules provided with this tender for each region identified. Pricing should be inclusive of all contract conditions as outlined in the schedules to this tender.

Stage 2 – Establishment Period

For each individual contract established the systems and services will be implemented in consultation with the Customer on a site by site basis as outlined in this document. Pricing for each service will be as per the pricing schedules submitted in this tender document.

The contractor, working with the Customer will provide services and where necessary adjust services so as to ensure an effective and efficient management of waste is provided.

Servicing will be carried out, at a minimum, for a six month period on this basis – the *Establishment Period*.

Stage 3 - Integrated Pricing Model

Following the establishment period and within a two month period, the Contractor will present to the Customer a proposal for an integrated pricing model to cover all services implemented during the establishment period.

This integrated model will be a fixed monthly fee based on the actual levels of activity evidenced in the first six months plus any feedback from the customer in terms of seasonal variations expected.

The contract fee will include an incentive for the contractor and a benefit to the customer based on waste diversion targets. As a minimum the integrated price is to reflect a 10% reduction in total fees being paid by the customer for waste management services.

The contractor has the potential to reduce waste to landfill by greater than 10% and thus realise savings through the contract. The service levels and conditions as outlined in this tender document are not to be diminished in any way as a consequence of this new pricing model. In addition, there is to be no reduction in the level of resource recovery being achieved.

At the commencement of Year 3 of the contract, the Contractor will submit a new fixed pricing schedule reflecting as a minimum a further 10% reduction in the total fees paid by the customer for waste management services.

The Customer may choose not to change to the integrated pricing model and may choose to continue with the fee for service model.

Upon acceptance of the Contractor's integrated pricing model, the Customer commits to active participation in diversion programs the Contractor proposes and commits to addressing issues such as contamination when raised by the Contractor. Any proposed changes to the systems in place as part of the integrated pricing model are to be presented to the Customer as part of the proposal.

CONTRACT REQUIREMENTS

Sections 1 – 4 of this document details the general contract requirements covering the provision of all services as outlined in Clause 1. In their submission, the contractor is to address each of these clauses and show evidence of understanding of the requirements, acceptance of the requirements and where applicable relevant experience and capability.

Failure to comply with this requirement may result in the submission being treated as a non-conforming tender.

System Requirements

The systems provided for each stream must be effective and efficient. The proposed bin type and size must adequately contain the quantity of material generated while not providing excess capacity. The overall capacity requirements will be a function of bin size and frequency of collection.

The Contractor is responsible for advising system details and servicing requirements to each site. The contractor will monitor system efficiency and advise the site where changes in bin size or frequency of collection would improve efficiency of service. In addition, the Contractor will respond to requests by the site for changes in bin size or frequency of collection where capacity is deemed to be either excessive or inadequate to actual generation rates.

It is expected that the needs of the site will change over the course of the contract period, due to improvements in resource management and changes in the operation and activity levels of the site. The contract will respond to these changing needs to ensure the continued provision of a cost effective solution.

Changes in the generation rates of any stream and subsequent changes in bin size and/or frequency of collection will not impact on the pricing rates as provided in this contract.

Additional, New and Special Services

Special Events

From time to time, the Customer may request the Contractor to provide Services at special events such as seminars, festivals, and trade shows.

The Customer will notify the Contractor, at least ten (10) working days prior, of the date, time, location, and duration of the event, the number of Bins required, and the frequency of service.

It is expected that the cost for providing these additional services will be consistent with the contract rates.

Temporary Collection Services

From time to time, the Customer may request the Contractor to provide a temporary collection service, generally being once only or an infrequent collection, at a nominated location. The Customer, where possible, is provide a minimum of two weeks notice to the contractor.

Following receipt of a request for a temporary collection service, the Contractor shall provide this service on the collection day as agreed with the Customer.

It is expected that the cost for providing these additional services will be consistent with the contract rates, including delivery of appropriate bins.

Variation to services

To optimise services the customer is entitled to vary any part of the services under this contract such as: The collection points, frequency, times, days, number of bins and sizes provided etc. Contract rates will not be adjusted for such changes.

It is likely that new waste/recycling technology and or services may become available during the term of this contract. Where these options provide a more cost effective solution for the Customer, or other greater diversion/resource recovery potential, the Department of Commerce reserves the right to access these new options. The department of Commerce will provide the Contractor with the opportunity to provide these new options as part of this contract. Where the contractor cannot provide these new options, or cannot do so at a commercially competitive rate, then the department of Commerce reserves the right to access these new options from an alternative supplier.

The Contractor may enter into a sub-contractor arrangement to provide these services at a competitive rate. Such an arrangement must receive the approval of the Department of Commerce.

Operations

General

The Services provided under this Contract must be efficient and effective, and be services on which Customers can depend. All services must be carried out with maximum regard for safety and security of all persons, tidiness and the preservation of property and amenity and compliance with legislation applicable to the provision of the Services including but not limited to workplace relations, occupational health and safety, environmental and local government legislation.

Services provided under this contract must be delivered in a manner that maximises resource recovery and promotes continuous improvement.

General Operational Requirements

- (a) The Contractor's employees must, after emptying each Bin, return a completely emptied Bin, with the lid closed and in an upright position, as near as practicable to the position in which it was located prior to being emptied;

- (b) After emptying, Bins must not be left in a position which might impede pedestrian or vehicular movement;
- (c) The Contractor must ensure that any Material(s) that is spilt or found spilt by the Contractor's employees or subcontractors in the course of performing the Services, whether caused by the Contractor's actions or not, is removed by the Contractor immediately;
- (d) When any Collection Vehicles are passing along roads or left standing in any public place, they must be secured so as to prevent the escape of any Materials from the Collection Vehicle. No Collection Vehicle must be left standing in such a manner as to cause offence or present a hazard to a member of the public;
- (e) Collection Vehicles shall remain stationary whilst emptying Bins;
- (f) The Services shall be performed with minimum noise, nuisance and disturbance; and shall not be in breach of EPA or Local Council noise regulations
- (g) Bins shall not be handled in a manner that may result in damage to the Bin.
- (h) Site specific requirements as required by the customer shall be adhered to at all times.

ENTRY AND EXIT OF CUSTOMER PREMISES

Some Customers have particular requirements in relation to the entry and exit of their premises. Eg Department of Corrective Services.

The contractor will be required to adhere to any special requirements for security and access clearances where the agency advises of such requirements.

Collection Days and Times

The Contractor and Customer will negotiate an agreement regarding the days, times and manner at which the Services will be provided. Such negotiations shall consider issues including, but not limited to:

- Compliance with local noise requirements,
- Minimising traffic congestion,
- Normal operating hours of each location, and
- Limitations on access to the collection point.

Collection Point

General

Services will generally be undertaken from the kerbside, loading dock or other location nominated by the Customer.

Access to Private Property

The Contractor may be required to enter onto the Customer's property with its Collection Vehicles to enable it to service some Bins.

Some customers have specific requirements in relation to entry and exit of their premises, in these instances the contractor will be required to conform to any direction given by the customer.

Indemnity against claims for loss or damage to the person or property including pavement or other driving surfaces, buildings and all surroundings must be in accordance with Part D Insurance/Indemnity requirements.

Collection vehicles

All vehicles used to carry out the services covered by this contract must be suitably licensed and insured to meet the requirements of the appropriate government departments including but not limited to: Roads and Traffic Authority, Department of Environment and Climate Change including Environment Protection Authority and Local Government Authorities .

All vehicles must be fit for service such as being capable of lifting mobile garage bins and other bins or waste receptacles as used for the purpose of this contract

All vehicles used by the Contractor are to be clearly identifiable as the Contractors vehicle or their approved sub-contractor.

Contractor Staff / Personnel

- * Personnel must be appropriately attired to be easily identified by the customer as an employee of the contractor

- * Personnel must carry appropriate photo identification to identify them as an employee of the contractor

- * Personnel may be required to undergo security clearances and must be prepared to undertake any security screening as required.

Non-Collection and Bin Presentation Problems

General

All Bins presented for collection on the normal collection day shall be emptied, unless the Bin is deemed unacceptable for collection in accordance with this General Specification.

The Contractor must develop procedures for Customer notification related to non-collection and Bin presentation problems as part of the Quality Plan specified under Clause 12 of this General Specification.

The Contractor shall develop and maintain a database for the purpose of logging non-collection and Bin presentation problems as detailed in Clause 0 of this General Specification.

Contractor to Notify Concerning Non-Collection

Rejection of pick up

In the case of a non-collection in accordance with this General Specification, the Contractor is to provide the Customer with a notice, specifying the problem, in a form approved by the Department of Commerce.

The Contractor must notify the Customer of the problem either by way of letter being placed in the letterbox of the Location or otherwise securely delivered to the Location, such as by placement of a sticker on the Bin or on materials placed alongside the Bin. Customers must be notified within two (2) working days of the day that the incident occurred.

Electronic notifications can also be used to advise customers of problems and non-collection (EG SMS or Email) to a customer nominated site representative.

The Customer must be given the opportunity to assess and rectify the problem and contact the customer service centre to request an additional Service if required.

The Contractor must agree a suitable time for the additional service, and where additional costs are incurred by the contractor approval for such additional cost is to be approved by the Customer prior to undertaking the service..

Where the missed service is the fault of the Contractor, then the Contractor will agree a suitable time for the additional service and will bear the cost of such service.

Bin Presentation Problems

Customers have a responsibility to place Bins out for emptying in a manner that is suitable for collection. The Contractor has a responsibility under this Contract to assist Customers rectify problems with presentation. Bin presentation problems may include, but are not limited to, Bins facing the wrong way or being placed behind a vehicle or other obstruction or Bins being overfilled.

Non – Collection due to Contamination - Contamination Procedures

In developing the contamination management strategy and procedures the Contractor must undertake the minimum requirements and procedures as detailed below .

These minimum requirements will form the basis of the procedures to be developed by the Contractor and the Contractor is expected to expand on and improve on the procedures.

On submitting the Quality Plan to the Department of Commerce as specified in the General Specification at Clause 24, the Contractor may propose amendments to these minimum procedures. The Contractor's proposal must detail how the amendments improve contamination management and resource recovery outcomes.

The procedures must specify clearly all operational details including responsibilities for tasks, time frames, specific supporting materials to be utilised and variations between strategy and procedures for single Premises and multi-occupancy Premises.

Minimum Contamination Requirements and Procedures

Gross Contamination - Visible at the collection point

The Contractor must not empty any Bin where it is evident upon visual inspection that it contains Gross Contamination.

Gross contamination includes high levels of material that does not conform to the acceptance criteria. Note this applies to all streams including general waste.

The Contractor must notify the Customer of the problem either by way of letter being placed in the letterbox of the Premise or sticker attached to the Bin. Customers must be notified within one (1) working day of the day that the incident occurred.

The Customer must be given the opportunity to rectify the problem and contact the customer service centre to request an additional Service. The Contractor will agree a suitable time to return to the site to empty the bin. Any additional cost in completing this additional collection is to be approved by the Customer prior to the service being undertaken.

Contamination - Visible at the collection point

If the Contractor finds contamination, not considered to be Gross Contamination, on visual inspection of a Bin, the Contractor may empty the Bin if deemed acceptable. The Contractor must notify the Customer of the problem and clarify the acceptable recyclable materials.

The Customer must be notified of the problem within two (2) working days of the incident occurring.

Contamination - Visible via Camera in Hopper

If the contractor becomes aware of contamination or Gross Contamination within a Bin in the process of emptying its contents into the Collection Vehicle, the Contractor must provide the Customer with notification, specifying the problem and clarifying the correct acceptance criteria.

The Customer must be notified of the problem within one (1) working day of the incident occurring.

Where the contamination would render the load in breach of relevant legislation, the Contractor is to isolate the load and immediately contact the Customer. The Contractor should then develop an appropriate action to rectify the situation and ensure disposal in

accordance with legislation. Any costs associated with such actions are to be approved by the Customer prior to proceeding.

Contamination - Visible upon unloading at a facility

If the contractor becomes aware of contamination or Gross Contamination whilst in the process of emptying the contents of the Collection Vehicle at either a MRF or Waste Disposal Facility, the Contractor must provide the Customer with immediate notification and assist in the immediate resolution of the incident. This may include but is not limited to the coordination of information such as key contacts, contamination type and other relevant incident details.

Any costs associated with the incident as such should be as agreed between the Customer and the Contractor.

The Customer must be notified of the problem immediately upon the incident occurring.

Multiple Occurrences - Second Occurrence

On the second occurrence, over a time period agreed upon by the Contractor and Department of Commerce, of any contamination incident as specified under Clause 11 of this Specification, the Contractor must follow the procedure as outlined in the relevant Clause specified.

Multiple Occurrences - Third Occurrence

On the third occurrence, over a time period agreed upon by the Contractor and Department of Commerce, of any contamination incident, or combination of incidents as specified under Clause 11 of this Specification, the Contractor must follow the procedure as outlined in the relevant Clause specified.

In addition, the Contractor must notify the Department of Commerce of the situation and request that a letter be issued to the Customer advising of the possible removal of services after any further incident over a time period agreed upon by the Contractor and Department of Commerce.

Duty of Care

In addition to any of the reporting requirements as outlined above, the Contractor has a duty of care to ensure that waste is disposed of in line with Environmental legislation. Where contaminants are identified in a waste stream, the disposal of which would contravene Environmental legislation, the contractor is to secure the load and immediately advise the Customer and advise of the correct disposal pathway. Any additional cost for correct disposal is to be advised to the customer prior to disposal.

Specifications for Mobile Bins

Unless otherwise approved in writing by the Department of Commerce, Mobile Bins used in the performance of Services must accord with the following specifications:

- (a) comply with *Australian Standard 4123 Mobile Waste Containers*;
- (b) Colours of bin bodies and lids **must** comply with the Australian Standard 4123.7 Colours, markings and designation requirements
- (c) Contain a minimum of thirty percent (30%) Post Consumer recycled content;
- (d) where reasonably possible and in accordance with the Australian and American Free Trade Agreement, be made in Australia;
- (e) be hot stamped with individual identification serial numbers;
- (f) be labelled with high quality stickers to identify materials, using the standard signs and symbols recommended by the NSW Department of Environment and Climate Change see; <http://www.environment.nsw.gov.au/> and
- (g) may contain bar coding, embedded passive chip systems or RFID where these devices are used by the Contractor to improve collection service, data gathering, monitoring and reporting;
- (h) Be clearly labelled as to the stream they are being used for.

Bin Supply, Maintenance and Ownership

Supply of Bins

The Contractor shall provide the optimum number and size of Bins at each location to ensure the efficient delivery of services under this contract.

All Bins supplied by the Contractor under this General Specification, shall remain the property of the Contractor throughout the term and upon expiry of the Contract including any extension of the Term of the Contract.

Mode of Delivery

The Contractor must deliver all Bins to all locations by

- (a) wherever possible, placing the Bin within the boundaries of the location in a safe and secure manner; or,
- (b) placing the Bin as close to the boundary or entrance of the location as possible.

Information Package

With delivery of the Bins, the Contractor must deliver a new service education package as detailed in Clause 14 of this General Specification.

Asset Management

The Contractor shall maintain an Asset Register of Bin Serial Numbers, delivery locations, delivery times, bins added, removed and replaced and make this information available to the Customer in electronic form each month or as agreed between the Contractor and the Customer.

Repairs and Maintenance

The Contractor must effect repairs to and maintain all Bins during the Term of the Contract or any extension of the Term of the Contract at no additional cost to the customer.

The Contractor is to ensure that bin labels are maintained and clearly readable at all times.

Supply of Replacement Bins

The Contractor must supply and deliver a Bin(s) to any Customer where a Bin has been:

- (a) lost;
- (b) stolen;
- (c) damaged; or
- (d) destroyed,

during the Term of the Contract or any extension of the Term of the Contract.

Where the Customer is responsible for the loss or damage, the cost of replacement will be in accordance with the pricing schedule, noting that damage caused by the Contractor during clearance of bins will be borne by the Contractor.

Requirements for Replacement and Additional Bins

All Bins supplied by the Contractor to meet its obligation of this General Specification, must:

- (a) meet all of the obligations under this General Specification; and,
- (b) meet any additional obligations specified in the Service Specification for that particular service; and,

- (c) be new or be second-hand Bins that are in good order, free of permanent numbering or paint and which have been thoroughly cleansed to the satisfaction of the Customer.

The cost of replacement and additional Bins must be identified in the pricing schedule.

Stocks of Bins

The Contractor must ensure that it maintains sufficient stocks of Bin(s) to meet its obligation contained in this General Specification.

Retrieval and Repair of Bins

The Contractor must retrieve all damaged Bins, or Bins no longer required, at any location and either:

- (a) Repair them and store them at the Contractor's depot for re-issue to locations in accordance with Clause 10 of this General Specification.
- (b) Recycle them where it is practicable; or,
- (c) Dispose of them where a practicable recycling option is not available, if they are damaged beyond repair

Bin Cleaning and Disinfection

Bins shall be kept clean by the Contractor (inside and outside of bin surface). Where it is deemed to be required or requested the Contractor should clean and disinfect bins. The customer and contractor can negotiate if there are special requirements in relation to the cleaning and disinfecting required. If cleaned on site waste water must not be discharged to stormwater.

The method and frequency of cleaning and disinfection should be detailed in your tender response.

Collection Vehicles and Depot

Supply and Standard of Vehicles

The Contractor must provide, and maintain throughout the Contract Term, sufficient Vehicles, Plant and Equipment to carry out its obligations under this Contract in a safe, thorough, reliable, timely and efficient manner, including circumstances where any regular Collection Vehicles are unavailable for use on Services due to any cause.

All vehicles must comply with relevant Australian Standards, Codes of Practice and requirements of WorkCover NSW. Unless written advice, supported by relevant bodies is provided to the contrary, all Collection Vehicles must be fitted with an automatic braking device, which engages when the driver alights from the Collection Vehicle. In addition, all Collection Vehicles should be fitted with rear view camera systems and monitor located in the cab of the Collection Vehicle so that the driver can observe pedestrian and other traffic when reversing.

Communication Equipment

For the purposes of effecting control over Collection Vehicles engaged in this Contract, the Contractor must be able to establish immediate and effective communication with Collection Vehicles from the Contractor's office. Therefore all Collection Vehicles operated by the Contractor in delivering the Services must be fitted with an effective communication system, such as mobile telephones or two-way radios.

Maintenance of Collection Vehicles

All Collection Vehicles must be kept clean and regularly washed down both inside and outside. Cleansing must be carried out at the Contractor's Depot or at another facility approved and maintained for that purpose, using a vehicle wash down bay that ensures all sludge and water deposited from the wash down bay is disposed of in accordance with any state legislation and regulation

All collection vehicles must:

- (a) be operated, maintained and serviced to the manufacturers' manuals, guidelines and specifications;
- (b) be maintained in good repair mechanically;
- (c) be in a clean, reliable and roadworthy condition;
- (d) be of presentable appearance.

Emission Management System for Diesel Vehicles

The Contractor must introduce an emission management system that complies with the standards of the Clean Fleet™ Program for Diesel Vehicle Maintenance for all Collection Vehicles that are diesel vehicles. Within six (6) months of the Services Commencement Date, the Contractor should become a member of the Clean Fleet™ Program for Diesel Vehicle Maintenance and pay any associated costs including periodic audits.

Contractors Depot

The Contractor must, throughout the Contract Term, provide and maintain in:

- (a) good repair, order and condition; and,
- (b) a clean, presentable and sanitary state,

a site to accommodate the Contractor's Vehicles, Plant and Equipment.

Allocation of Regular Services

The Contractor must notify and seek the approval of the Customer if the Contractor intends to allocate the services to a Sub Contractor for any scheduled or project based collections. The Contractor shall be responsible for facilitating the accuracy and timely delivery of any associated paperwork to the Sub Contractor and the absolute management of the Sub Contractor to perform services as detailed within this document.

The Contractor shall ensure that all of its Employees and or contractors:

- a) comply with any site specific requirements in relation to security/access;
- b) have in their possession all relevant documentation in respect of the Regular Services including all Safe Work Method Statements, Risk Assessments, Material Safety Data Sheets associated with the services being provided;
- c) are, and shall remain, sufficiently qualified, careful, ethical, skilful and diligent to enable the work under the Agreement to be efficiently, professionally and safely provided by the Contractor;
- d) have completed all required training;
- e) maintain strict discipline and good order.

The Contractor must ensure that its Personnel / Sub Contractors comply with any reasonable guidelines or procedures that the Customer may issue to the Contractor from time to time.

If the Customer is dissatisfied with the performance of any of the Contractor's Personnel / Sub Contractor, the Customer may require the Contractor, within 24 hours of such request, to replace that person or persons with some other Personnel of the Contractor acceptable to the Customer

Contractor's Weighing Equipment

Where weighing equipment is used, for any purpose, the Contractor will:

- a) allow, the Customer to test the accuracy of the weighing equipment at any reasonable time, in accordance with the Contract;
- b) provide the Customer upon request, a copy of the certified calibration results for all weighing equipment used to weigh any materials collected from the Customer's site(s).

Customer Service and Complaint Rectification

Introduction - Contractor to Manage Customer Service

The Contractor is responsible for Customer service under this Contract and shall be the principal point of contact for Customer enquiries and complaints about Services.

Contractor Obligations

The Contractor is responsible for establishing a Customer service centre that will allow complaints to be received, recorded, actioned and reported to the Customer and to the Department of Commerce. The Contractor will devise 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.

The Contractor must respond quickly and positively, and resolve all Customer complaints in a timely and civil manner.

The Contractor must accept complaints from the Customer and any Customer employees.

The Customer Service Centre must be staffed from 8:30am to 5:00pm on all week days, excluding Public Holidays. An answering service must be operational after hours to accept Customer complaints and enquiries. An emergency contact must be available as described in Clause 15.4 below

Urgent Complaints

In instances where a Customer complaint is received that requires urgent attention, the Contractor must take steps to resolve the complaint immediately. An urgent complaint includes, but is not limited to, a complaint that may impact on safety and security of any person(s) or property, traffic hazards, public health or repeated poor service levels at a specific location.

If the urgent complaint is directed to the Contractor by the Customer or Customer's employees, it shall be marked as "URGENT". Any complaint reasonably deemed to be urgent by the Customer shall be treated as an urgent complaint by the Contractor.

Emergency Contact Number

The Contractor will provide two (2) alternative contact numbers where the Customer may have emergencies addressed when the Contractors Office/Service Centre is unattended. These telephone numbers are to be available twenty-four (24) hours a day, every day of the year.

Customer Service Reporting

For the Department of Commerce and the customer to adequately monitor the performance of this Contract, the Contractor will be required to undertake regular reporting to the Department of Commerce and the customer. The frequency and nature of the Customer service reporting must be approved by the Department of Commerce prior to the Services Commencement Date, but must be at least monthly. The Customer may require changes to the reporting from time to time throughout the Contract.

The reports must include, but are not limited to:

- (a) The number and type of complaints received and/or resolved during each collection period;
- (b) The time taken and the action implemented to resolve complaints;
- (c) Number of calls made to the customer service centre including waiting time;
- (d) Complaints requiring on-going monitoring by Contractor;
- (e) Exceptions to agreed bin fill percentages set by the Customer and calculated from weight, bin size and collection frequency.

Customer Satisfaction Surveys

To ensure that Services are being carried out in accordance with the Specification, and that the Contractor is fulfilling its obligations completely, the Department of Commerce may carry out Customer satisfaction surveys.

Effective management of user problems will be an important aspect of such surveys, and will be used as an indicator in the formal performance measurement and evaluation process of this contract.

Customer satisfaction surveys shall be statistically valid and will represent a fair and accurate measure of Customer satisfaction.

EDUCATION

General

The Contractor must actively participate in the education and training of customers in the use of services provided. This education and training will be consistent with the principles of waste avoidance and resource recovery and the reuse and recycling principals underlying NSW Government's WRAPP.

The education and training plan for the Department of Education and Training's schools shall be delivered in consultation with the Department of Education and Training's Environmental Education unit and shall be in accordance with Sustainable Schools NSW.

Signage, instructions, and labelling

The Contractor will be responsible for appropriate signage, instructions, and labelling of bins.

Placement of such material will be negotiated between the contractor and the customer, but as a minimum will be required at all bin locations and collection points to ensure all users of bins are fully informed as to acceptance criteria.

Pre Service and Start Up Education

Contractor to Develop and Deliver Pre Service and Start Up Education

The Contractor will nominate and provide appropriately qualified and experienced personnel to develop, implement and evaluate the pre service and start up education program on behalf of the Department of Commerce.

The pre service and start up education phase will cover the period prior to the Services Commencement Date and include the first twelve (12) months of the Contract Term.

Purchase of Environmentally Preferable Goods

The Contractor must purchase environmentally preferable goods where possible for the development of the pre service and start up education. Printed materials should be produced in an environmentally sensitive manner and must contain a minimum of fifty percent (50%) recycled fibre and be manufactured using cleaner production printing practices, including but not limited to, use of vegetable based inks and manufacture without the use of bleaches containing chlorine.

The distribution of the education materials shall be done in partnership with each customer to ensure:-

- Relevance of the message to particular users (ie; schools, hospitals, jails
And
- Avoidance of waste through the use of web based and other media

Pre Service and Start Up Education Plan

One (1) month prior to the Services Commencement Date, the Contractor must provide a draft pre service and start up education plan for approval by the Customer.

At a minimum, this plan must include:

- (a) Ultimate and immediate outcomes of the plan;
- (b) Design and production of bin stickers;
- (c) Design and production of pre-service information flyers;
- (d) Customer information packages;
- (e) Other initiatives to assist Customers to correctly use the Services;
- (f) Proposed environmentally preferable goods to be purchased;
- (g) Detailed timeline and responsibilities for activities;
- (h) Details on how the plan will be evaluated including useful, feasible key performance indicators for the ultimate and immediate outcomes.

The pre service and start up education plan must be approved by the Customer prior to implementation. A copy of the draft plan is also to be sent to the Department of Commerce.

The Department of Commerce and the Customer reserves the right to make amendments or additions to the education plan prior to final approval.

Ongoing Education

Contractor to Develop and Deliver Waste Education

The Contractor will nominate and provide appropriately qualified and experienced personnel to undertake the education program on behalf of the Department of Commerce.

The Contractor will provide all appropriate office accommodation and equipment necessary for education personnel to undertake all duties in a professional and timely manner.

Annual Education Plan

Two (2) months prior to each anniversary of the Contract Commencement Date, the Contractor will prepare and submit for approval, a detailed annual education plan for the following year of the Contract.

The Plan should include details of actual performance of the contract to date identifying areas where additional education is required and issues identified during the previous year. The Plan should show how the previous year's plan has been amended to take into account actual performance and actions.

Contents of Annual Education Plan

The annual education plan will be developed within the framework of the NSW Government's waste education objectives and will include:

- (a) Ultimate and immediate outcomes of the plan;
- (b) Groups that the plan will target;
- (c) Strategies to be used to target each group;
- (d) New resources to be developed;
- (e) Reprinting of existing resource materials;
- (f) Proposed environmentally preferable goods to be purchased;
- (g) Details of how the plan will complement or enhance other contractual obligations such as contamination management and report recycling performance back to users on a quarterly basis;
- (h) Specific timeframes and responsibilities for carrying out tasks;
- (i) Reporting timeline and methods;
- (j) Details on how the plan will be evaluated including useful, feasible key performance indicators for the ultimate and immediate outcomes.
- (k) Methods of ensuring that customers understand the importance of
 - i. Separated waste streams
 - ii. End markets for recyclables
 - iii. Outcomes of recycling by material types
 - iv. Minimising waste

The Department of Commerce and the Customer reserves the right to make amendments or additions to the plan

Reporting

The Contractor must provide reports, in electronic format, on a monthly basis and as agreed with the Customer, specific agencies or the Department of Commerce.

The reporting should be in accordance with the NSW Government Waste Reduction and Purchasing Policy.

The Contractor is to provide a draft report format for approval by the Department of Commerce within one month of contract acceptance. As a minimum the **monthly** report will include the following:

- Waste and recycling quantities by stream by weight and volume. The contractor is to maintain records to allow all data to be independently verified if required. Where data is collected in volume then the conversion factor used must also be disclosed.
- The number, type and size of bins collected per month per stream.

- Where materials are compacted, the compaction ratio is to be provided and equivalent “un-compacted” figures to be reported in relation to volumes collected.
- Where residue waste (ie general waste) is diverted to a secondary recovery facility, then this recovery is to be separately identified as “secondary recovery”.
- Actuals for the month, together with year-to-date totals are to be shown for each stream and for the total percentage diverted from landfill.
- Actual performance in terms of diversion levels against agreed targets per stream (Refer 3).
- Total number of scheduled collections for all service types per month.
- Cost breakdown by stream detailing (\$) amount paid for the material disposed of and (\$) amount received for any rebates. Any ad hoc or special services, (ie bin replacement, contamination clean-up costs etc) provided in the month are to be separately disclosed.
- Details of any contamination issues, detailing the stream; contamination identified and percentage of the stream contaminated.
- Detail any new diversion streams implemented or proposed.
- Where weight based systems are in place, the weight per lift is to be detailed.
- Where volume based systems are in place, the number of bins cleared in the month is to be reported.
- The contractor must be able to report waste and recycling quantities by site where requested

In addition to the monthly reporting, additional six monthly reporting requirements include:

- Where requested by the Customer, a report detailing the composition of the co-mingled recycling stream via an accredited third-party verified audit.
- In addition, the contractor must verify the sorting efficiency of any off-site separation of any mixed recycling stream. The ‘sorting rate’ of the Sorting Facility must be provided via an annual accredited third-party verified audit.
- Actual performance as compared to agreed Performance Criteria.

PERFORMANCE MEASUREMENT AND MANAGEMENT

Performance Criteria

For the purpose of monitoring performance under this Contract, if a Service Level Agreement is not entered into between the Customer and the Contractor the following performance criteria will be used, . .

Standard	Performance Criteria
Compliance	<ul style="list-style-type: none"> • Satisfaction of the objectives of the Contract, specifically: <ul style="list-style-type: none"> - provision of an integrated approach to the management of waste - a primary focus on diversion of waste from landfill as

Standard	Performance Criteria
	<p>evidenced by the introduction of a range of recycling/reuse streams</p> <ul style="list-style-type: none"> - implementation of the “integrated pricing model” • Compliance with all terms of the Contract. • Compliance with Monitoring and Reporting requirements of the Contract • Compliance with the approved Quality Plan. • Compliance with the Occupational Health and Safety Management System. • Achievement of diversion targets. • Compliance with quiet work practice strategy in the Quality Plan. • Specific recovered material streams are delivered to the processing facility in the intended condition. This will be measured by the overall diversion rate achieved by the facility and any complaints received from the facility in relation to quality of loads. • No materials are spilt during collection. • Surveys, where undertaken by the Department of Commerce, show at least ninety-five percent (95%) Customer satisfaction level. • Customer Complaints resolved within the specified timeframes. • Reporting information enables the Customer to easily feed waste and recycling information into their WRAPP report.
Non Compliance	<ul style="list-style-type: none"> • Failure to satisfy the Objectives of the Contract. • Failure to satisfy Monitoring and Reporting requirements of the Contract • Lack of compliance with any of the terms of the Contract. • Lack of Compliance with quiet work practice strategy. • Services not provided on the scheduled day. • Bins not correctly replaced after emptying. • Materials Spilt are not cleaned up within the specified timeframes. • Recyclables rejected at the Material Recovery Facility due to over compaction or breakage. • Recyclables repeatedly rejected at Material Recovery Facility due to contamination. • Diversion targets not achieved. • Surveys, where undertaken by the Department of Commerce, show less than ninety-five percent (95%) satisfaction level. • Customer complaints not resolved within the specified time frames. • Waste reporting data not provided or not provided in the detail required to be included in the WRAPP report.

Actions in the Event of Non Compliance

In the event of any non-compliance with the performance criteria or deviation from the specified service conditions, provided that the Contractor takes all steps required to implement corrective action such that the non-compliance or deviation is corrected immediately and in a satisfactory manner, the Department of Commerce will take no action other than to record the non-compliance.

Failure to adequately address a non-compliance is a breach of contract and the Department of Commerce may take appropriate action.

Investigation of Problems

Apart from undertaking immediate corrective action to rectify particular problems, all instances of non-compliance with the performance criteria of this General Specification, must be investigated to determine the causes for the non-compliance and to bring about full and ongoing compliance with the requirements of the Contract.

The Department of Commerce may audit, or engage third parties to audit, the performance of any of the services at any time without notice to the Contractor.

The Contractor must provide any assistance requested by the Department of Commerce, or a third party engaged for this purpose.

Establishment of Committees

A Performance Management Committee shall be established and comprise of Department of Commerce Vendor Management staff and /or its delegates and/or Customers as deemed appropriate.

Functions of the Committee

The Committee will monitor the Services and seek co-operatively to identify and investigate:

- (a) problems in delivery of Services;
- (b) non compliance with service standards specified in this General Specification;
- (c) existence of trends in contamination, resource recovery, glass breakage and disposal of materials;
- (d) measures that may be taken to increase and maintain resource recovery;
- (e) technological developments and other possible improvements;
- (f) new markets for recyclables;
- (g) evaluation of and potential improvements to contamination management procedures as specified in the Recyclables Specification;
- (h) potential improvements to the efficiency, quality and productivity of Services;
- (i) promoting safer work practices;
- (j) promoting quieter work practices;
- (k) potential improvements to the efficiency, quality and productivity of Services;
- (l) performance targets for Service(s); and,
- (m) any other improvements that could be made to Services.

Establishment of Service Level Agreements

The Contractor and the Customer are free to enter into Service Level Agreements in accordance with this contract. Any such agreement is to be in writing and agreed between the parties.

When a Service Level Agreement is entered into, Contractor performance will be managed by a set of Key Performance Indicators within the Service Level Agreement.

Where no Service Level Agreement is established, the performance measures in this contract shall be used to measure Contractor performance.

Reporting Requirements

The Contractor will be required to provide the following reports and data for each service unless varied by Service Level Agreement:

<i>Timing</i>	Reporting Requirements
Daily (Telephone, SMS, with confirmation via email)	<ul style="list-style-type: none"> • <u>Urgent (within one (1) hour)</u> notifying the Customer of serious personal injury or damage to property, or any significant interruption to the Services for whatever cause include contamination incident whilst unloading • <u>Immediate (within two (2) hours)</u> notifying the Customer of any major malfunction of Contractor's equipment, industrial situations, non-availability of facilities that has the potential to interrupt service; • <u>Routine (within three (3) hours)</u> notifying the Customer of other service problems that Customer service staff may need to respond to such as non-collection.
Weekly	<ul style="list-style-type: none"> • Notifying the Customer of any service problems, industrial action, early start or serious complaints including complaints about Contractor Occupational Health and Safety, and service deficiencies that have occurred in the past week.
Monthly	<ul style="list-style-type: none"> • Monthly waste reporting as detailed in Clause 17 • Occupational Health and Safety reporting requirements; • Any other relevant issues relating to the past month's Services; • Any issues that the Contractor becomes aware of that may affect Services in future; • Graphical reports of service provision over the preceding twelve (12) months, showing trends; • The number of Bins repaired and/or replaced during the quarter; • The details and number of new and additional services provided within the month; • Customer Service Centre and Complaints reporting.

Timing	Reporting Requirements
Quarterly	<p>Notify the Department of Commerce and each customer (as required) in writing of:-</p> <ul style="list-style-type: none"> • Any relevant issues relating to the past quarter's service delivery including contamination levels • Any issues that the Contractor becomes aware of that may affect the services in future • Date and type non compliant material was collected from customer • Average Recyclables Contamination rates as observed by the Contractor, (note the Customer may request an audit to verify this information); • Details of contamination of recycling streams. •
Six Monthly	<ul style="list-style-type: none"> • Average recyclables composition, where requested by the Customer (% percentage by material type) • Emissions reporting – detailing emissions relating to fleet engaged in servicing this contract. Any other emissions the contractor is required to measure and report as they relate to the servicing of this contract.
Annually upon anniversary of Services Commencement Date	<ul style="list-style-type: none"> • Recyclables MRF audit results (and 'sorting rate' of facility as verified by third party); • Occupational Health and Safety Management System/updates; • Emergency Plan/updates; • Insurances review and update; • Revised Annual Education Plans.

AUDITS

Annual Audits

The Contractor must undertake a representative audit at least once every twelve (12) months of the waste, both general waste and recyclables collected by the Contractor and provide these details to the Department of Commerce and the Customer as required to assist with the Government's waste reduction and resource recovery strategies. The Contractor can invite the Customer and/or Department of Commerce representatives to an audit(s) giving 14 days notice.

The Contractor is to provide details of these audits in their submission and note any costs associated with undertaking these audits.

The timing of the audits will be agreed with the Customer and will be conducted so as to provide details for WRAPP reporting requirements (both in terms of timing and methodology). The Customer will advise the Contractor of specific WRAPP requirements to be covered in the audits.

Optional Customer Audits

The Contractor shall undertake an audit at the request of a Customer. The timing of such audits, location, scope and cost (if any) shall be negotiated with the Customer.

Purpose of Audits

Audits shall be conducted to determine:

- (a) the composition of all streams;
- (b) the proportion and composition of potentially recoverable material available in the general waste stream;
- (c) the proportion and composition of unacceptable materials within the recyclables stream;
- (d) the recovery rate of the individual Recyclables.
- (e) the total waste generation rate, annualised.

VARIATIONS AND BETTER PERFORMANCE

During the term of the contract the Contractor is encouraged to propose innovative arrangements to the provision of Services for incorporation in the current or future contracts. Service trials may be undertaken provided the Department of Commerce is satisfied that improved performance will result.

NSW Government and agencies are also looking for integrated waste management solutions for a variety of materials (eg; computers, batteries, oils, organics etc). The Contractor is encouraged to identify and develop re-use, recycling and disposal services for additional materials other than those specified in this Contract.

Risk Management

Contractors must describe how they will mitigate any risks associated with providing the Services, including but not limited to, regulatory compliance, environmental and OH&S risks, and provide a high level risk assessment matrix using the following template.

Risk Assessment Matrix

	Risk	Impact (H,M,L)	Probability (H,M,L)	Mitigation Strategy	Responsibility
1					
2					
3					

Before commencement of any work under the Contract, the Contractor is required to undertake an assessment of the risks associated with provision of services to the site.. A separate risk assessment is to be completed for each site.

The assessment of risks must be comprehensive, developed in consultation with the Customer, must identify any control measures required before the commencement of the task and be approved by the Customer. The extent and content of the risk assessment will be communicated to any other contractors affected by the scope of work and all relevant Personnel.

Occupational Health and Safety

General Requirements

The Customer is obliged to provide and maintain a working environment for its employees and members of the public that is safe and without risk to health.

The Contractor must itself, and must ensure that any subcontractors of the Contractor will also, at all times identify and take all necessary precautions for the health and safety of all persons, including the Contractor's employees, employees of the Customer and members of the public, who may be affected by the performance of Services.

Legislative Compliance

The Contractor must comply with, and ensure that its employees, subcontractors and agents comply with, any Acts, regulations, local laws, codes of practice, guidelines and Australian Standards which are in any way applicable to Occupational Health and Safety and the performance of Services under this Contract.

Contractor Occupational Health and Safety Management System

The Contractor must establish, implement and operate an Occupational Health and Safety Management System.

The Contractor warrants and represents that the Occupational Health and Safety Management System:

- (a) will ensure that any locations controlled by the Contractor, where any persons are performing work, are safe and without risks to health;
- (b) will ensure that any plant or substance provided for use by any persons performing work are safe and without risks to health when properly used;
- (c) will ensure that systems of work, including the working environment, are safe and without risks to health;
- (d) will provide such information, instruction, training and supervision to ensure health and safety in the provision of the Services;
- (e) will provide adequate facilities for persons performing the Services;
- (f) will have occupational health and safety policies and procedures and will provide any persons performing work, with information, instruction, training and supervision as required as to those policies and procedures and their duties and obligations in relation to occupational health and safety;
- (g) will provide any persons performing work, with information, instruction training and supervision in relation to changes and amendments to the occupational health and safety policies and procedures and their duties;
- (h) will ensure that any subcontractors comply with and implement their own Occupational Health and Management System;
- (i) will ensure that any subcontractors Occupational Health and Safety Management System is kept up to date with developments in occupational health and safety including legislation changes, new guidelines and codes and amendments to guidelines and codes.

Personal Protective Equipment (PPE)

The Contractor must supply all their Personnel with adequate and appropriate PPE including but not limited to protective clothing and safety equipment. The Contractor must ensure that their Personnel utilise their PPE as required and or use supplied PPE on all relevant occasions as indicated by notices, instructions, safety regulations or codes of practice or dictated by good sense.

Occupational Health and Safety Performance Reporting

The Contractor must, when requested by the Department of Commerce, provide evidence of the Contractor's ongoing implementation of the Occupational Health and Safety Management System. Such evidence shall include, but not be limited to:

- (a) the number of "lost time" injuries suffered by the Contractor's employees or subcontractors;
- (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, damaged property or environmental damage or pollution;
- (e) the status of the implementation and outcomes of corrective actions undertaken as a result of Occupational Health and Safety inspections and risk assessments; and
- (f) the status of Occupational Health and Safety Management System audits undertaken by the Contractor.

Incident Notice and Prosecution Notification

If the Contractor is required by the *Occupational Health and Safety Act 2000* or by any other Act or regulation to give any notification of an accident, injury, property damage or environmental damage occurring during the performance by the Contractor of its obligations under the Contract, the Contractor must, at the same time, or as soon thereafter as possible in the circumstances, notify the nominated Customer site representative and give a copy of any relevant notification to the Department of Commerce.

The Contractor must promptly notify the Customer of any incident which occurs during the performance of Services and subject to any laws which require otherwise, it must not undertake an investigation into the Incident without first consulting with Customer.

The Contractor must promptly notify the Department of Commerce of any fines, charges or improvement notices which are issued to the Contractor under occupational health and safety legislation and which are issued either during the performance of Services or as a result of the Services. If requested by Department of Commerce, the Contractor must, within three (3) days after any such incident or at any other time on request, provide the Department of Commerce with details of or a copy of or a written report into such fines, charges or improvement notices.

Non-Compliance

If, during the Contract Term, the Department of Commerce or the Customer gives the Contractor notice that, in the opinion of the Department of Commerce or the customer, the Contractor is:

- (a) not performing its obligations under the Contract in compliance with the Occupational Health and Safety Management System or any other obligation of this General Specification; or,
- (b) performing its obligations under the Contract in such a way as to endanger the health, safety and security of the Contractor's employees or subcontractors, the Customer employees, persons under control of the customer or the public,

the Contractor must within 24 hours:

- (a) rectify the Contractor's failure to comply with its obligations; or,
- (b) ensure that it performs its obligations under this Contract so as not to endanger the health, safety or security of any person including, the Contractor's employees or subcontractors, the Customer's employees, persons under control of the customer or the public as appropriate.

The Department of Commerce may direct the Contractor to suspend the Contractor's performance of the Service until such time as the Contractor satisfies the Department of Commerce that it is willing and able to perform the Service:

- (a) in accordance with its obligations under this General Specification; and,
- (b) without endangering the health and safety of any person including, the Contractor's employees or subcontractors, the Customer's employees or the public.

Emergency Plan

The Contractor must provide to the Department of Commerce an Emergency Plan. The Emergency Plan must be:

- (a) submitted at the time of tender.
- (b) The contractor has two months to complete a site specific emergency plan from the date of letter of acceptance
- (c) The site specific plan is updated during each year of the Contract Term submitted to the Customer for information prior to each anniversary of the Services Commencement Date.

The Contractor must consider any amendments to the Emergency Plan, or any update of the Emergency Plan, which the Department of Commerce may propose.

The Emergency Plan must include as a minimum:

- (a) a list of events that would constitute an emergency;
- (b) the name(s) of the persons who will declare an event to be an emergency; and
- (c) the procedure for communicating the effect of the event to Customers.

Quality Management

Preparation of Quality Plan

The Contractor shall have a quality management system ("Quality Plan") which shall monitor, control and manage the work being undertaken under this contract. A draft Quality Plan must be submitted to Department of Commerce within one (1) month of the Services Commencement Date and in accordance with ASNZS: ISO9000

The Department of Commerce may direct that the Contractor make any amendments to the Quality Plan that it considers appropriate. However, non supply of comments does not relieve the Contractor of the responsibility for the Quality Plan and its implementation.

The Quality Plan must identify all critical quality aspects of the Service and establish procedures for meeting the Contractor's obligations in respect of the critical quality factors, which must include but is not limited to:

- (a) quality assurance philosophies, policies and procedures;
- (b) continuous improvement philosophies, policies and procedures;
- (c) details of how the Quality Plan will be implemented, reviewed and maintained;
- (d) collection methodology;
- (e) quiet work practice strategy to minimise noise impacts;
- (f) proposed methodology to measure and report compaction levels of Recyclables;
- (g) procedures for rectification of complaints including Missed Services;
- (h) procedures for Customer notification related to non collection and Bin presentation problems;

- (i) performance measures and methods used by the Contractor to monitor performance and the contents of the garbage stream and opportunities to improve recovery ;
- (j) final contamination management strategy and procedures as specified under the Recyclables Specification;
- (k) details of audits to be used to ensure that the service is provided consistently in accordance with the Contract.

Review of Quality Plan

The Contractor must review the Quality Plan annually and submit any amendments to the Department of Commerce. Any such review must be to the satisfaction of the Department of Commerce.

ENVIRONMENTAL MANAGEMENT

Preparation of Environmental Management Plan

The Contractor must, have an Environmental Management Plan that complies with ASNZS 14001:2004 and that details the impact of its service delivery on the environment and measures to improve environmental performance and management.

A draft of the Contractor's Environmental Management Plan must be submitted to the Department of Commerce at least one (1) month prior to the Services Commencement Date.

The Department of Commerce may direct that the Contractor make any amendments to the Environmental Management Plan that it considers appropriate. However, non supply of comments does not relieve the Contractor of the responsibility for the Environmental Management Plan and its implementation.

Review of Environmental Management Plan

The Contractor must review the Environmental Management Plan annually and advise the Department of Commerce when the review has taken place. Any amendments to the plan must be submitted to the Department of Commerce for information. This information must also be made available to customers using the contract when requested.

Fair Trading, Privacy and Trade Practices Legislation

The Department of Commerce is committed to compliance with fair trading principles, privacy legislation and the Trade Practices Act. Contractors are required to describe their compliance systems and any compliance measures that would be used in performing the Services.

Prohibited Employment Declaration.

The Contractor shall notify all staff and agents that may be required to work on Customer's premises that they must comply with the Customer's site security requirements.

The Customer may require the Contractor to complete the Prohibited Employment Declaration under the provisions of the Child Protection (Prohibited Employment Act 1998). Any person falling within the category of prohibited persons shall not be allowed to work on the Customer's site.

Criminal Records Checks

The Customer may require the Contractor to undergo criminal and related behaviour checks if the service involves unsupervised access to children at the site.

PART 2 – GENERAL SOLID WASTE SERVICE

INTRODUCTION

This Part defines explicit requirements for the collection of general solid waste. It must be read in conjunction with the General Specification, to form the complete specification in relation to the General Solid Waste Collection Service

The Contractor must ensure that Services provided under this contract address the requirements of this General Specification as well as the particular Service Specifications. To the extent of any inconsistency between the General Specification and Service Specification, the Service Specification shall have precedence.

Service Requirements

Commencing on the Services Commencement Date and finishing on the Expiry Date, the Contractor shall provide a general solid waste collection service to the Customer in accordance with this Contract.

COLLECTION SERVICE AND FREQUENCY

The Contractor will assess the Customers service needs by site in terms of the size and type of bin required, service frequency and timing and location of bins. Procedures to ensure that only full bins are collected will also be provided. These details will be agreed with the Customer and will be developed to ensure an efficient and cost effective service.

The Contractor will monitor the service for the first month to ensure system details are optimal. Feedback from the Customer together with the contractor's own observations and information is to be considered when reviewing the service options.

Following this initial review the Contractor will advise the Customer of the outcomes of the initial review and any proposed changes to the service provided.

Disposal and Delivery of Materials

Ownership of Materials

Notwithstanding the Customers responsibilities as determined by the Protection of the Environment Operations Act, 1997, the Contractor shall retain ownership of materials collected under this Contract and pay all disposal, and processing charges.

Disposal Facility

The material collected by the Contractor in the course of performing the General solid waste Collection Service must be delivered to a licensed and approved waste disposal facility or secondary resource recovery facility.

The Contractor is to advise the Customer in writing prior to commencement of the service, the facility that the general solid waste will be disposed at. In addition, the Contractor is to advise the Customer, prior to the service commencing the acceptance criteria of the facility and any specific no-acceptance criteria. It is the responsibility of the Contractor to monitor the facilities acceptance criteria and to advise the Customer of any changes in this criteria.

If the Contractor wishes to change the disposal facility for the general solid waste for whatever reason, either temporarily or permanently, then the Contractor must inform the Customer of this proposed change PRIOR to the change being implemented. The Customer or the Department of Commerce may seek further explanation and reserves the right to challenge any such change. The Customer or the department of Commerce can stipulate

that the Contractor continues to use the disposal facility as proposed in their original service offer, providing such action is not in contravention of any legislation and does not pose a health and safety risk.

Secondary Recovery Facility

The Department of Commerce encourages opportunities to increase resource recovery and reduce waste to landfill. Where there are opportunities for general solid waste to be diverted to secondary recovery facilities these should be detailed in the Contractor's submission. Details of the materials that can be recovered and the recovery performance of the facility are to be clearly stated.

PART 3 – RECYCLING SPECIFICATION

INTRODUCTION

This Part defines explicit requirements for the collection of Recyclables. It must be read in conjunction with the General Specification, to form the complete specification in relation to the Recyclables Collection Service.

The Contractor must ensure that Services provided under this contract address the requirements of this General Specification as well as the particular Service Specifications. To the extent of any inconsistency between the General Specification and Service Specification, the Service Specification shall have precedence.

Service Requirements

Commencing on the Services Commencement Date and finishing on the Expiry Date, the Contractor shall provide a Recyclables Collection Service for Customers in accordance with this Contract.

Recyclables to be Collected

Recyclables to be collected under this contract will include the recyclables defined in the General Specification.

In keeping with the overall objectives of the contract, service providers are encouraged to propose additional recycling/re-use options. Such initiative will be positively viewed by the Department.

In their submissions, contractors are required to detail exactly the materials accepted in each recycling stream. As a minimum, the contractor is to specifically state whether each of the following items are included in the recycling services proposed. Where the acceptance criteria differs from region to region, a table for each region showing acceptance or non-acceptance for each item is to be provided with the tender submission.

Minimum recyclables list:

- Recyclable Paper and Cardboard
- Liquid paperboard cartons;
- Glass bottles and jars;
- Aluminium rigid and semi-rigid packaging;
- PET (1), HDPE (2) and PVC (3) rigid plastic packaging;
- Other rigid plastic packaging including LDPE (4), PP (5), PS (6), Other (7);
- Steel rigid packaging, including aerosol cans;
- Green waste
- Food Waste
- Electronic / imaging consumables eg CDs; DVDs etc
-

Diversion Targets and Destination

In their submissions, Contractors are required to detail exactly the expected use of all materials for each of the recycling streams.

Within one (1) month of commencement of services, the Contractor is to establish, in consultation with the Customer diversion targets for each of the recycling streams. These targets will be expressed in terms of quantity diverted as a percentage of total waste generated, (weight and volume).

Diversion targets may be set by site as agreed with the Customer. Diversion targets are to be reported against on a monthly basis, (by weight and volume) and formally reviewed every six months.

Diversion targets may also be measured against other key indicators such as “kgs per EFT”, as agreed with the Customer.

Additional Requirements for Vehicles

For the purposes of monitoring contamination and vehicle loads, each Collection Vehicle used under this Recyclables Specification must be fitted with effective hopper mounted colour cameras. Colour monitors should be mounted within the cabin to allow the driver and other staff riding in the vehicle to view material as it enters the collection vehicles hopper.

All Collection Vehicle used for Services must be operated, maintained and serviced to the manufacturers' manuals, guidelines and specifications. For this Recyclables Specification, this includes without limitation, any features designed to optimise quality of Recyclables including compaction mechanisms, hydraulic controls or devices which may affect the compaction densities, lifting devices and lifting speeds.

The Customer may engage the services of the manufacturer of the collection equipment who shall inspect the operation of the equipment on all Collection Vehicles used under this Recyclables Specification including compaction mechanisms, hydraulic controls or devices which may affect the compaction densities, lifting devices and lifting speeds on an annual basis for the duration of the contract.

Contractor Recyclables Ownership and Delivery

Contractor Ownership of Recyclables

The Contractor owns all Recyclables collected pursuant to the Recyclables Collection Service. The Contractor must pay all costs associated with the acceptance, receipt, sorting, processing and delivery to end market or other destinations of Recyclables and will retain any income from Recyclables sold through provision of these services.

Amendment of Recyclables

The Recyclables to be collected by the Contractor under this Contract may be varied from time to time by the Contractor with the prior written consent of the Department of Commerce.

The Department of Commerce's consent may be withheld at its absolute discretion or given subject to any conditions, which it may, in its absolute discretion, consider appropriate, including, without limitation, agreement on any costs necessary to give effect to the variation.

Materials Recovery Facility

The material collected by the Contractor in the course of performing the Recyclables Collection Service must be delivered to a licensed and approved Materials Recovery Facility (MRF) unless delivered directly to the processing facility.

The Contractor will be responsible for ensuring that all recyclables collected comply with the requirements for receipt of materials at the facility.

Rejection of Recyclables and Penalty Payments

Where material collected under this Contract is rejected by the facility, or where a penalty charge is imposed for any reason whatsoever, including but not limited to contamination of the delivered material, over compaction of loads or unacceptably high levels of glass fines, the Contractor will pay any and all associated charges and costs.

If the Contractor is required to transport the load to a disposal facility, all associated transport costs will be paid by the Contractor.

The Contractor must, within two (2) working days notify the Customer of all rejected loads and full details of any non-compliance reports from the facility.

Compaction and Quality Management

The Contractor shall manage the Service to ensure that the quality of the collected recyclables are not degraded during:

- a) Collection;
- b) Transport including compaction; and,
- c) Unloading.

The Contractor is expected to work with the Customers throughout the term of the contract to ensure that optimum value is obtained for the Recyclables collected.

The Contractor must have the capability to ensure segregation of recyclables and general waste is maintained throughout the entire collection and processing stages. The Contractor is to detail in their submission how this will be achieved.

Contamination Management

Contamination Strategy and Operations

The Contractor will be responsible for developing, implementing, monitoring, evaluating and reviewing a contamination management strategy and associated procedures.

The procedures must specify clearly all operational details including responsibilities for tasks, timeframes, specific supporting materials to be utilised and variations between strategy and procedures for single Premises and multi-occupancy Premises.

The strategy and procedures will ultimately form a chapter of the Quality Plan specified under Clause 24 of the General Specification but also must be suitable to act as a stand alone operational document.

Supporting Materials to be Developed

The Contractor will be responsible for producing any supporting materials required to implement the strategy such as stickers and brochures. The Department of Commerce must give final approval to all supporting materials and changes to supporting materials over the term of the Contract.

All supporting materials must be developed in conjunction with educational resources developed under Clause 16 of the General Specification to ensure an integrated approach and consistent messages.

REPORTING AND DOCUMENTING CONTAMINATION INCIDENTS

The Contractor must document and maintain database(s) of all addresses and other appropriate details for all contamination incidents including a description of the severity of the incident.

This information must be collated and compiled for the Department of Commerce as required and at least on a quarterly basis.

PART 4 – SECURE DESTRUCTION

INTRODUCTION

This Part defines explicit requirements for the collection and secure destruction of items as defined in Clause 1 of the General Specification. It must be read in conjunction with the General Specification, to form the complete specification in relation to the Secure Destruction Service.

The Contractor must ensure that Services provided under this contract address the requirements of this General Specification as well as the particular Service Specifications. To the extent of any inconsistency between the General Specification and Service Specification, the Service Specification shall have precedence.

Service Requirements

Commencing on the Services Commencement Date and finishing on the Expiry Date, the Contractor shall provide a Secure Collection and Destruction Service for Customers in accordance with the specification documents.

Materials to be Collected

“Secure Destruction Items” means:

Any record that is not required to be stored/filed or kept as required by the *State Records Act 1998*. The State Records Act defines a record as: “any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means”.

- Paper (eg. Email, fax or printed drafts/copies of ministerial, briefing notes, personal records, health/police checks, financial records etc).
- Electronic/ Magnetic Media (eg. Hard Drives etc.)
- Non-Electronic and non-paper media (eg. Videos, optical discs, microfilm/fiche etc.)
- Other items upon customer request and as agreed by the Contractor and State Procurement.

Additional Requirements for Handling

The Contractor shall provide the service using the appropriate methods of destruction which are:

- In accordance with all relevant Policies and the National Privacy Principals-4 (NPP4) guidelines;
- Consistent with national, state and local waste management policies, particularly the NSW Government’s Waste Reduction and Purchasing Policy (WRAPP), NSW State Records Guideline 3 Destruction of records and the NSW Privacy and Personal Information Protection Act 1998 and be
- Environmentally friendly.

CUSTODY OF MATERIALS

The Contractor shall be responsible for all materials collected pursuant to the Secure Destruction Services. The Contractor is to state in their submission how they will

effectively ensure the security of documents from collection until the documents are destroyed.

The Contractor must pay all costs associated with the acceptance, receipt, destruction, recycling and processing and will retain any income from recyclable materials sold through provision of these services.

The Contractor will be liable for any leakage or loss of items or breaches of privacy or security due to any accident or mishandling, once it leaves the Customer's premises. If material that has been collected from the Customer and is subsequently removed from the custody of the Contractor through the actions of the Contractor or a third party, whether deliberate or otherwise, the Contractor must notify the Customer within one hour of becoming aware of this issue and take all reasonable steps to locate the item(s).

Destruction of Items

Secure Destruction Processes

There are a number of methods for destruction that are considered appropriate for different media on which records are stored. Some of the current methods to be used are outlined below:

Paper records

Shredding : The security provided by the shredding of records depends on how fine the paper is shredded. Shredded paper shall be pulped and recycled. If shredded paper is not stored securely before being pulped it must be cross shredded. Cross shredding may also be required on sensitive documents.

Pulping: Pulped paper is reduced to its constituent fibres. If carried out correctly, it is a very secure method of destruction. Pulped paper shall then be recycled.

Burning: Records should only be burnt if there is no other environmentally friendly method of destruction available. Records should be burned in accordance with any environmental guidelines and local burning restrictions. Densely packed paper does not burn well, so burning should be undertaken only in a licensed industrial facility and any residue crushed.

Destruction on-site and placed in recycling stream: If the Contractor uses this method the materials destroyed must not be recognisable or readable and material must be placed in the appropriate recycling stream. Note the Contractor is responsible for materials until they are disposed of in the appropriate manner, if materials are mishandled in the recycling stream the Contractor will be held liable.

Important: Burying is not an acceptable method of destruction. The records are not destroyed immediately and may take months or even years to break down. Records that are buried may also be uncovered within hours or days of being buried.

Electronic/magnetic media

Re-writable media: For secure destruction of re-writable media data (including backup copies) must be physically and permanently destroyed (non-recoverable).

Non Re-writable Media and rewritable optical disks: Records held on optical media can be destroyed by cutting, crushing, or other physical means of destruction – at a minimum, each disc must be radially scored through the metallic layer from centre to circumference.

Although other physical means of destruction, such as microwaving, can be used, these are often only useful for very small quantities. Care should also be taken with microwaving due to fumes produced and possible harm to the microwave oven if 'over-cooked'.

Hard drives: Hard drives of personal computers and servers should be physically and permanently destroyed (non-recoverable) before computers are recycled. A Certificate of Destruction is required for all hard drives destroyed.

Important: Files may not simply be deleted from electronic media such as floppy disks, rewritable optical disks and hard disks, as the information can be recovered.

Non-Electronic and non-paper media: Such as videos, cinematographic film, microforms (microfilm/ fiche/ aperture cards) can be destroyed by shredding, cutting, crushing or chemical recycling, whichever is considered appropriate.

Microforms must be destroyed such that no individual image is readable, preferably by cross shredding.

Recycling Rates

The Contractor is encouraged to maximise recycling of all secure records (following secure destruction), as appropriate. While recycling of some materials such as paper and hard drives, is well established, the Contractor is encouraged to identify new opportunities for recycling of other materials as the technologies/facilities become available.

The contractor is required to detail what percentage of the secure document stream is recycled. Details of the materials that will be recycled and the facility that these materials will be diverted to are required.

The recycling of materials from this stream can in no way diminish the security of these documents or the appropriate destruction as detailed above.

Certificates of Destruction

Customers may optionally require a certificate of destruction, signed by a representative of the contractor, specifying the date, nature and other details of the material destroyed, and the method of destruction. Such a requirement is to be established with the Customer at the commencement of the contract.

Where a Customer, subsequently requires such proof, the Customer will provide the Contractor with a written request one week prior to the service being undertaken.

If a certificate of destruction is requested it is a mandatory requirement.

Customer Observation of Destruction

Customers may optionally require that their representatives observe the destruction of any batch of material, at any site where the destruction takes place.

If observation of destruction is requested it is a mandatory requirement.