

RRC draft 4 September 2015

Subject to review and approval by the Council and the Participants

# RIVERS REGIONAL COUNCIL



**Agreement 2013/1**

**Draft Agreement for the**

**Receipt and Processing of Waste for Resource Recovery**

Prepared by



## RIVERS REGIONAL COUNCIL

## Table of Contents

<b>1. DEFINITIONS AND INTERPRETATION .....</b>	<b>6</b>
1.1. Definitions .....	6
1.2. Interpretation .....	12
1.3. Interpretation of inclusive expressions .....	13
1.4. Business Day .....	13
1.5. Agreement components .....	13
1.6. Ambiguities and inconsistencies .....	13
<b>2. FINANCIAL CLOSE AND TERM .....</b>	<b>13</b>
2.1. Commencement of Agreement .....	13
2.2. Financial Close .....	13
2.3. Security .....	14
2.4. Term .....	15
<b>3. QUALITY OF THE SERVICES .....</b>	<b>15</b>
<b>4. OVERVIEW OF THE SERVICES .....</b>	<b>15</b>
<b>5. REPRESENTATIVES AND KEY PERSONNEL .....</b>	<b>16</b>
5.1. Representatives .....	16
5.2. Key Personnel .....	17
5.3. Power to Act for the Principal .....	17
5.4. Power to Act for the Contractor .....	17
<b>6. DEVELOPMENT OF THE RRF .....</b>	<b>17</b>
6.1. Approvals and Licences .....	17
6.2. Timetable .....	17
6.3. Principal to be Kept Informed .....	17
6.4. Commissioning .....	17
6.5. Practical Completion .....	19
<b>7. EXTENSION OF TIME .....</b>	<b>20</b>
7.1. Delays in Date of Practical Completion .....	20
7.2. Delays due to Force Majeure Event .....	20
<b>8. CONDITIONS PRECEDENT TO SERVICES .....</b>	<b>20</b>
<b>9. RESOURCE RECOVERY SERVICES .....</b>	<b>21</b>
9.1. Receipt and Processing of Wastes .....	21
9.2. Waste Delivery Plan .....	22
9.3. Waste Acceptance Protocol .....	22
9.4. Weighing Waste .....	23
9.5. Unavailability of the RRF .....	23
<b>10. PRODUCTS AND RESIDUE .....</b>	<b>25</b>
10.1. Recovery and Sale of Products .....	25
10.2. Disposal of Residue .....	25

## RIVERS REGIONAL COUNCIL

<b>11. SERVICE OF NOTICES .....</b>	<b>25</b>
<b>12. VARIATIONS TO THE AGREEMENT.....</b>	<b>26</b>
<b>13. INVOICING AND PAYMENT .....</b>	<b>26</b>
13.1. Calculation of the Fee and the Shortfall Fee.....	26
13.2. Escalation.....	27
13.3. Manner of Payment of Invoices.....	28
13.4. Goods and Services Tax.....	29
13.5. Deductions of Charges or Debt.....	29
13.6. Payment Direction.....	30
<b>14. COMPLIANCE .....</b>	<b>30</b>
14.1. Laws, Approvals and Licences.....	30
14.2. Safety Obligations .....	31
14.3. Industrial Awards.....	31
<b>15. INDEMNITY AND LIABILITY .....</b>	<b>31</b>
15.1. Indemnity and Liability.....	31
15.2. Proportionate Liability.....	32
<b>16. LIMITS ON LIABILITY.....</b>	<b>32</b>
<b>17. INSURANCES.....</b>	<b>34</b>
<b>18. FORCE MAJEURE EVENT AND CHANGE OF LAW .....</b>	<b>35</b>
18.1. Force Majeure Event.....	35
18.2. Change of Law .....	36
<b>19. DEFAULT.....</b>	<b>38</b>
19.1. Default by the Contractor .....	38
19.2. Default by the Principal .....	39
19.3. Procedure upon Default .....	39
19.3A Look Forward Default.....	40
19.4. Cure Plan .....	40
19.5. Failure in respect of Cure Plan.....	41
<b>20. TERMINATION OF AGREEMENT .....</b>	<b>41</b>
20.1. Termination for Default.....	41
20.2. Termination upon Prolonged Force Majeure Event .....	42
20.3. Termination upon Expiration of the Term.....	42
<b>21. SETTLEMENT OF DISPUTES .....</b>	<b>42</b>
21.1. Notice .....	42
21.2. Negotiation .....	43
21.3. Expert determination .....	43
21.4. Costs .....	44
21.5. Continued performance of obligations .....	44
21.6. Summary or urgent relief.....	44
<b>22. APPOINTMENT AND REPLACEMENT OF PRINCIPAL AND OTHER MATTERS.....</b>	<b>44</b>

## RIVERS REGIONAL COUNCIL

22.1.	Replacing the Principal.....	44
22.2.	Participant's obligations .....	45
22.3.	Withdrawal of a Participant .....	46
22.4.	Shire of Murray.....	47
<b>23.</b>	<b>DIRECT DEED .....</b>	<b>48</b>
<b>24.</b>	<b>MISCELLANEOUS PROVISIONS.....</b>	<b>48</b>
24.1.	Entire Agreement .....	48
24.2.	Subcontracting .....	48
24.3.	Confidentiality.....	49
24.4.	Publicity .....	49
24.5.	Severability.....	49
24.6.	Legal Costs .....	49
24.7.	Cumulative Rights .....	50
24.8.	Waiver .....	50
24.9.	Relationship of the Parties .....	50
24.10.	Rights and Remedies .....	50
24.11.	Patent Rights / Copyright and Other Intellectual Property Rights .....	50
24.12.	Survival.....	50
	Annexure 1 – Contractor, Participants and Principal Details .....	56
	Annexure 2 – Rate .....	62
	Annexure 3 – Minimum Technical Requirements .....	63
	Annexure 4 – Project Implementation Plan.....	64
	Annexure 5 – Products and Residue Management Plan .....	65
	Annexure 6 – Facility Performance Reporting Plan .....	66
	Annexure 7 – Community Waste Education Plan .....	67
	Annexure 8 – Waste Acceptance Protocol and Waste Delivery Plan .....	68
	Annexure 9 – Wastes.....	69
	Annexure 10 – Committed and Optional Waste Quantities .....	70

## RIVERS REGIONAL COUNCIL

### This Agreement

is made on \_\_\_\_\_ 2015 between the following Parties:

1. **Rivers Regional Council**  
 ABN: 80 479 097 483  
 a regional local government under the *Local Government Act 1995 (WA)*, having its principal office at 13 Third Road, Armadale, Western Australia 6112 (**Principal**)
2. **City of Armadale**  
 ABN 79 863 269 538  
 a local government under the *Local Government Act 1995 (WA)*, having its principal office at 7 Orchard Avenue, Armadale, Western Australia 6112
3. **City of Gosnells**  
 ABN 18 374 412 891  
 a local government under the *Local Government Act 1995 (WA)*, having its principal office at 2120 Albany Highway, Gosnells, Western Australia 6110
4. **City of Mandurah**  
 ABN 43 188 356 365  
 a local government under the *Local Government Act 1995 (WA)*, having its principal office at 3 Peel Street, Mandurah, Western Australia 6210
5. **City of South Perth**  
 ABN 65 533 218 403  
 a local government under the *Local Government Act 1995 (WA)*, having its principal office at Cnr Sandgate St and South Tce, South Perth, Western Australia 6151
6. **Shire of Murray**  
 ABN 16 036 156 261  
 a local government under the *Local Government Act 1995 (WA)*, having its principal office at 1915 Pinjarra Road, Pinjarra, Western Australia 6208
7. **Shire of Serpentine-Jarrahdale**  
 ABN 98 924 720 841  
 a local government under the *Local Government Act 1995 (WA)*, having its principal office at 6 Paterson Street, Mundijong, Western Australia 6123
8. **City of Canning**  
 ABN 80 227 965 466  
 a local government under the *Local Government Act 1995 (WA)*, having its principal office at 1317 Albany Highway, Cannington, Western Australia 6107
9. **Kwinana WTE Project Co Pty Ltd**  
 ACN: 165 661 263  
 of Lot 9500, Leath Road, Kwinana WA 6167  
 (**Contractor**),

under which the Principal agrees to purchase the Services of the Contractor in accordance with the Agreement, and the Contractor agrees to provide the Services in accordance with the Agreement, in consideration of the mutual promises contained in the Agreement.

The details of the Parties are shown in **Annexure 1**.

## RIVERS REGIONAL COUNCIL

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

In the Agreement:

**'Affected Party'** has the meaning set out in the definition of 'Force Majeure Event' in this **Clause 1.1**;

**'Agreement'** means this agreement between the Principal, the Participants and the Contractor;

**'Approvals and Licences'** means any approval, licence, consent, authority or permit;

**'BBSY Rate'** means the rate (which is expressed as a yield per centum per annum to maturity) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Perth time) on page 'BBSY' of the Reuters Monitor System on that day, having a term of one month;

**'Bill'** has the same meaning as 'bill of exchange' in the *Bills of Exchange Act 1909* (Cth) (but does not include a cheque or payment order);

**'Billing Period'** means one calendar month in a Financial Year;

**'Breach Notice'** has the meaning given by **Clause 19.3(a)**;

**'Business Day'** means a day on which banks are open for business in Perth, other than a Saturday, Sunday or public holiday in Perth or 27, 28, 29, 30 or 31 December;

**'Change of Law'** means a change of:

- (a) statute, regulation, or ministerial direction in force in Australia, made by the Commonwealth of Australia or the State of Western Australia or the introduction or repeal of a statute, regulation, or ministerial direction by either the Commonwealth of Australia, or the State of Western Australia (but the reference to a ministerial direction does not include a ministerial direction arising out of a failure by the Contractor to comply with existing Laws, Approvals and Licences);
- (b) any applicable judgment of a relevant court of law having jurisdiction in Western Australia which changes a binding precedent;
- (c) to the extent they apply to the cleaning of flue gases used in the RRF, any Approvals and Licences necessary to construct the RRF or provide the Services in accordance with the Agreement, granted by either the Commonwealth of Australia or the State of Western Australia, and any emissions standard that must be complied with under any such Approvals and Licences (including the emissions limits specified in Annex V of the European Union Waste Incineration Directive 2000/76 or its updates, if compliance with the Directive is required under any such Approvals and Licences including the Ministerial Statement granted under Part IV of the EPA),

which:

(d) comes into effect after the Contract Date and had not been tabled as a bill in the parliament in which it was passed, prior to the Contract Date;

(e) a Party is required by Law to comply with,

but does not include a change or introduction of:

(f) Laws related to amalgamation, mergers, dissolution or otherwise of the Principal, the Participants or any other local or regional government;

(g) local laws enacted by an Affected Party; or

## RIVERS REGIONAL COUNCIL

(h) taxes, levies or other similar imposts;

'**Change of Law Notice**' has the meaning set out in **Clause 18.2(b)**;

'**Clause**' means any clause of the Agreement;

'**Commissioning Plan**' means the commissioning plan as approved by the Department of Environmental Regulation under Part V, Division 3 of the EPA;

'**Commissioning Scheduled Waste**' is defined in **Clause 6.4(h)**;

'**Commissioning Shortfall Fee**' is defined in **Clause 6.4(i)**;

'**Commissioning Shortfall Waste**' is defined in **Clause 6.4(h)**;

'**Committed Waste**' means the per annum quantities of Wastes of that name, expressed in tonnes and set out in **Annexure 10**, as amended in the Waste Delivery Plan for the relevant Financial Year;

'**Community Waste Education Plan**' means the community waste education plan for the education of communities within the districts of the Member Councils, and the City of Canning in the City of Canning's discretion, as set out in **Annexure 7** and as updated in accordance with **Clause 4(c)**;

'**Contract Date**' means the date first written above;

'**Contractor Default**' has the meaning set out in **Clause 19.1**;

'**Contractor Maximum Liability Amount**' is defined in **Clause 16(b)**;

'**Contractor's Personnel**' means any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representatives of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor;

'**Cure Plan**' has the meaning set out in **Clause 19.4(a)**;

'**Date of Practical Completion**' means the date on which Practical Completion of the RRF is achieved;

'**Default Rate**' means a rate equivalent to 2% per annum above:

- (a) the BBSY Rate; or
- (b) if the BBSY Rate is no longer available or, if in the reasonable opinion of the Principal, the BBSY Rate becomes an inappropriate rate to benchmark the default rate or becomes incapable of application, the rate reasonably determined by the Principal to be the appropriate equivalent rate having regard to prevailing market conditions;

'**Defaulting Party**' has the meaning set out in **Clause 19.3(a)**;

'**Delivered Waste**' is defined in **Clause 6.4(h)**;

'**Direct Deed**' means the agreement of that name between the Principal, the Participants, the Contractor and the Security Trustee, as contained in Annexure 11;

'**Dissolution Date**' has the meaning given in **Clause 22.1(a)**;

'**EPA**' means the *Environmental Protection Act 1986* (WA);

'**Facility Performance Reporting Plan**' means the facility performance reporting plan for the purposes of public reporting and education, as set out in **Annexure 6** and as updated in accordance with **Clause 4(c)**;

'**Fee**' means the amount due and payable to the Contractor for providing the Services in the Billing Period calculated in accordance with **Clause 13**;

## RIVERS REGIONAL COUNCIL

'**Financial Close**' means such time as the Direct Deed, Key Contracts and the Financing Documents have been duly executed by all parties to those documents and all conditions precedents under those documents have been satisfied or waived, in writing;

'**Financial Close Plan**' means a detailed plan prepared by the Contractor and provided to the Principal that sets out each task or activity that the Contractor must complete or achieve to achieve Financial Close, including timeframes for delivery or achievement of those tasks or activities;

'**Financial Year**' means any 12 month period commencing on 1 July and ending on 30 June, provided that the first Financial Year will commence on the day following the date that the Services CPs are satisfied, as notified in accordance with **Clause 8(d)**, and end on the next 30 June and the last Financial Year will commence on 1 July immediately preceding the end of the Term and end on the last day of the Term;

'**Financiers**' means the providers of senior secured financing to the Contractor for the construction of the RRF;

'**Financing Documents**' means the documents entered into by the Contractor for the purpose of obtaining debt and equity financing for the whole of the construction of the RRF (other than the Direct Deed) on terms:

- (a) not materially different from the relevant term sheet provided to the Principal as described in **Clause 2.2(a)** (and materially different is a difference that has a material adverse effect on the Principal or the Services); or
- (b) which are materially different, but in respect of which the Principal has notified the Contractor under **Clause 2.2(c)** that it does not object to the material difference for the purpose of evidencing Financial Close;

'**Force Majeure Event**' means the occurrence after the Contract Date of:

- (a) fire, explosion, lightning, storm, tempest, flood, ionising radiation, earthquakes, riot and civil commotion, but not including spontaneous combustion in the Wastes at the RRF;
  - (b) any blockade or embargo;
  - (c) any:
    - i official or unofficial strike;
    - ii lockout;
    - iii go-slow; or
    - iv other dispute,
 generally affecting the haulage, construction, or waste management industries in the Perth metropolitan area or a significant sector of them;
  - (d) war, civil war, declared national emergency, armed conflict or terrorism;
  - (e) nuclear, chemical or biological contamination, provided that in respect of contamination arising out of the Wastes delivered, the Contractor has complied with the Waste Acceptance Protocol;
  - (f) pressure waves caused by devices travelling at supersonic speeds; or
  - (g) a Change of Law,
- which causes a Party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under the Agreement but does not include:
- (h) any failure or inability to pay money;



## RIVERS REGIONAL COUNCIL

- (i) an event to the extent that it is caused or contributed to by the Party seeking relief from performance or to the extent that the effect of the event could have been avoided or mitigated by a prudent contractor or local government (as the case may be) acting reasonably; or
- (j) any event to the extent that it is caused or contributed to a breach of contract or Law by the Party seeking relief from performance or to the extent that the effect of the breach of contract or Law could have been avoided or mitigated by a prudent contractor or local government (as the case may be), acting reasonably;

**'Key Contracts'** means:

- (a) the design and construct contract for the design and construction of the RRF; and
- (b) the operation and maintenance contract for the operation and maintenance of the RRF,

between the Contractor and one or more Subcontractors on terms:

- (c) not materially different from the relevant term sheet provided to the Principal as described in **Clause 2.2(a)** (and materially different is a difference that has a material adverse effect on the Principal or the Services); or
- (d) which are materially different, but in respect of which the Principal has notified the Contractor under **Clause 2.2(c)** that it does not object to the material difference for the purpose of evidencing Financial Close;

**'Law'** means any statute, regulation, by-law, local law, Approvals and Licences or other authorisation, direction, order or ruling of a Minister of the Crown, or other authorised government representative pursuant to statute, any common law in force or applicable from time to time in Australia or any final determination of a court or legal tribunal within Australia;

**'Legal Requirements'** means any requirement of Law and any fees and charges payable in respect of the foregoing;

**'Loss'** means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Approvals or Licences;

**'Member Councils'** means the City of Armadale, the Shire of Waroona, the City of Gosnells, the City of Mandurah, the City of South Perth, the Shire of Murray and the Shire of Serpentine-Jarrahdale;

**'Minimum Technical Requirements'** means the minimum technical requirements for the RRF set out in **Annexure 3**;

**'Notice'** means any notice given by one Party to any other Party, in accordance with the Agreement;

**'Optional Waste'** means, in respect of a Participant in any Financial Year, the amount of all Wastes required to be delivered under **Clause 9.1** in excess of that Participant's Committed Waste in that Financial Year, expressed in tonnes (forecast estimates of which are set out in **Annexure 10**);

**'Participants'** means the City of Armadale, the City of Gosnells, the City of Mandurah, the City of South Perth, the Shire of Murray, the Shire of Serpentine-Jarrahdale and the City of Canning and **'Participant'** means one of them;

**'Participants Agreement'** means the agreement entered into between the Participants and the Principal under which the Participants agree to deliver Wastes to the Principal, dated on or about the Contract Date;

## RIVERS REGIONAL COUNCIL

**'Party'** means the Principal, any one or more Participant or the Contractor and **'Parties'** means all of them;

**'Practical Completion'** has the meaning set out in **Clause 6.5**;

**'Principal Maximum Liability Amount'** is defined in **Clause 16(a)**;

**'Principal's Costs'** means the Principal's legal and other professional costs incurred in connection with the tender process conducted by the Principal for the Services in relation to the evaluation of the Contractor's tender and the preparation of Agreement, being \$400,000 (exclusive of GST);

**'Principal's Party'** means the Participants, or a party acting on behalf of or engaged by the Principal or one or more Participants;

**'Product'** means a material or commodity that is produced by the RRF, which has commercial value or assists the Principal or the Participants (or both) to achieve environmental or social objectives;

**'Products and Residue Management Plan'** means the products and residue plan as set out in Annexure 5 and as updated in accordance with **Clause 4(c)**;

**'Project Implementation Plan'** means the project implementation plan prepared by the Contractor and approved by the Principal, set out in **Annexure 4**;

**'Quarterly Billing Period'** means the following Billing Periods:

- (a) July to September;
- (b) October to December;
- (c) January to March; and
- (d) April to June,

in a Financial Year;

**'Rate'** means the amount of dollars per tonne payable to the Contractor for the receipt and processing of Wastes, as shown in **Annexure 2** and as updated from time to time in accordance with the Agreement;

**'Rectification Plan'** means a rectification plan prepared by the Contractor and approved by the Principal as described in **Clause 9.5(c)**;

**'Representative'** means the representatives of the Principal or the Contractor (as the case may be) for the purposes of the Agreement as set out in **Annexure 1** (as may be replaced from time to time in accordance with **Clause 5.1(b)**);

**'Residue'** means everything produced or derived as a result of receiving the Wastes at the RRF which is not sold or disposed of by the Contractor as a Product, including residual bottom ash, fly ash and residual material that is extracted from any air pollution control system;

**'Resource Recovery Facility'** or **'RRF'** means the resource recovery facility to be provided by the Contractor, at which Wastes are to be received and processed by the Contractor in accordance with the Agreement;

**'RRF Capacity'** means the licensed capacity of the RRF, as increased by the Contractor from time to time;

**'Scheduled Date of Practical Completion'** means 36 months from the Contract Date, as updated pursuant to the Agreement;

**'Security Trustee'** means the 'Security Trustee' as defined in the Direct Deed.

## RIVERS REGIONAL COUNCIL

**'Services'** means the waste processing services to be provided by the Contractor to the Principal, as described in the Agreement, from the day following the date that the Services CPs are satisfied, as notified in accordance with **Clause 8(d)**, until the end of the Term;

**'Services CPs'** means the following conditions precedent:

- (a) Practical Completion has been achieved;
- (b) all insurances have been obtained by the Contractor in accordance with the Agreement; and
- (c) the Waste Delivery Plan for the first Financial Year of the Term has been prepared by the Contractor and approved by the Principal;

**'Shortfall Fee'** has the meaning set out in **Clause 13.1(f)**;

**'Shortfall Waste'** is defined in **Clause 13.1(d)**;

**'Specified Dispute'** means a dispute relating to a matter under **Clause 9.3** or **13**, whether a Rectification Plan is required to be accepted by the Principal in accordance with **Clause 9.5(g)**, Annexures 8 or 9 of the Agreement or any other dispute that the parties to the dispute agree can be resolved by expert determination;

**'Subcontractor'** means any person engaged by the Contractor in connection with the construction of the RRF or the provision of the Services and includes consultants, subcontractors, suppliers and other contractors;

**'Tender'** means the offer submitted by the Contractor to provide the Services under the Agreement and includes any associated documentation;

**'Term'** commences on the Contract Date and continues until the date specified in **Clause 2.4**;

**'Unavailable'** means that, on a given day:

- (a) the Contractor is unable to receive all of the Wastes delivered by or on behalf of the Principal on that day (or Wastes which would have been delivered but for **Clause 9.5(j)**) and thereafter process that Waste at the RRF in accordance with the requirements of the Agreement and all Laws; or
- (b) the Contractor receives Wastes delivered by or on behalf of the Principal and diverts any of the Wastes to any landfill,

but the RRF is not Unavailable if the Contractor is unable to process all of the Wastes delivered by or on behalf of the Principal on that day, but can store the Wastes in accordance with all relevant Laws, including its licence conditions, and processes those Wastes at the RRF at a later date in accordance with the requirements of the Agreement and all Laws.

**'Unavailability'** has a corresponding meaning;

**'Unavailability Immediate Default'** means the RRF is Unavailable but the Contractor instead processes or stores waste from a third party for the Contractor's direct or indirect financial gain, other than a financial gain which is obtained inadvertently as a consequence of the Contractor processing or storing waste from a third party because of either a:

- (a) technical or operational constraint at the RRF; or
- (b) scheduling error on the part of the Contractor,

provided that the Contractor has provided reasonable evidence that the circumstances in paragraph (a) or (b) occurred and that they are unlikely to reoccur.

**'Waste Acceptance Protocol'** means the protocol set out in **Annexure 8**, as amended by the Contractor and approved by the Principal from time to time;

**'Waste Delivery Plan'** means:

## RIVERS REGIONAL COUNCIL

- (a) for the first Financial Year, the plan contained in **Annexure 8**, as updated by the Contractor and approved by the Principal in accordance with **Clause 9.2**; and
- (b) following the first Financial Year, the plan prepared by the Contractor and approved by the Principal in accordance with **Clause 9.2(c)**,

in each case consistent with **Annexure 10**;

'**Wastes**' means the wastes to be delivered to the RRF in accordance with the Agreement, as described in **Annexure 9** and as amended in accordance with Annexure 9; and

'**Wilful Misconduct**' means any act or failure to act which:

- (a) does not breach the Agreement, but:
  - i is deliberate and wrongful; or
  - ii involves reckless disregard or wanton indifference to the likely consequences; or
- (b) breaches the Agreement in circumstances where the person who acted or failed to act knew that their action or failure to act would breach the Agreement.

### 1.2. Interpretation

In the Agreement, heading and bold type are for convenience only and do not affect the interpretation of the Agreement and, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- (b) Monetary references are references to Australian currency.
- (c) Reference to an Act by name includes the rules, regulations and local laws for the time being in force thereunder for the period of the Agreement.
- (d) Where two or more persons or bodies comprise the Contractor they shall be bound hereby jointly and severally.
- (e) Other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning.
- (f) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government authority as well as an individual.
- (g) A reference to any thing (including any right) includes a part of that thing but nothing in this **Clause 1.2(g)** implies that performance of part of an obligation constitutes performance of the obligation.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a Party includes that Party's successors and permitted assignees.
- (k) A reference to an agreement other than the Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) A reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind.
- (m) No provision of the Agreement will be construed adversely to a Party because that Party was responsible for the preparation of the Agreement or that provision.

## RIVERS REGIONAL COUNCIL

- (n) References to time are to Australian Western Standard Time.
- (o) A reference to a body, other than a Party to the Agreement (including an institute, association or authority), whether statutory or not:
  - i which ceases to exist; or
  - ii whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### 1.3. Interpretation of inclusive expressions

Specifying anything in the Agreement after the words 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### 1.4. Business Day

If the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### 1.5. Agreement components

The Agreement includes any annexures.

### 1.6. Ambiguities and inconsistencies

If there is any inconsistency between the terms and conditions in the Agreement, and the Principal and the Contractor are unable to resolve the inconsistency, the matter must be resolved in accordance with **Clause 21**.

## 2. FINANCIAL CLOSE AND TERM

### 2.1. Commencement of Agreement

The Agreement commences and becomes effective on the Contract Date.

### 2.2. Financial Close

- (a) The Contractor has provided the Principal term sheets for the proposed Key Contracts and the proposed Financing Documents and a Financial Close Plan prior to the Contract Date.
- (b) Subject to **Clause 2.2(c)**, the Contractor must provide to the Principal the Key Contracts and the Financing Documents as soon as they have been executed, in accordance with the Financial Close Plan and, in any event, no later than 6 months following the Contract Date or such longer period as the Principal gives the Contractor to achieve Financial Close in accordance with **Clause 2.2(f)**.
- (c) If a proposed Key Contract or proposed Financing Document is materially different from a term sheet provided to the Principal as described in **Clause 2.2(a)** (being a difference that has a material adverse effect on the Principal or the Services) or is not the subject of such a term sheet, the Contractor must provide the draft contract to the Principal for review prior to its execution and a reasonable time prior to the expiry of 6 months following the Contract Date. The Principal must provide written notification to the Contractor as to whether it accepts the material difference or the

## RIVERS REGIONAL COUNCIL

contract which was not the subject of a term sheet and, if it does not accept the material difference or the contract, its reasons for doing so (which must detail the anticipated material adverse effect on the Principal or the Services).

- (d) The Contractor must provide regular reports to the Principal on the Contractor's progress in achieving Financial Close as against the Financial Close Plan.
- (e) The Principal's acceptance or otherwise of the proposed Key Contracts and the proposed Financing Documents is for the purpose of confirming that Financial Close has occurred only, and is not an endorsement or approval of those documents by the Principal.
- (f) If Financial Close will not occur within 6 months of the Contract Date, the Contractor may request that the Principal grant the Contractor an extension of time to achieve Financial Close. The Principal will act reasonably in its consideration of whether to grant an extension of time. Without limitation, it is reasonable for the Principal not to approve an extension of time if the period of time remaining to achieve Financial Close is significant, if there has been more than one request for an extension or if the Principal considers there is a reasonable risk of not finding an alternative for the processing of its waste. The Principal may impose conditions on any extension to the date to achieve Financial Close, acting reasonably. The Principal may also unilaterally extend the date for achieving Financial Close, notwithstanding that it has not received a request from the Contractor to do so, by providing notice of the extension to the Contractor.
- (g) If Financial Close has not occurred within 6 months of the Contract Date, or such later date as the Principal gives the Contractor to achieve Financial Close in accordance with **Clause 2.2(f)**, the Principal may elect to terminate the Agreement by notice. Any notice must be served within the later of:
  - i 10 Business Days of the date that is 6 months after the Contract Date;
  - ii the later date as the Principal gives the Contractor to achieve Financial Close; and
  - iii 10 Business Days of the date that the Principal gives the Contractor notice that it is not granting an extension to the time to achieve Financial Close, if such a request has not been resolved as at the date that Financial Close was required to be achieved.
- (h) The Agreement will terminate on the date of the notice and no Party will be entitled to make any claim against, or to recover any Loss from, the other as a result of the termination, except:
  - i in respect of any accrued rights in relation to prior breaches under the Agreement; and
  - ii the Contractor must pay the Principal's Costs to the Principal within 20 Business Days of termination.

### 2.3. Security

- (a) The Contractor must obtain and deliver to the Principal the Bank Guarantee no later than the Contract Date for an amount equal to the Principal's Costs, in accordance with this **Clause 2.3**.
- (b) The Contractor must ensure that the Bank Guarantee:
  - i is maintained in the amount equal to the Principal's Costs and otherwise remains valid and enforceable until at least 12 months from the Contract Date, or such longer time as the Principal agrees under **Clause 2.2(f)**; and

## RIVERS REGIONAL COUNCIL

- ii does not contain any provisions inconsistent with the rights of the Principal under the Agreement.
- (c) The Principal may have full recourse to the Bank Guarantee if the Principal elects to terminate the Agreement in accordance with **Clause 2.2(g)**.
- (d) The Principal is entitled to retain the Bank Guarantee until Financial Close is achieved or when the Principal's Costs owed by the Contractor to the Principal under **Clause 2.2(h)ii** have been paid in full to the Principal.
- (e) For the purposes of this **Clause 2.3, 'Bank Guarantee'** means an irrevocable and unconditional bank guarantee in a form acceptable to the Principal and issued by:
  - i an Australian trading bank registered under the *Banking Act 1959* (Cth); or
  - ii other financial institution,
 with a current Standard & Poor's rating of not less than A- or a similar rating from another financial institution acceptable to the Principal.

### 2.4. Term

- (a) The term of the Agreement expires on the 20th anniversary of the Scheduled Date of Practical Completion, subject to any other earlier termination permitted under the Agreement.
- (b) The Principal may, at its sole discretion, extend the Term by up to 2 periods of 5 years by giving the Contractor no less than 2 years' Notice of its intention to exercise an option to extend (or such shorter notice period as agreed between the Principal and the Contractor).

---

## 3. QUALITY OF THE SERVICES

The Contractor must ensure that:

- (a) the Services are provided in accordance with all applicable Laws;
- (b) the Services are performed with the professional skill, care and diligence expected of a professional contractor; and
- (c) any items which the Contractor uses or supplies in conjunction with the Services are fit for their usual purpose and any purpose described in the Agreement and will be suitable, appropriate and adequate for the Contractor to perform its obligations under the Agreement.

---

## 4. OVERVIEW OF THE SERVICES

- (a) The Contractor must:
  - i provide a Resource Recovery Facility suitable for receiving and processing Wastes in accordance with the terms of the Agreement;
  - ii ensure that the RRF is constructed and operates to meet the Minimum Technical Requirements as shown in **Annexure 3**;
  - iii commission and test the RRF in accordance with an approved Commissioning Plan as detailed in **Clause 6.4(a)**;

## RIVERS REGIONAL COUNCIL

- iv ensure that the RRF is operational and able to receive and process Wastes in accordance with the Agreement by the Scheduled Date of Practical Completion;
  - v receive and process Wastes delivered by the Principal at the RRF, in accordance with the Agreement, including the Minimum Technical Requirements and in accordance with and subject to the Waste Acceptance Protocol;
  - vi recover and sell Products from the Wastes delivered in accordance with the Agreement and the Products and Residue Management Plan;
  - vii dispose of all Residue in accordance with the Agreement, all Laws and the Products and Residue Management Plan;
  - viii conduct regular performance testing of the RRF and submit regular reports in accordance with the Facility Performance Reporting Plan;
  - ix comply with the Community Waste Education Plan in accordance with **Clause 4(b)**; and
  - x ensure that access to the site of the RRF and the waste disposal point is suitable to accommodate trucks of size up to and including category 3 heavy vehicles (prime mover towing 2 semi-trailers).
- (b) The Community Waste Education Plan must be jointly implemented by the Contractor and the Principal in the communities within the districts of the Member Councils, and the City of Canning at the City of Canning's discretion.
  - (c) No less than one month prior to the commencement of each Financial Year (or such other period as agreed by the Contractor and the Principal), the Contractor and the Principal must review the Products and Residue Management Plan, the Facility Performance Reporting Plan and the Community Waste Education Plan for currency with the provision of the Services for the next Financial Year and, where reasonably required by the Principal, the Contractor must update such plans to reflect the reasonable requirements of the Principal. The Contractor must submit any updated plans (other than the Products and Residue Management Plan) for approval by the Principal. Once approved, the Facility Performance Reporting Plan and the Community Waste Education Plan will apply for the relevant Financial Year. If the Principal and the Contractor are unable to agree on the updated Facility Performance Reporting Plan or the Community Waste Education Plan, the relevant plan for the previous Financial Year applies to the next Financial Year.
  - (d) The Principal may, in its discretion, waive the requirement for the Contractor to review and update the Products and Residue Management Plan, the Facility Performance Reporting Plan or the Community Waste Education Plan in a Financial Year.
  - (e) Without limiting the Agreement, the Agreement does not restrict the Contractor from receiving and processing Wastes or other material which are not the subject of the Agreement at the RRF.

---

## 5. REPRESENTATIVES AND KEY PERSONNEL

### 5.1. Representatives

- (a) Each of the Contractor and the Principal must appoint a Representative to act on behalf of the Contractor or the Principal (as the case may be) for the purpose of the Agreement within delegation limits which must be advised in writing to the Contractor and the Principal (as the case may be).



## RIVERS REGIONAL COUNCIL

- (b) The identity and contact details of the Contractor's and Principal's Representative as at the Contract Date are set out in **Annexure 1**. Each of the Contractor and the Principal must notify the other in writing of a change to its respective Representative.

### 5.2. Key Personnel

The Contractor must ensure that the key personnel retain the roles assigned to them in respect of the Services, being those roles outlined in **Annexure 1**, unless otherwise approved by the Principal (acting reasonably and taking into account resignation and illness).

### 5.3. Power to Act for the Principal

Anything to be done or performed by the Principal may be done and performed by the Representative appointed by the Principal.

### 5.4. Power to Act for the Contractor

Anything to be done or performed by the Contractor may be done and performed by the Representative appointed by the Contractor.

## 6. DEVELOPMENT OF THE RRF

The Contractor must provide, own and operate (or procure the operation of) the RRF in order to provide the Services in accordance with the Agreement.

### 6.1. Approvals and Licences

- (a) The Contractor must obtain, maintain and renew all required Approvals and Licences necessary to construct the RRF and provide the Services.
- (b) If any Approvals and Licences are revoked or withdrawn, the Contractor must do everything necessary to regain the relevant Approval and Licence and immediately inform the Principal in writing.

### 6.2. Timetable

The Contractor must do all things necessary to comply with the Project Implementation Plan, including ensuring that the Wastes can be delivered to the RRF in accordance with the Agreement by the Scheduled Date of Practical Completion.

### 6.3. Principal to be Kept Informed

Prior to the Date of Practical Completion, the Contractor must provide the Principal with monthly, or otherwise as agreed by the Principal, written reports setting out the current progress of the work against the Project Implementation Plan and the then current version of the construction programme for the RRF.

### 6.4. Commissioning

- (a) The Contractor must:
- i prepare a commissioning plan for the RRF including reasonable requirements, having regard to the technical requirements of the RRF, for Wastes delivery by the Principal for the commissioning tests;

## RIVERS REGIONAL COUNCIL

- ii use all reasonable endeavours to progress the approval of its commissioning plan with the Department of Environmental Regulation in compliance with Part V, Division 3 of the EPA;
  - iii not less than 5 Business Days after approval of the commissioning plan in accordance with **Clause 6.4(a)ii**, provide the Principal with a copy of the commissioning plan approved in accordance with **Clause 6.4(a)ii**. The approved plan becomes the 'Commissioning Plan';
  - iv obtain all other Approvals and Licences to undertake the commissioning;
  - v give the Principal at least 20 days' written notice prior to commencing the commissioning tests; and
  - vi give the Principal at least 40 days', (20 days', ten 10 days' and 5 days' written notice of the date upon which it believes that the independent certifier will issue a certificate evidencing the fact that the Minimum Technical Requirements have been achieved.
- (b) Without limiting **Clause 6.4(a)**, not less than 60 Business Days prior to required delivery for commissioning tests, the Contractor shall notify the Principal of the type, quantity and timing (which must each be reasonable, having regard to the technical requirements of the RRF) of Wastes to be delivered by the Principal for the commissioning tests as required to commission in compliance with Part V, Division 3 of the EPA.
- (c) Following notification in accordance with **Clause 6.4(b)** and upon receiving notice from the Contractor under **Clause 6.4(a)v**, the Principal must ensure the quantity and type of Wastes notified under **Clause 6.4(b)** is delivered to the RRF at the time notified under **Clause 6.4(b)** for the purpose of the Contractor conducting the commissioning tests.
- (d) If the Principal fails to deliver Wastes in accordance with **Clause 6.4(c)** and that failure delays or disrupts the commissioning tests resulting in the Contractor being delayed in completing the commissioning tests as required to commission the RRF in compliance with Part V, Division 3 of the EPA, then subject to **Clauses 6.4(e)**, **6.4(f)** and **6.4(g)**, the Scheduled Date of Practical Completion will be extended by the period that the Principal's failure caused Practical Completion to be delayed, which period will be determined acting reasonably.
- (e) The Contractor will not be entitled to an extension of the Scheduled Date of Practical Completion unless the Contractor has taken all reasonable steps to mitigate the delay. The obligation under this clause to take all reasonable steps to mitigate the delay does not include an obligation on the Contractor to incur additional costs.
- (f) Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not due to the Principal's failure to deliver Wastes in accordance with **Clause 6.4(c)**, then the Contractor is not entitled to an extension of the Scheduled Date of Practical Completion to the extent of the concurrency.
- (g) For the avoidance of doubt, if the Principal fails to deliver Wastes in accordance with **Clause 6.4(c)** and that failure does not cause Practical Completion to be delayed, the Contractor is not entitled to an extension of time or any other remedy in respect of such failure.
- (h) If the Wastes delivered by the Principal on any day during commissioning (**Delivered Waste**) is less than the Wastes that the Principal is obligated to deliver on that day in accordance with **Clause 6.4(c) (Commissioning Scheduled Waste)**, the difference (expressed in tonnes) is the Commissioning Shortfall Waste.

## RIVERS REGIONAL COUNCIL

- (i) If:
- i the Contractor is entitled to an extension of time to the Scheduled Date of Practical Completion in accordance with this **Clause 6.4**; and
  - ii the Delivered Waste is less than the 70 per cent of the Commissioning Scheduled Waste (when expressed as a percentage),
- the Principal must pay to the Contractor the Commissioning Shortfall Fee in respect of each day that the Contractor is entitled to an extension of time as follows:
- Commissioning Shortfall Fee = Commissioning Shortfall Waste x Rate**
- where,
- Commissioning Shortfall Waste = the quantity of Commissioning Shortfall Waste calculated in accordance with **Clause 6.4(h)**.
- Rate = the Rate as defined in **Annexure 2** as adjusted in accordance with the Agreement.
- (j) If the Commissioning Shortfall Fee is payable by the Principal to the Contractor in respect of the failure to deliver the Commissioning Scheduled Waste on 3 separate occasions, in respect of each further instance that the Commissioning Shortfall Fee is payable by the Principal, the Principal will pay, as liquidated damages and in addition to the Commissioning Shortfall Fee, \$65 per tonne in respect of the Commissioning Shortfall Waste.
- (k) The extension of time to the Scheduled Date of Practical Completion, payment of the Commissioning Shortfall Fee and the payment of liquidated damages under **Clause 6.4(j)** is the Contractor's sole remedy for the Principal failing to deliver the Wastes required to be delivered under **Clause 6.4(c)**.
- (l) The Contractor must procure and bear the costs of testing, including all consumables (other than Wastes) required for the testing and commissioning of the RRF.
- (m) The Contractor must dispose of all untreated Wastes and any Residue produced as part of the testing and commissioning in accordance with all Laws and the Agreement.
- (n) The Fee for processing and disposing of the Delivered Wastes will be calculated at the Rate multiplied by the tonnage delivered to and received at the RRF under **Clause 6.4(c)**, without further cost to the Principal. The Contractor may deliver an invoice to the Principal for the Fee, Commissioning Shortfall Fee (if any) and liquidated damages under **Clause 6.4(j)** (if any) incurred during commissioning following the Date of Practical Completion, which invoice must be paid by the Principal in accordance with **Clause 13.3**.
- (o) The Contractor must promptly provide the Principal with copies of all results of the commissioning tests of the RRF.

### 6.5. Practical Completion

Practical Completion will be achieved when:

- (a) the commissioning tests required under the Commissioning Plan have been completed and acceptable results of the commissioning tests have been achieved as evidenced by the issue of the licence to operate the RRF by the Department of Environmental Regulation pursuant to Part V, Division 3 of the EPA;

## RIVERS REGIONAL COUNCIL

- (b) the Contractor has provided the Principal with copies of the results of the commissioning tests demonstrating that the commissioning tests have been achieved as provided in **Clause 6.5(a)**;
- (c) the Principal has received a certificate from an independent certifier evidencing the fact that the Minimum Technical Requirements have been achieved, and that certificate is able to be relied on by the Principal; and
- (d) the Contractor has obtained all necessary Approvals and Licences to receive Wastes and operate the RRF in accordance with the Agreement.

## 7. EXTENSION OF TIME

### 7.1. Delays in Date of Practical Completion

The Principal may (in its absolute discretion) grant an extension of time for the Scheduled Date of Practical Completion.

### 7.2. Delays due to Force Majeure Event

If a Force Majeure Event occurs prior to the Scheduled Date of Practical Completion, **Clause 18.1** applies.

## 8. CONDITIONS PRECEDENT TO SERVICES

- (a) Other than pursuant to **Clause 6.4**:
  - i the obligation to deliver Wastes and the commencement of the Services are conditional upon the satisfaction or waiver of all of the Services CPs; and
  - ii the Principal's obligation to deliver Wastes and the Contractor's obligation to perform the Services commences from the day following the date of satisfaction of the Services CPs.
- (b) The Contractor must ensure that the Services CPs are satisfied as expeditiously as possible and in any event on or before the Scheduled Date of Practical Completion. For the avoidance of doubt, the Services CPs may be satisfied prior to the Scheduled Date of Practical Completion, provided that reasonable notice of the early completion has been given to the Principal.
- (c) Within a reasonable time prior to the Scheduled Date of Practical Completion having regard to the time required to review the evidence, the Contractor must provide a Notice and reasonable supporting documented evidence to the Principal to demonstrate that each of the Services CPs has been satisfied.
- (d) The Principal shall determine, acting reasonably and within 5 Business Days following receipt of the Notice, if the Services CPs have been satisfied. If the Principal determines that a Services CP has been satisfied the Principal shall forthwith issue a Notice to that effect to the Contractor specifying the date of satisfaction. For the avoidance of doubt, if the Principal has received a copy of the licence to operate the RRF by the Department of Environmental Regulation pursuant to Part V, Division 3 of the EPA, the Principal must not dispute that the RRF has passed the commissioning tests.
- (e) A Services CP shall not be satisfied until a Notice to that effect has been (or it is determined should have been) issued by the Principal.

## RIVERS REGIONAL COUNCIL

- (f) The Principal may waive a Services CP by issuing a Notice to that effect to the Contractor.

---

## 9. RESOURCE RECOVERY SERVICES

### 9.1. Receipt and Processing of Wastes

- (a) Without limiting **Clause 22.2(b)**, the Principal will satisfy its obligation to deliver Wastes to the RRF by procuring the delivery of Wastes to the RRF by the Participants or a Principal's Party. References in this Agreement to the Principal delivering Wastes include Wastes delivered on the Principal's behalf by a Principal's Party.
- (b) Subject to the remainder of this **Clause 9.1**, the Principal will procure the delivery to the RRF of all Wastes collected by or on behalf of the Participants and generated within the Participants' respective districts.
- (c) Subject to **Clause 9.1(h)**, the obligation to deliver Wastes to the RRF in the Agreement applies only to Wastes collected by or on behalf of the Participants and generated within Participants' respective districts (being the districts as at the date of the Agreement).
- (d) Without limiting the Principal's obligation to either deliver or pay for the Committed Waste in accordance with **Clause 13.1(f)**, the Principal is not required to procure the delivery of Optional Waste collected by or on behalf of the Participants and generated within the Participants' respective districts in excess of the amounts set out in **Annexure 10** as at the Contract Date which would cause the Principal to be in breach of section 3.57 of the *Local Government Act 1995 (WA)* and the associated *Local Government (Functions & General) Regulations 1996 (WA)*.
- (e) The Principal must not procure the delivery of Wastes which would cause the amounts of Wastes delivered to the RRF by the Principal to exceed the RRF Capacity.
- (f) The Contractor shall receive all Wastes delivered to it by the Principal and process all Wastes which are received, provided that the Wastes delivered by the Principal do not exceed the RRF Capacity. The Contractor must comply with the Waste Acceptance Protocol when accepting or rejecting waste delivered to the RRF.
- (g) Without limiting **Clause 9.1(b)**, the Principal will use reasonable endeavours to procure the delivery of the Wastes in accordance with the Waste Delivery Plan approved in accordance with **Clause 9.2**.
- (h) If, after the Contract Date:
- i the boundary of any Participant's district is changed; or
  - ii the rights or responsibilities of a Participant with respect to the collection of Wastes within a Participant's district change for any reason, including as a result of any statutory change or other change in law, or the loss of a Participant's right or responsibility to collect Wastes to another party,
- such that the tonnage of Wastes collected by, or on behalf of, the Participant and generated within the Participant's district is reduced:
- iii the relevant Participant must notify the Contractor of the proposed change promptly upon becoming aware of the proposal to effect the change, unless such notification would cause the Participant to breach any confidentiality obligations (in which case it must provide such notice as soon as it is legally able to do so);

## RIVERS REGIONAL COUNCIL

- iv the Principal will use its best endeavours to maintain the same levels of Wastes being delivered to the RRF as existed immediately prior to the change; and
- v the Principal will reasonably assist the Contractor to make submissions to the relevant body responsible for the proposed change in respect of leaving the Contractor in no worse position as a result of the change, provided that it is not required to make submissions that are adverse to its obligations as a local government,

provided that nothing shall affect the quantity of Committed Waste that the Principal is required to procure the delivery of or the obligation to pay any Shortfall Fee and liquidated damages (where applicable) in respect of any shortfall in the delivery of that quantity of Committed Waste.

### 9.2. Waste Delivery Plan

- (a) The Contractor must prepare an annual Waste Delivery Plan detailing the quantities of Committed Waste that must, and Optional Waste that will if it is generated, be delivered each month in accordance with this **Clause 9.2**.
- (b) For the first Financial Year, the Waste Delivery Plan must be updated by the Contractor and provided to the Principal for its approval no less than one month prior to commissioning of the RRF. The Committed Waste and Optional Waste contained in **Annexure 10** for the first Financial Year are calculated for 12 months and must be pro-rated to reflect the number of months that are actually in the first Financial Year. Once approved, the Waste Delivery Plan applies for the first Financial Year. If the Principal and the Contractor are unable to agree on the updated Waste Delivery Plan, the Waste Delivery Plan set out in **Annexure 8** will apply with the tonnages of Committed Waste and forecast Optional Waste not being less than the amount set out for the relevant Financial Year in **Annexure 10**, subject to pro-rating the Committed Waste and the forecast Optional Waste.
- (c) The Waste Delivery Plan for each subsequent Financial Year during the Term must be proposed by the Contractor for approval by the Principal no less than one month prior to the commencement of each relevant Financial Year during the Term (or part Financial Year in respect of the last Financial Year of the Term). Once approved, the Waste Delivery Plan applies for the relevant Financial Year. If the Principal and the Contractor are unable to agree on the new Waste Delivery Plan, the Waste Delivery Plan for the previous Financial Year applies to the next Financial Year, subject to the tonnages of Committed Waste and forecast Optional Waste for that Financial Year not being less than the applicable amount set out for that year in **Annexure 10**.
- (d) The aggregate tonnage for each of Committed Waste and Optional Waste for a Financial Year must not be altered in the relevant annual Waste Delivery Plan without the Principal's prior consent.
- (e) The Contractor may request, and the Principal may approve (acting reasonably), changes to the Waste Delivery Plan during a Financial Year in the event of an Unavailability of the RRF, to achieve delivery of the annual target of Committed Waste set out in **Annexure 10** for the relevant Financial Year.

### 9.3. Waste Acceptance Protocol

Wastes delivered by the Principal must be Acceptable Waste, as defined in **Annexure 9**. Once accepted by the Contractor in accordance with the Waste Acceptance Protocol the Wastes are deemed to be Acceptable Waste, as defined in **Annexure 9**.

## RIVERS REGIONAL COUNCIL

### 9.4. Weighing Waste

- (a) The Principal and the Contractor must weigh all Wastes that are delivered to the RRF on the RRF weighbridge pursuant to the Waste Acceptance Protocol.
- (b) The measurements taken by the Contractor at the RRF weighbridge will be conclusive evidence of the amount of Wastes accepted by the Contractor (unless the Contractor and the Principal agree that there has been a demonstrable error) and will be used for the purpose of calculating the Fee to be paid by the Principal.
- (c) The Contractor must ensure that the weighbridge is appropriately licensed and calibrated for accuracy in accordance with applicable Laws.

### 9.5. Unavailability of the RRF

- (a) During any period of Unavailability, subject to any relief granted under **Clause 18.1** and the Principal's election under **Clause 9.5(j)**, the Principal shall continue to procure delivery of Wastes and the Contractor shall continue to receive Wastes and the Principal shall continue to pay the Contractor the Fee.
- (b) Subject to **Clause 9.5(l)**, if the RRF is Unavailable, the Contractor shall, at its own cost, make arrangements acceptable to the Principal (acting reasonably) for the disposal of Wastes delivered to the RRF.
- (c) If the RRF is Unavailable on each day for a consecutive one month period or 6 weeks (in aggregate) in any 2 month period (**Unavailability Trigger**), the Contractor shall submit to the Principal a Rectification Plan within 10 Business Days of the Unavailability Trigger occurring. The Rectification Plan must detail:

- i how the failure to receive and process Wastes will be resolved;
- ii subject to **Clause 9.5(d)**, a timetable for such resolution;
- iii arrangements for the delivery of Wastes during the period of Unavailability; and
- iv the fee payable by the Principal during this period.

The fee payable during this period may vary from the Fee, in accordance with the following principles:

- v the Principal will pay no more than the Rate payable by the Principal immediately prior to the Unavailability Trigger;
  - vi any savings obtained by the Contractor due to the Contractor's costs being reduced as a result of the Unavailability or other failure to receive and process Wastes will be passed onto the Principal through a reduction in the Fees; and
  - vii the Contractor is solely responsible for any rectification costs for remedying Unavailability and otherwise dealing with its consequences and these costs are not taken into account in determining whether the Contractor's costs have reduced under **Clause 9.5(c)vi**.
- (d) The timetable proposed in the Rectification Plan:
    - i subject to **clause 9.5d)ii**), must not exceed a period of 6 months from the earlier to occur of:
      - (A) receipt by the Contractor of notification from the Principal of the Unavailability Trigger occurring; and
      - (B) the date of the submission of the Rectification Plan, with such earlier date being the "**Timetable Start Date**"; and

## RIVERS REGIONAL COUNCIL

- ii may be up to a maximum of 9 months from the Timetable Start Date if, to rectify the failure to receive and process Wastes, the Contractor is required to source long lead items or otherwise rectify significant defects in the RRF and provides a timetable with reasonable supporting evidence showing that:
  - (A) the rectification of the failure to receive and process Wastes can be overcome within 9 months from the Timetable Start Date;
  - (B) the rectification work being undertaken is of similar quality or specification as the remainder of the RRF; and
  - (C) the rectification cannot, using best endeavours, be reduced such that the rectification can be achieved within 6 months of the Timetable Start Date.
- (e) For the purposes of **clause 9.5d)ii**), the Contractor will be deemed to have used best endeavors in relation to sourcing and installation of long lead components if it has made bona-fide attempts to source components from:
  - i other plants in the Asia-Pacific region (if any) and such plants will not or cannot supply such components; and
  - ii at least three reputable leading global manufacturers or suppliers of such components have confirmed that they are unable to supply such components so as to achieve rectification within 6 months of the Timetable Start Date.
- (f) Within 10 Business Days of the receipt of the Rectification Plan, the Principal must, acting reasonably, by notice to the Contractor, advise whether the Rectification Plan is acceptable or if any amendments are required. The Principal may, in its absolute discretion, agree to a rectification period longer than the time specified in **Clause 9.5(d)**, but is under no obligation to do so and is not obliged to act reasonably in this respect.
- (g) If required pursuant to **Clause 9.5(f)**, and for no longer than 10 Business Days, the Contractor must promptly amend the Rectification Plan until it is acceptable to the Principal (acting reasonably). If there is a dispute as to whether the Principal should accept the Rectification Plan, that dispute will be referred for resolution in accordance with **Clause 21**. Notwithstanding **Clause 21.3(a)iii**, the Parties agree that any expert determination in respect of a dispute under this **Clause 9.5(g)** will be binding on the Parties, except in the case of fraud or manifest error. The time taken to resolve the Rectification Plan does not adjust the Timetable Start Date or otherwise entitle the Contractor to a longer rectification period in the Rectification Plan. Acceptance of the Rectification Plan by the Principal is not an endorsement of the Rectification Plan by the Principal and does not affect the Contractor's obligation to remedy the Unavailability.
- (h) If the Contractor fails to prepare a Rectification Plan or to resubmit such a plan and is not going through the process described in **Clause 9.5(g)**, that is a Contractor Default described in **Clause 19.1(d)** unless:
  - i the Unavailability has been rectified in the interim; or
  - ii the Contractor is using its best efforts to prepare such a plan but is unable to do so in the prescribed time periods due to matters outside of its reasonable control.
- (i) The Contractor must comply with the Rectification Plan agreed to or determined in accordance with **Clause 9.5(g)** and must resolve the Unavailability in accordance with, and by the date set out in, the Rectification Plan. A failure to do so may give



## RIVERS REGIONAL COUNCIL

rise to a Contractor Default as described in **Clause 19.1(b)** (if the requirements of that Clause are met), but not **Clause 19.1(e)**.

- (j) If the RRF is Unavailable on a given day, the Principal may upon giving Notice to the Contractor, choose not to deliver some or all of the Wastes that cannot be either processed by or stored at the RRF for the period of (and to the extent the RRF is affected by) the Unavailability, but will remain liable to pay the Fee in respect of any Wastes that are delivered to the RRF. The Principal must continue to deliver all Wastes that can be either processed or stored at the RRF in accordance with this Agreement and all Laws and will remain liable to pay the Shortfall Fee and, where applicable, liquidated damages in respect of any shortfall in delivery of those Wastes.
- (k) If **Clause 9.5(j)** applies, the amount of Committed Waste to be delivered for the relevant Financial Year will be reduced by the amount of Waste (as notified by the Principal to the Contractor) that the Principal delivers elsewhere pursuant to **Clause 9.5(j)** and that quantity of Waste must not be taken into account in calculating the Fee or the Shortfall Fee under **Clauses 13.1(b)** or **13.1(f)** (respectively). The reasonable supporting evidence of the Waste delivery elsewhere shall be used as the basis of the calculation.
- (l) To the extent Unavailability is caused or contributed to by breach or negligence by, or other wrongful act or omission of, the Principal or a Participant:
  - i **Clauses 9.5(a) to 9.5(k)** do not apply;
  - ii the Contractor is not obliged to continue receiving the Wastes to the extent prevented by the Unavailability;
  - iii if the Contractor notifies the Principal that it is not receiving Wastes, the Principal may deliver Wastes elsewhere, but is still obliged to pay the Shortfall Fee for Committed Waste and liquidated damages (where applicable) for Wastes that have not been delivered.

---

## 10. PRODUCTS AND RESIDUE

### 10.1. Recovery and Sale of Products

- (a) The recovery and sale of Products must be undertaken in accordance with the Agreement and the Products and Residue Management Plan. The Contractor has all title and risk in the Products.
- (b) All revenue produced by the sale of Products by the Contractor will be retained entirely by the Contractor.

### 10.2. Disposal of Residue

- (a) All Residue produced by the RRF must be disposed of by the Contractor in accordance with the Products and Residue Management Plan and all Laws.
- (b) The Contractor shall bear all costs associated with the disposal of all Residue produced by the RRF.

---

## 11. SERVICE OF NOTICES

- (a) Any Notice or other communication under the Agreement shall be in legible writing, in English, and signed by the issuing Representative (if any) and shall be given or served by:

## RIVERS REGIONAL COUNCIL

- i hand delivery or prepaid post to the address of the recipient specified in the Agreement or at such other address as may from time to time be notified in writing to the Party giving the Notice by the intended recipient but in any event to the last notified address; or
- ii e-mail transmission to the Representative (if any) specified in the Agreement,

and is regarded as being given by the sender and received by the addressee:

- iii if by delivery in person, when delivered to the addressee;
- iv if by post, 3 Business Days from and including the date of postage; or
- v if by e-mail transmission, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee or an out of office notification),

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

- (b) A Notice must not be given by electronic means of communication (other than e-mail as permitted in **Clause 11(a)ii**).
- (c) A printed or copied signature will be sufficient for the purpose of sending any Notice or other communication.
- (d) The Contractor must only deliver Notices to the Principal and not to the Participants.

---

## 12. VARIATIONS TO THE AGREEMENT

None of the terms of the Agreement shall be varied, waived, discharged or released either at law or in equity, unless by the express agreement of the Parties in writing.

---

## 13. INVOICING AND PAYMENT

### 13.1. Calculation of the Fee and the Shortfall Fee

- (a) The calculation of the Fee for each Billing Period and the Shortfall Fee for each Quarterly Billing Period is subject to adjustment in accordance with **Clause 9.5**.
- (b) The Principal will pay the Contractor the Fee for the performance of the Services in a Billing Period, calculated as follows:

**Fee = Quantity x Rate,**

where,

Quantity = the quantity of Wastes (in tonnes) delivered to the RRF by the Principal and accepted by the Contractor in accordance with the Agreement and the Waste Acceptance Protocol in the Billing Period.

## RIVERS REGIONAL COUNCIL

Rate = the Rate as defined in **Annexure 2** as adjusted in accordance with the Agreement.

- (c) At the end of each Quarterly Billing Period in the Financial Year, the Contractor must conduct a reconciliation.
- (d) If the total aggregate of all Wastes delivered to the RRF for the Financial Year to date is less than the total aggregate of the Committed Wastes to be delivered by the Principal up to the relevant date, as set out in the Waste Delivery Plan for the Financial Year, that difference (expressed in tonnes) shall be the Shortfall Waste. For the purpose of determining whether there is Shortfall Waste, Optional Waste from one Participant may be counted as the Committed Waste of another Participant to the extent that the Participant's delivery of Wastes is less than the Committed Waste that it is required to deliver.
- (e) At the end of each Quarterly Billing Period in a Financial Year, the Shortfall Fee payable for the Quarterly Billing Period (if any) will be calculated in accordance with the formula in **Clause 13.1(f)** by reference to the aggregate amount of Shortfall Waste for the Financial Year to date, less the Shortfall Fee paid to date in respect of previous Quarterly Billing Periods for the same Financial Year. If the calculation of the Shortfall Fee payable for the Quarterly Billing Period in accordance with this **Clause 13.1(e)** results in a negative number, that number will be deducted from the Fee in accordance with **Clause 13.1(g)**.
- (f) The Shortfall Fee will be calculated as follows:

**Shortfall Fee = Quantity Shortfall x Rate**

where,

Quantity Shortfall = the quantity of Shortfall Waste calculated in accordance with **Clause 13.1(d)**.

Rate = the Rate as defined in **Annexure 2** as adjusted in accordance with the Agreement.

The Contractor must ensure that where **Clause 13.1(e)** applies, the Contractor's invoice describes, as a separate line item, the Quantity Shortfall and the amount payable in respect of the Shortfall Waste for the Quarterly Billing Period (**Shortfall Fee**).

- (g) Any deductions from the Fee to be made under **Clause 13.1(e)** will be deducted from the Fee for that Billing Period and any subsequent Billing Periods until the deduction has been fully accounted for. If there are insufficient Billing Periods remaining in the Financial Year in which to make the deductions, the Contractor must reimburse the remainder of the deduction to the Principal on demand.
- (h) Payment of the Shortfall Fee, together with any payment of liquidated damages under **Clause 16(g)**, is the Contractor's sole remedy for the Principal failing to deliver the Wastes required to be delivered under the Agreement.

### 13.2. Escalation

- (a) Escalation of the Rates shall commence on the Contract Date and be applied annually on 1 July.
- (b) The Rates shall be escalated annually based on cost escalation rates as follows:
- i Producer Price Index (**PPI**) published by the Australian Bureau of Statistics (Labour Price Index, Australia, Catalogue no. 6427.0); and

## RIVERS REGIONAL COUNCIL

- ii Consumer Price Index (**CPI**) published by the Australian Bureau of Statistics (Labour Price Index, Australia, Catalogue no. 6401.0).
- (c) Each Rate is detailed in **Annexure 2** and shall be escalated as follows:

$$CR_{\text{year } y} = CR_{\text{year } C} \times ((A\% \times PPI_{\text{year } y-1} / PPI_{\text{year } C}) + (B\% \times CPI_{\text{year } y-1} / CPI_{\text{year } C}))$$

where,

yearC is 2013;

$PPI_{\text{year } C}$  and  $CPI_{\text{year } C}$  are each the published figure for June of 2013 for that indice;

A% = 50%; and

B% = 50%.

### 13.3. Manner of Payment of Invoices

- (a) The Contractor must issue an invoice to the Principal for the Fees, the Shortfall Fee (if any) and any liquidated damages owing in accordance with **Clause 16(g)** (if any), calculated for the relevant Billing Period. In addition to the calculation of the Fee and any Shortfall Fee and liquidated damages, the invoice must set out the Wastes tonnages delivered by each Participant for the Billing Period and, when relevant, the Quarterly Billing Period.
- (b) Upon receipt of the invoice, the Principal will prepare and issue invoices to each of the Participants in accordance with the Participants Agreement. The aggregate of the amounts invoiced to the Participants in accordance with this **Clause 13.3(b)** must not be less than the amount identified in the relevant Contractor's invoice delivered in accordance with **Clause 13.3(a)**, except to the extent that the Principal disputes the amount identified in the Contractor's invoice. The Contractor may not object to the amount identified in the invoices prepared by the Principal at any time unless the aggregate of the amounts identified in the invoices prepared for the Participants in accordance with this **Clause 13.3(b)** is less than the amount identified in the relevant Contractor's invoice delivered in accordance with **Clause 13.3(a)** (adjusted in accordance with the resolution of any dispute in respect of that invoice). The due date for payment of the invoices issued by the Principal to the Participants must be no later than the due date for payment of the invoices issued by the Contractor to the Principal under **Clause 13.3(e)**.
- (c) **Clause 13.3(b)** does not limit the right of the Principal to dispute the information contained in the invoice.
- (d) All payments shall be made in Australian Dollars.
- (e) Unless otherwise provided in the Agreement, all payments shall be made within 30 days of the receipt of the Contractor's invoice by the Principal. Without prejudice to **Clause 19.2**, failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or suspend the Agreement.
- (f) The Principal will pay to the Contractor interest for late payment of the Fee, the Shortfall Fee and liquidated damages, calculated at the Default Rate from the due date of payment until the date that payment is made (inclusive). The amount calculated in accordance with this **Clause 13.3(f)** will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money. The Contractor shall not otherwise be entitled to any interest, credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Services unless expressly provided for in the Agreement.

## RIVERS REGIONAL COUNCIL

- (g) All periods for payment of invoices shall be calculated from the date the invoice is received by the Principal.
- (h) The Fee is the Contractor's sole entitlement to payment for the performance of its obligations under the Agreement.

### 13.4. Goods and Services Tax

- (a) For the purposes of this **Clause 13.4**:
  - i 'GST' means Goods and Services Tax applicable to any taxable supplies as determined under the GST Act.
  - ii 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
  - iii 'Supply', 'taxable supply' and 'tax invoice' have the same meanings as in the GST Act.
- (b) Where the supply of the Services or any part thereof is a taxable supply under the GST Act:
  - i the Fee is exclusive of all applicable GST which shall be payable at the rate in force at the time;
  - ii the obligation of the Principal to pay the Fee or any instalment thereof, and the right of the Contractor to recover the Fee or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Fee, or the relevant instalment thereof, which complies in all respects with the GST Act;
  - iii this provision applies notwithstanding any other provision of the Agreement or any legislation or rule of Law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act; and
  - iv the Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Services under the Agreement.

### 13.5. Deductions of Charges or Debt

- (a) Without limiting the Principal's rights under any of the Clauses of the Agreement any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal. Nothing in this **Clause 13.5** shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- (b) The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Agreement and all costs, expenses, losses, and damages for which the Contractor shall become liable at any time under the Agreement, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of any other agreement or agreements which may be subsisting between the Contractor and the Principal for the time being.

## RIVERS REGIONAL COUNCIL

### 13.6. Payment Direction

- (a) The Principal hereby irrevocably directs each of the Participants to pay the amount of the invoice prepared by the Principal for that Participant under **Clause 13.3(b)** and any interest in respect of that amount calculated in accordance with the Participants Agreement into a single bank account nominated by the Contractor (with such account to be nominated by the Contractor, in writing, to the Principal and the Participants). The Contractor must notify the Principal when an amount is received by it from a Participant. The Contractor must also notify the Principal no less than three days prior to the due day for payment of any amounts which are outstanding.
- (b) If a Participant fails to make a payment in accordance with **Clause 13.6(a)**, without implying any obligation to do so, the Principal or another Participant may make the payment owing and that payment will discharge the obligation of the non-paying Participant up to the amount paid by the Principal or other Participant.
- (c) Each Participant agrees that if it does not pay an amount in accordance with the payment direction in **Clause 13.6(a)** by the time required in **Clause 13.3(b)**, including because the payment direction is or becomes for any reason unenforceable, invalid or illegal (including as a result of any insolvency or insolvency administration of the Principal or any other party) then, to the extent the amount has not otherwise been paid in accordance with **Clause 13.6(b)**, it will, as an independent and primary obligation, indemnify the Contractor immediately on demand for the amount that would, but for any unenforceability, invalidity or illegality have been payable in accordance with **Clause 13.6(a)** but was not paid, but such indemnity will not extend to any other amount.
- (d) Without implying any obligation to do so, the Principal or another Participant may pay the amount owing under **Clause 13.6(c)** and such payment will discharge the obligation of the non-paying Participant up to the amount paid by the Principal or other Participant.

---

## 14. COMPLIANCE

### 14.1. Laws, Approvals and Licences

- (a) The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Services or the performance of the Agreement (or both).
- (b) The Contractor is responsible for obtaining and maintaining (at its cost) all Approvals and Licences necessary to construct the RRF and provide the Services.
- (c) If a Legal Requirement is at variance with a term of the Agreement, the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Services or the way in which they must be provided (or both), the Principal may, by Notice and acting reasonably, direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk.
- (d) The Agreement, and any dispute arising out of it, shall be governed by, construed and take effect in accordance with the Laws of the State of Western Australia and the Parties hereby irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with the Agreement or its subject matter or formation.

## RIVERS REGIONAL COUNCIL

### 14.2. Safety Obligations

The Contractor must:

- (a) perform all relevant functions and fulfill all relevant duties of an employer and occupier and comply with all Laws and other obligations applicable to workplace health and safety; and
- (b) take measures necessary to protect people and property, avoid unnecessary interference with the passage of persons and vehicles and prevent nuisance and unreasonable noise and disturbance when performing its obligations.

### 14.3. Industrial Awards

With respect to all work done in Western Australia under the Agreement, the Contractor shall observe, perform and comply with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the Services and the Agreement.

---

## 15. INDEMNITY AND LIABILITY

### 15.1. Indemnity and Liability

- (a) The Contractor shall indemnify and keep indemnified the Principal, the Principal's Parties and the Principal's and the Principal's Parties' respective directors, officers, employees, agents, representatives or professional consultants (**Indemnified Persons**) from and against all Loss and other liabilities of any kind arising directly or indirectly from:
  - i any breach of any warranty or any of the other terms and conditions of the Agreement;
  - ii any Wilful Misconduct or a negligent act or omission;
  - iii any claim made by a third party against the Principal or the Principal's Parties, to the extent that the claim arose out of an act or omission of the Contractor or the Contractor's Personnel; or
  - iv personal injury (including mental illness), death and property damage caused or contributed to by the Contractor or the Contractor's Personnel,
 except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Parties or the Principal's or the Principal's Parties' respective directors, officers, employees, agents, representatives or professional consultants.
- (b) The Principal and the Participants declare that they hold on trust for each of the Indemnified Persons, the benefit of each indemnity and release given by the Contractor under the Agreement in favour of each Indemnified Person.
- (c) The Contractor acknowledges the existence of such trusts and consents to:
  - i the Principal or the relevant Participant (or both) exercising rights in relation to, or otherwise enforcing, such indemnities and releases on behalf of the Indemnified Persons; and
  - ii the Indemnified Persons exercising rights in relation to, or otherwise enforcing the indemnities and releases.
- (d) The Parties agree that the consent of the Indemnified Persons will not be required for any amendment to, or waiver of, rights in accordance with the Agreement.

## RIVERS REGIONAL COUNCIL

## 15.2. Proportionate Liability

- (a) The Contractor and the Principal agree that Part 1F of the *Civil Liability Act 2002* (WA) is excluded from operation with respect to any dispute, claim or action brought by the Contractor against the Principal, or vice versa, arising out of or in connection with:
- i the Agreement; and
  - ii any of the Contractor's Subcontractors or the Subcontractor's personnel.

## 16. LIMITS ON LIABILITY

- (a) **Principal Maximum Liability Amount** is the amount of \$20,000,000.
- (b) **Contractor Maximum Liability Amount** is the amount of \$20,000,000.
- (c) The Contractor's liability to the Principal and the Participants (collectively) in respect of Loss suffered by the Principal or the Participants under or in relation to the Agreement or the Direct Deed, or as a consequence of its termination, for all claims (including negligence) is limited (in aggregate) to the Contractor Maximum Liability Amount.
- (d) The Contractor Maximum Liability Amount does not apply to limit liability in respect of
- i any Loss suffered by the Principal or a Participant to the extent attributable to fraud or Wilful Misconduct of the Contractor or the Contractor's Personnel or for any loss arising from any claim by a third party against the Principal or the Participants arising out of any act or omission of the Contractor or the Contractor's Personnel, in which case, the Contractor's liability is unlimited; and
  - ii any other liability to the Principal or the Participants, which liability is the subject of insurance held by the Contractor or a Subcontractor pursuant to the Agreement, in which case the limit of liability is the greater of the Contractor Maximum Liability Amount and the amount recoverable under insurance.
- (e) The collective liability of the Principal and the Participants to the Contractor in respect of Loss suffered by the Contractor under or in relation to the Agreement or the Direct Deed, or as a consequence of its termination, for all claims (including negligence) is limited (in aggregate) to the Principal Maximum Liability Amount.
- (f) The Principal Maximum Liability Amount does not apply to limit liability:
- i in respect of any Loss suffered by the Contractor to the extent attributable to fraud or Wilful Misconduct of the Principal or a Participant or any of their employees, contractors or other personnel, (but, without limiting **Clause 16(g)** and **Clause 16(f)iii**, not Loss suffered arising out of a failure to deliver Wastes) in which case the Principal or the Participant's liability is unlimited;
  - ii in respect of the indemnity in **Clause 13.6(c)**, for the amount of the liability which is calculated in accordance with that clause;
  - iii for liquidated damages described in **Clause 16(g)**, for the amount of the liability which is calculated in accordance with that clause; and
  - iv without limiting the application of the limits described in **Clause 16(f)ii** and **16(f)iii**, for the amounts referred to in **Clause 22.2(c)** and **Clause 22.2(e)**.



## RIVERS REGIONAL COUNCIL

- (g) If the Principal or any Participant acts in a way which is fraudulent or there is Wilful Misconduct by the Principal or any Participant, and, as a result, the Principal fails to deliver Wastes to the Contractor in accordance with **Clause 9.1** for the Financial Year (the non-delivered Wastes being **Compensable Tonnes**), the Principal will pay liquidated damages, calculated as follows:
- i In addition to any Shortfall Fee payable in respect of Committed Waste not delivered, the Principal will pay, as liquidated damages, \$65 per tonne (indexed in accordance with **Clause 13.2(c)**) for each Compensable Tonne shortfall in Committed Waste and \$175 per tonne (indexed in accordance with **Clause 13.2(c)**) for each Compensable Tonne of Optional Waste which should have been delivered in accordance with **Clause 9.1**.
  - ii The liquidated damages, together with the Shortfall Fee, are the sole remedy for failing to deliver the Wastes.
  - iii The Shortfall Fee and any liquidated damages calculated in respect of Compensable Tonnes are not taken into account in determining whether the Principal Maximum Liability Amount has been exceeded.
  - iv For the avoidance of doubt, other than payment of liquidated damages in accordance with this **Clause 16(g)**, there is no payment consequence for the failure to deliver Optional Waste and the Shortfall Fee is not payable in respect of Optional Waste tonnes which are not delivered to the RRF.
- (h) The Parties acknowledge and agree that:
- i it will be deemed to be Wilful Misconduct for the purpose of **Clause 16(g)** if:
    - (A) the Principal or any Participant enters into any agreement, arrangement, or other understanding, the purpose of which is to directly or indirectly result in Wastes that should be delivered to the RRF pursuant to **Clause 9** being delivered elsewhere and not to the RRF; or
    - (B) the Principal is issued with a Persistent Breach notice by the Contractor and following the receipt of that notice by the Principal, a breach of the same type re-occurs within the following 12 months. A "Persistent Breach" notice may be issued by the Contractor if two or more deliveries of Waste that should be delivered to the RRF pursuant to **Clause 9** have been delivered elsewhere and not to the RRF and the Contractor has notified the Principal of the two non-deliveries;
  - ii without limiting **Clause 22.2(b)**, a failure by the Principal to comply with the terms and conditions of the Agreement is not a breach of the relevant term or condition by any or all of the Participants; and
  - iii the liability of the Participants under the Agreement is several as between each Participant.
- (i) If the Principal pays a Shortfall Fee or liquidated damages as described in **Clause 6.4(j)** or **Clause 16(g)**, and the quantum of Loss that the Contractor actually suffers arising out of the failure of the Principal to deliver Wastes is less than the amount paid by the Principal, the difference will be taken into account in calculating any other amount that the Principal (including a Participant) is liable to the Contractor for in accordance with this Agreement or at Law that arises out of the same event, but does not arise out of the failure of the Principal to deliver Wastes.

## RIVERS REGIONAL COUNCIL

- (j) The Principal and the Participants are not liable to the Contractor, and the Contractor is not liable to the Principal or the Participants, for (and the indemnities in the Agreement shall not apply to) any claim or Loss suffered or incurred, howsoever arising, from, in respect of, in relation to, or in connection with, any breach of the Agreement or breach of any duty of care (including in respect of the duty of care in negligence) in respect of:
- i loss of profit, loss of revenue, loss of use, loss of agreement, loss of goodwill, loss of reputation or loss of business opportunity;
  - ii punitive damages;
  - iii any new or increased costs and expenses, including financing, capital or operating costs; and
  - iv any failure to achieve any actual or anticipated saving in respect of any cost or expense,
- and the parties agree that this clause does not apply:
- v to any Fees, Shortfall Fees or liquidated damages that are expressly payable under the Agreement; or
  - vi in respect of claims for amounts under **Clause 22.2(c)iv** or **Clause 22.2(e)** or if this Agreement is terminated under **Clause 20.1(b)**, to exclude any liability for amounts in respect of the revenue comprised of the Fee or the Shortfall Fee or any liquidated damages calculated in accordance with **Clause 16(g)** (in the circumstances in which that clause applies) that would have been payable under this Agreement, but for the breach giving rise to the claim.

---

## 17. INSURANCES

- (a) The Contractor must procure and maintain the appropriate levels of insurances for:
- i public and product liability;
  - ii vehicle and equipment insurance for the Contractor's vehicles and registered plant and equipment used in connection with the Agreement;
  - iii liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability by statute and at common law; and
  - iv professional indemnity.
- (b) The Contractor must:
- i pay all premiums and all deductibles applicable to the insurances required under **Clause 17(a)** when due; and
  - ii promptly reinstate any insurance required under this Clause if it lapses or if cover is exhausted.
- (c) If a Subcontractor obtains insurance referred to in **Clause 17(a)**, in satisfaction of the Contractor's obligations under that Clause, the Contractor must ensure that it is named as an insured under those policies of insurance. This **Clause 17(c)** does not apply to any professional indemnity insurance policy obtained by a Subcontractor, and the Subcontractor obtaining professional indemnity insurance does not satisfy the Contractor's obligation to obtain insurance in accordance with

## RIVERS REGIONAL COUNCIL

**Clause 17(a)iv** to the extent that the Contractor is itself providing services of the type usually covered by a professional indemnity insurance policy.

- (d) The insurances are primary, and not secondary, to the indemnities referred to in the Agreement.
- (e) On or before the Date of Practical Completion and whenever reasonably requested by the Principal thereafter, the Contractor must produce to the Principal certificates of currency for the insurances required under **Clause 17(a)** which demonstrate compliance with the Agreement.
- (f) The Contractor must take all reasonable steps to recover Loss suffered by the Principal or a Participant, if that Loss is attributable to the Contractor or the Contractor's Personnel and is Loss covered under an insurance policy taken out under **Clause 17(a)** and, in the case of professional indemnity insurance held by a Subcontractor, must take all reasonable steps to pursue all of its rights against the Subcontractor to recover that Loss from the Subcontractor if it is Loss covered under the professional indemnity insurance.

---

## 18. FORCE MAJEURE EVENT AND CHANGE OF LAW

### 18.1. Force Majeure Event

- (a) The Affected Party must give a Notice to the other of any Force Majeure Event that precludes the Affected Party (whether partially or wholly) from complying with its obligations under the Agreement (**Affected Obligations**) within twenty (20) Business Days of the Force Majeure Event occurring and must either:
  - i to the extent practicable, specify in the Notice the length of delay or disruption that will result from the Force Majeure Event; or
  - ii where it is not practicable to specify the length of delay or disruption at the time the Notice is delivered, provide the Contractor or the Principal (whichever is the unaffected Party) with periodic supplemental Notices during the period over which the Force Majeure Event continues to have an effect.
- (b) Subject to **Clause 18.2**, the Affected Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay or disruption arising out of the Force Majeure Event and any event that would otherwise give rise to the RRF being Unavailable or be a Contractor Default is disregarded to the extent arising out of the non-performance of the Affected Obligations. If the Force Majeure Event occurs prior to the Date of Practical Completion, the Principal must also grant an extension of time pursuant to **Clause 7** for the period of the actual delay or disruption.
- (c) If the Contractor is the Affected Party with Affected Obligations, the Principal and the Participants are relieved, to the extent the Contractor is precluded from providing the Services, from any payment to the Contractor for the duration of the suspension due to the Force Majeure Event.
- (d) If a Force Majeure Event prevents Wastes from being delivered to the RRF, to the extent that the Principal has not been able to procure the delivery of the total Committed Waste to the RRF for the relevant Financial Year (including having regard to Optional Waste that may be reclassified as Committed Waste as described in **Clause 13.1(d)**), the total Committed Waste for the relevant Financial Year is reduced by the amount of Wastes that the Principal was unable to procure for delivery due to delivery of Wastes being prevented by the Force Majeure Event.

## RIVERS REGIONAL COUNCIL

- (e) The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay or disruption caused by any Force Majeure Event including, in the case of the Affected Party being the Principal or a Participant, by reasonably rescheduling the delivery of Wastes to the RRF to catch up any Committed Waste prevented from being delivered. If the Contractor is the Affected Party with Affected Obligations and the Force Majeure Event is causing Unavailability of the RRF for more than 7 days, the Contractor must also prepare a plan as soon as practicable following Notice being given of the Force Majeure Event, describing how the effects of the Force Majeure Event can be overcome. The purpose of the plan is to assist the Parties to comply with their obligations in this **Clause 18.1(e)** only.

If a Force Majeure Event continues to affect the supply of the Services for a continuous period of 180 days and there is no reasonable prospect of the Services resuming, the Principal may terminate the Agreement by serving written Notice on the Contractor and no Party has liability to the other except in respect of any event arising prior to the date of the Agreement being terminated.

- (f) Subject to **Clause 18.2**, each of the Parties will be responsible for their own costs incurred during the period of the Force Majeure Event.

### 18.2. Change of Law

- (a) The Contractor is entitled to an adjustment to the Rates, an extension of the Term and/or a lump sum capital contribution from the Principal in accordance with this **Clause 18.2** if there is a Change of Law which:

- i occurs after the Date of Practical Completion and directly results in the Contractor being required to incur additional capital costs to modify the RRF to perform the Services in accordance with the Agreement; or
- ii occurs after the Contract Date and is a change in the statute or regulations or Approvals and Licences applying to the cleaning of flue gas used in the RRF and directly results in the Contractor being required to incur additional capital or operating costs to perform the Services in accordance with the Agreement,

and in each case only to the extent:

- iii in relation to a Change of Law being a type described in **Clause 18.2(a)i**:
  - (A) if there are similar waste to energy facilities using combustion to process municipal solid waste in operation or under construction in Australia, those facilities are required to carry out modifications to address the requirement imposed by the Change of Law or are required to be designed to take account of the requirement imposed by the Change of Law; or
  - (B) if there are no similar waste to energy facilities using combustion to process municipal solid waste in operation or under construction in Australia, a reasonable and prudent operator would carry out modifications of the type proposed by the Contractor to address the requirement imposed by the Change of Law; and
- iv in relation to a Change of Law being a type described in **Clause 18.2(a)ii**:
  - (A) if there are similar waste to energy facilities using combustion to process municipal solid waste in operation or under construction in Australia, those facilities are required to carry out modifications or incur additional operating costs to address the requirement imposed

## RIVERS REGIONAL COUNCIL

by the Change of Law or are required to be designed to take account of the requirement imposed by the Change of Law;

- (B) if there are no similar waste to energy facilities using combustion to process municipal solid waste in operation or under construction in Australia, but there are facilities in jurisdictions outside of Australia which are required to be operated in accordance with the same standards as the RRF, operators of those facilities are required to carry out modifications or incur additional operating costs to address the same or substantially the same requirement as the Change of Law; or
  - (C) if there are no similar waste to energy facilities using combustion to process municipal solid waste in operation or under construction in Australia or worldwide which are required to be operated in accordance with the same standards as the RRF, a reasonable and prudent operator would carry out modifications of the type proposed by the Contractor to address the requirement imposed by the Change of Law; and
- v the Change of Law is notified by the Contractor to the Principal in accordance with this **Clause 18.2**,

where such adjustment, extension or contribution is to compensate the Contractor for the capital costs or additional operating costs referred to in this **Clause 18.2(a)**.

- (b) The Contractor must notify the Principal of a Change of Law which occurs after the Contract Date if and to the extent that the Contractor seeks an adjustment under **Clause 18.2(a)** in relation to the Change of Law (**Change of Law Notice**) within 20 Business Days of the Contractor becoming aware of the proposed Change of Law and must update that notice as soon as reasonably practicable after having calculated the amounts pursuant to **Clause 18.2(c)** to the extent it is not practicable to determine such amounts at the time the notice is issued.
- (c) Any Change of Law Notice must be in writing and to the extent practicable detail (or be subsequently supplemented by the following information as contemplated pursuant to **Clause 18.2(b)**):
  - i for a Change of Law described in **Clause 18.2(a)i**, the additional direct capital costs that the Contractor will be required to incur modifying the RRF as a direct result of the Change of Law (if any) in order to perform the Services in accordance with the Agreement;
  - ii for a Change of Law described in **Clause 18.2(a)ii**, the additional direct capital or operating costs that the Contractor will be required to incur as a direct result of the Change of Law to perform the Services in accordance with the Agreement;
  - iii evidence that the requirements of **Clause 18.2(a)iii** or **18.2(a)iv** are met;
  - iv the Principal's share of the costs identified under **Clause 18.2(c)i** and **18.2(c)ii** subject to **Clause 18.2(g)**, prorated on the basis of tonnage of feedstock being delivered to the RRF in the previous Financial Year or existing Financial Year (whichever gives a more accurate representation of current percentage usage of the RRF by the Principal relative to other customers) between all of the Contractor's customers and taking into account the remaining operational life of the RRF, which share of costs must be expressed as both a lump sum capital contribution (other than for an increase in the operating costs) and a proposed escalation of Rate; and

## RIVERS REGIONAL COUNCIL

- v any proposed extension to the Term that could be implemented to avoid an adjustment to the Rate or a capital contribution from the Principal;
- (d) Following receipt of a Change of Law Notice, the Principal may request an expert (to be appointed by the Principal) to offer a non-binding opinion on the matters in the Change of Law Notice.
- (e) If the Principal accepts the matters in the Change of Law Notice or such matters are determined in accordance with **Clause 21**, the Principal shall elect to either:
  - i extend the Term (if and to the extent an extension is proposed);
  - ii pay the lump sum capital contribution in respect of any capital; and/or
  - iii adjust the Rates in relation to any increased operating cost and (if to the extent that a lump sum is not to be paid) any capital cost,

as set out in the Change of Law Notice in which case the election shall be implemented by the Parties and the Agreement will be deemed modified accordingly. The election in this clause must be made within 15 Business Days of the Change of Law Notice being agreed or determined. If the matter is determined in accordance with **Clause 21** the election of the Principal must be consistent with that determination.
- (f) If the Principal disputes the matters identified in the Change of Law Notice, **Clause 21** will apply.
- (g) The Contractor is not entitled to recover costs from the Principal or the Participants in respect of a Change of Law except as expressly stated in this **Clause 18.2**.
- (h) Except for an adjustment to the Rate, capital contribution or extension to the Term in the manner set out in this **Clause 18.2**, or relief granted under **Clause 18.1**, the Principal is not liable for any claim by the Contractor and the Contractor is absolutely barred from making any claim, arising out of, or in connection with, any change to any Law (including a Change of Law).
- (i) Any adjustment to the Rate, capital contribution or extension to the Term in the manner set out in this **Clause 18.2**, or relief granted under **Clause 18.1** agreed or determined between the Principal and the Contractor will bind the Participants.

---

## 19. DEFAULT

### 19.1. Default by the Contractor

A Contractor Default occurs when:

- (a) on the date that is 24 or 30 months following the Contract Date, there is no reasonable possibility that the Contractor will be able to receive and treat Wastes in accordance with the Agreement on the Scheduled Date of Practical Completion. The parties agree that there will be a reasonable possibility that the Contractor will be able to receive and treat Wastes in accordance with the Agreement on the Scheduled Date of Practical Completion, and so it is not a Contractor Default under this paragraph (a), if the Contractor has a plan consistent with its current rate of progress demonstrating that it can achieve Practical Completion by the Scheduled Date of Practical Completion. The assessment as to whether there is a Contractor Default pursuant to this paragraph (a) is to be made on or about the 24 or 30 month date, but the Default Notice may be delivered within up to 90 days after that date, but not at any other time;
- (b) a period of Unavailability extends for a continuous period of 180 days or more or an aggregate period of 180 days in any 12 month rolling period (**Unavailability**

## RIVERS REGIONAL COUNCIL

**Default Trigger**), unless a Rectification Plan has been approved under **Clause 9.5(f)** or **Clause 9.5(g)** and the time for rectifying the Unavailability in the Rectification Plan extends beyond the Unavailability Default Trigger and that Rectification Plan is being implemented, in which case a default under this **Clause 19.1(b)** will only occur if:

- i the period of Unavailability extends for a continuous period of 180 days or more or an aggregate period of 180 days in any 12 month rolling period; and
  - ii at the expiry of the time for rectifying the Unavailability in the Rectification Plan, the Unavailability has not been rectified;
- (c) an Unavailability Immediate Default occurs;
  - (d) the Contractor fails to prepare a Rectification Plan or resubmit a Rectification Plan, as described in **Clause 9.5(h)**;
  - (e) the Contractor fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained in the Agreement and such failure continues for a period of 35 days after service on the Contractor of a Notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach or overcome its effects;
  - (f) the Contractor fails to achieve Practical Completion by the Scheduled Date of Practical Completion and the failure has not been caused by the Principal; or
  - (g) the Contractor fails to satisfy any Service CP, other than the requirement to achieve Practical Completion, by the Scheduled Date of Practical Completion, the failure has not been caused by the Principal and the unsatisfied Service CP has not been waived by the Principal.

### 19.2. Default by the Principal

Default by the Principal occurs if the Principal does not pay a due and payable invoice in accordance with the timeframes specified in the Agreement, provided that the Contractor has first given the Principal a Notice (in addition to the invoice) requesting payment within a minimum period of 30 days. The Notice shall be issued no earlier than the date in **Clause 13.3(e)**.

### 19.3. Procedure upon Default

- (a) Subject to **Clause 19.3A**, either the Contractor may give the Principal or the Principal may give the Contractor (as the case may be) a Notice specifying the default and, subject to **Clause 19.3(e)ii** or **19.3(e)iv**, requiring the Party named in the notice (**Defaulting Party**) to rectify or remedy the same at the Defaulting Party's expense within a period agreed between the Contractor and the Principal or, in the absence of an agreement, within 20 Business Days (**Breach Notice**).
- (b) If the default cannot be rectified, but the Party giving the Breach Notice believes (acting reasonably) that its effects can be overcome, then the Party giving the Breach Notice must include in the Breach Notice those actions that it considers reasonably necessary to overcome the effects of the default.
- (c) If the Breach Notice specifies that the effects of the default cannot be overcome and the Defaulting Party disagrees with this assessment, the Defaulting Party may dispute this aspect of the Breach Notice in accordance with **Clause 21**.
- (d) Other than in the circumstances described in **Clause 19.3(e)ii**, if the Party giving the Breach Notice or the Defaulting Party believes (acting reasonably) that the default or its effects will take longer than 20 Business Days to rectify or remedy or overcome its effects, within 5 Business Days of receipt of the Breach Notice, that

## RIVERS REGIONAL COUNCIL

Party may notify the other Party of its belief and, without limiting a party's right to dispute the giving of a notice under this **Clause 19.3(d)**, **Clause 19.4** applies.

- (e) If:
- i a default specified in a Breach Notice is not rectified or its effects overcome after the expiry of the period specified in **Clause 19.3(a)** or is not referred to **Clause 19.4**;
  - ii the Contractor is the Defaulting Party, the Contractor Default arises under **Clause 19.1(b)**;
  - iii **Clause 19.5** applies; or
  - iv the default specified in a Breach Notice is incapable of rectification or remediation,
- then the Contractor or the Principal (whichever is not in default and without prejudice to any other rights that it may have under the Agreement or otherwise) may exercise all or any of the following rights:
- v suspend its obligations under the Agreement until the default has been remedied or rectified; or
  - vi terminate the Agreement in accordance with **Clause 20**.
- (f) For the avoidance of doubt, the Contractor may not terminate the Agreement for an act or omission of a Participant, unless the act or omission of the Participant causes the Principal to fail to meet its payment obligations, which gives rise to a Default under **Clause 19.2**, and the right to terminate arises under this **Clause 19**.

### 19.3A Look Forward Default

- (a) This **Clause 19.3A** applies if the Principal intends to take action pursuant to the Contractor Default described in **Clause 19.1(a)** or **Clause 19.1(f)**.
- (b) The Principal must not take action in respect of a Contractor Default described in **Clause 19.1(f)** if the Principal has given a Breach Notice in respect of a Contractor Default described in **Clause 19.1(a)** and the Contractor Default is subsisting. In those circumstances, the parties must continue to comply with the obligations in respect of the Contractor Default in **Clause 19.1(a)** in the Agreement, including the Direct Deed.
- (c) If the Principal is of the view that Contractor Default pursuant to **Clause 19.1(a)** or, subject to **Clause 19.3A(b)**, **Clause 19.1(f)** has occurred and it wishes to take action, the Principal must issue a notice to this effect to the Contractor. The provisions of **Clause 19.3** thereafter apply save that:
  - i the reference in **Clauses 19.3(a)** and **19.3(d)** to 20 Business Days shall be extended to 60 Business Days; and
  - ii the Cure Plan prepared under **Clause 19.4** must demonstrate that the Services will commence as soon as reasonably practicable and in any event not later than 6 months after the Scheduled Date of Practical Completion and must contain a letter from the Security Trustee indicating that the Security Trustee (acting on appropriate instructions from the Financiers) is supportive of the Cure Plan.

### 19.4 Cure Plan

If this **Clause 19.4** applies, then:

- (a) within 10 Business Days of receiving the notice under **Clause 19.3(d)**, the Defaulting Party must submit a plan containing full details of all steps which the Agreement (No. 2015/1) – Receipt and Processing Waste for Resource Recovery



## RIVERS REGIONAL COUNCIL

Defaulting Party is taking, or proposes to take, to remedy or overcome the effects of the default on which the Breach Notice is based and the timeline for those steps to be executed (**Cure Plan**);

- (b) within 10 Business Days of the receipt of the Cure Plan, the Party issuing the Breach Notice must, acting reasonably, by notice to the Defaulting Party, advise whether the Cure Plan is acceptable and of any amendments that may be required;
- (c) if required, and for no longer than 10 Business Days, the Defaulting Party must promptly amend the Cure Plan until it is acceptable to the other Party (acting reasonably);
- (d) if and when the Defaulting Party receives written acceptance of the Cure Plan, the Defaulting Party must immediately implement and comply with the Cure Plan; and
- (e) acceptance of a Cure Plan by the non-Defaulting Party is not an endorsement of the Cure Plan by that Party and does not affect the Defaulting Party's obligation to remedy the Default.

### 19.5. Failure in respect of Cure Plan

- (a) If the Defaulting Party fails to prepare a Cure Plan that is acceptable to the Party issuing the Breach Notice (acting reasonably) within the time required under **Clause 19.4(c)** or, in the case of a Contractor Default described in **Clause 19.1(a)** or **Clause 19.1(f)**, 60 Business Days from the date of the Breach Notice, and has not otherwise remedied or rectified the default, the Party issuing the Breach Notice may exercise its rights under **Clause 19.3(e)**.
- (b) If the Defaulting Party fails to comply with or implement the agreed Cure Plan in its entirety, or fails to remedy or overcome the effects of the default within the time provided by the agreed Cure Plan, then the Party issuing the Breach Notice may exercise its rights under **Clause 19.3(e)**.

---

## 20. TERMINATION OF AGREEMENT

### 20.1. Termination for Default

- (a) The Principal may, at its absolute discretion, and without being obliged to give any reasons (but subject to **Clause 23**), terminate the Agreement by written notice to the Contractor if:
  - i the Contractor is the Defaulting Party, in the circumstances described in **Clause 19.3(e)**;
  - ii the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver is appointed or enters into any composition or scheme of arrangement with its creditors or if an inspector is appointed to examine the affairs of the Contractor, or if the Contractor enters into voluntary or other external administration;
  - iii the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
  - iv the Contractor assigns or subcontracts the Agreement or any part thereof without the prior written consent of the Principal;

## RIVERS REGIONAL COUNCIL

- v the Contractor or any Contractor's Personnel, are found guilty of any criminal act related to the Services that may bring the Principal into disrepute and:
    - (A) in the case of the Contractor, the Principal has given reasonable consideration to options other than termination; and
    - (B) in the case of the Contractor's Personnel, the Contractor has not, having been given notice of the act, permanently replaced or removed that person from the RRF; or
  - vi the Contractor includes in its Tender any statement, representation, fact, matter, information or thing which is materially false, untrue, incorrect or inaccurate which affects the Services or the Contractor's obligations under the Agreement.
- (b) The Contractor may only terminate the Agreement in the event of a default by the Principal as set out in **Clause 19.2** in the circumstances described in **Clause 19.3(e)**, or for a breach by the Principal of **Clause 24.2(e)**.
  - (c) If the Agreement is terminated pursuant to **Clause 20.1(a)**, the Parties' remedies, rights and liabilities shall be the same as they would have been had the Contractor repudiated the Agreement and the Principal elected to treat the Agreement at an end and recover damages provided that **Clause 16** shall continue to apply notwithstanding.
  - (d) Without limiting any other rights of the Parties under the Agreement, if the Agreement terminates for any reason whatsoever the Contractor agrees that the Principal and the Participants are free to continue with services the same or similar to the Services on their own or with another contractor.

### 20.2. Termination upon Prolonged Force Majeure Event

The Agreement may be terminated in accordance with **Clause 18.1**.

### 20.3. Termination upon Expiration of the Term

The Agreement will otherwise terminate at the expiration of the Term.

---

## 21. SETTLEMENT OF DISPUTES

### 21.1. Notice

- (a) Any dispute must be resolved in accordance with this **Clause 21**.
- (b) In the event of a dispute between the Contractor and the Principal or a Participant, a Party to the dispute (**Notifying Party**) may deliver a written Notice to each other Party to the dispute (**Receiving Party**) that identifies the dispute (**Notice of Dispute**).
- (c) The Notifying Party must also provide enough information about the dispute in the Notice of Dispute for the Receiving Party to reasonably understand the:
  - i alleged facts on which the dispute is based;
  - ii legal basis on which any claim arising from the dispute is made; and
  - iii relief that is claimed.

## RIVERS REGIONAL COUNCIL

### 21.2. Negotiation

- (a) Within 10 days of a Notice of Dispute being delivered, the Receiving Party must deliver a written response to the Notifying Party stating:
  - i its position in relation to the dispute; and
  - ii the basis for its position.
- (b) Within 10 days of receipt of the response the Notifying Party and the Receiving Party agree to meet and to use their reasonable endeavours to resolve through negotiation any dispute arising under or in relation to the Agreement.
- (c) If the Notifying Party and the Receiving Party do not resolve the dispute within 10 Business Days after meeting pursuant to **Clause 21.2(b)**, either the Notifying Party or the Receiving Party may:
  - i if the dispute is a Specified Dispute, by notice to the other Party refer the dispute for expert determination in accordance with **Clause 21.3**; or
  - ii if **Clause 21.2(c)i** does not apply, initiate proceedings in a court of competent jurisdiction.

### 21.3. Expert determination

- (a) The Notifying Party and the Receiving Party agree that an expert determination under this **Clause 21.3**:
  - i is to be provided in writing to the Parties by the expert;
  - ii is to be used for the purpose of assisting the Parties to resolve any Specified Dispute; and
  - iii except as set out in **Clause 9.5(g)**, is non-binding on the Parties, and does not prevent a Party from initiating proceedings in a court of competent jurisdiction.
- (b) Within 5 Business Days after the date of the notice under **Clause 21.2(c)**, the Notifying Party and the Receiving Party must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of **Clause 21.3(e)**, from whom the expert is to be chosen in order of preference.
- (c) Any person that appears on both lists under **Clause 21.3(b)** will be appointed as the expert to determine the Specified Dispute and if more than one person appears on both lists the person given the highest order of priority by the relevant Party that gave the notice under **Clause 21.2(c)** will be appointed as the expert.
- (d) If no person appears on both lists, the Party that gave the notice under **Clause 21.2(c)** must promptly procure the President of the Institute of Arbitrators and Mediators Australia to nominate an individual to act as the expert to determine the Specified Dispute and that nomination will be final and binding on the Parties.
- (e) It is the intention of each of the Notifying Party and the Receiving Party that the expert appointed will be a person with appropriate skills having regard to the nature of the matters the subject of the Specified Dispute.
- (f) The Notifying Party and the Receiving Party must enter into an agreement with the expert which governs the expert determination process. Any such agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2012 (WA)*.
- (g) The Notifying Party and the Receiving Party may make submissions to the expert in relation to the Specified Dispute, and the expert must, promptly after his or her appointment, fix a reasonable time and place for receiving submissions or

## RIVERS REGIONAL COUNCIL

information from the Notifying Party and the Receiving Party and provide an indicative timetable for making his or her determination.

- (h) The expert may make such further enquiries and require such other evidence as the expert may consider necessary for determining the matter before him or her. The Notifying Party and the Receiving Party will promptly provide to the expert all information that the expert may reasonably request.

### 21.4. Costs

Each Party must:

- (a) bear its own costs in connection with the expert determination process pursuant to **Clause 21.3**; and
- (b) if it is a Receiving Party or a Notifying Party, pay an equal portion of the costs of the expert.

### 21.5. Continued performance of obligations

If a dispute exists, each Party must continue to comply with its obligations under the Agreement, except with respect to the payment of moneys that are in dispute.

### 21.6. Summary or urgent relief

Nothing will prejudice the right of a Party to institute proceedings to seek urgent interlocutory injunctive relief.

---

## 22. APPOINTMENT AND REPLACEMENT OF PRINCIPAL AND OTHER MATTERS

### 22.1. Replacing the Principal

- (a) Subject to the rest of this **Clause 22.1**, if:
- i the Principal is dissolved by or in accordance with Law; or
  - ii all of the Participants agree in writing to replace the Principal for the purposes of the Agreement,
- the Principal will cease to be a Party. The cessation of the Principal as a Party takes effect on the date that a successor Principal has been appointed and has executed all documents and undertakings required under **Clause 22.1(d) (Dissolution Date)**.
- (b) Prior to the Dissolution Date, the Participants must appoint:
- i one of the Participants;
  - ii a body that is subject to the *Local Government Act 1995* (WA) or otherwise created pursuant to statute and is either a statutory authority or local government;
  - iii an agency or department of the State of Western Australia; or
  - iv a body that replaces the Principal's functions (subject to the prior written approval of the Contractor (which is not to be unreasonably withheld or delayed)),

## RIVERS REGIONAL COUNCIL

as a successor Principal and notify the Contractor of its election. Such appointment must occur on or prior to the Dissolution Date so that there is always a "Principal" in situ under the Agreement.

- (c) The Participants must ensure that the successor Principal executes an undertaking to accede to and be bound as successor Principal under the Agreement, the Participants Agreement, the Direct Deed and under any other agreements or associated documents to which the Contractor and the Principal are a party in respect of the RRF.
- (d) Subject to the transitional provisions of the relevant Law (if applicable), when a successor Principal executes an undertaking to be bound as successor Principal under the Agreement, the Participants Agreement, the Direct Deed and under any other agreements or associated documents to which the Contractor and the Principal are a party in respect of the RRF, the successor Principal succeeds to and becomes vested with all the rights and duties (whether past, present and future, actual or contingent) of the retiring Principal, and the retiring Principal is discharged from its duties and obligations under the Agreement.
- (e) After any retiring Principal's cessation as a Party, the Agreement, the Participants Agreement, the Direct Deed and any other agreements or associated documents to which the Contractor and Principal are a party in respect of the RRF continue in effect in respect of any actions which the Principal took or omitted to take while acting as the Principal.

### 22.2. Participant's obligations

- (a) The Parties acknowledge that a financial agreement in respect of the Principal's obligations under the Agreement exists between the Principal and all of the Participants and which is dated on or about the Contract Date (**Participants Agreement**).
- (b) Each Participant agrees for the benefit of the Contractor that it will:
  - i comply with the irrevocable payment direction in **Clause 13.6**;
  - ii without limiting **Clause 22.2(b)i**, comply with its respective financial and payment obligations under the Participants Agreement; and
  - iii deliver its Wastes in accordance with the Participants Agreement.
- (c) The Parties agree that the only amounts payable by a Participant to the Contractor for the Participant breaching its obligations under the following clauses are as follows:
  - i for a breach of **Clause 22.2(b)i** or **Clause 22.2(b)ii**, the amount determined pursuant to the indemnity set out in **Clause 13.6(c)**;
  - ii for a breach of **Clause 22.2(b)iii**, the Shortfall Fee and, where relevant, liquidated damages, calculated in accordance with **Clause 13.1(f)** and **Clause 16(g)** respectively;
  - iii for the dissolution or failure to replace the Principal in breach of **Clause 22.1**, the amount of the Fee, the Shortfall Fee and, where relevant, liquidated damages, calculated in accordance with **Clause 13.1** and **Clause 16(g)** respectively, that the Principal would have invoiced the Participant for in accordance with **Clause 13.3(b)** and the Participant would have paid into the Contractor's bank account in accordance with **Clause 13.6(a)** but did not pay to the Contractor, in each Billing Period during which there is a breach of **Clause 22.1** for as long as the breach is not rectified; and

## RIVERS REGIONAL COUNCIL

- iv if a Participant withdraws from the Agreement or the Participants Agreement in breach of **Clause 22.3**, an amount equal to the loss suffered by the Contractor as a result of the breach, subject to an obligation on the Contractor to use reasonable endeavours to mitigate that loss.
- (d) The Participants and the Principal:
  - i warrant that (as at the Contract Date) a true, correct and up-to-date copy of the Participants Agreement has been provided to the Contractor; and
  - ii agree and confirm that:
    - (A) they will not amend, vary, replace, supplement, terminate or waive any provision of the Participants Agreement without the prior written consent of the Contractor (provided that a waiver by conduct which does not adversely affect the Contractor or its Financiers is not prohibited, provided that it is temporary and not of a material nature); and
    - (B) any such amendment, variation, replacement, supplement, termination or waiver in breach of this **Clause 22.2(d)** shall be deemed to be of no effect for the purposes of the Agreement.
- (e) Without limiting **Clause 22.2(d)ii(B)**, the Parties agree that the only amounts payable by a Participant or the Principal (whichever is liable) to the Contractor:
  - i for a breach of the warranty under **Clause 22.2(d)i**; and
  - ii for a breach of **Clause 22.2(d)ii**,
 shall be an amount equal to the loss suffered by the Contractor as a result of the breach, subject to an obligation on the Contractor to take all reasonable steps to mitigate that loss.
- (f) The Contractor acknowledges and agrees that the only obligations of the Participants under the Agreement are those set out in Paragraph 2.4(f)(iv) of the Waste Acceptance Protocol and **Clauses 9.1(h)iii, 13.6, 22.1(b), 22.1(c), 22.2(b), 22.2(d), 22.3** and **24.2(e)**.
- (g) The liability of the Participants under the Agreement and the Participants Agreement is several as between each Participant.

### 22.3. Withdrawal of a Participant

- (a) Each Participant agrees for the benefit of the Contractor that it will not withdraw from or transfer any of its rights and obligations under the Participants Agreement or the Agreement otherwise than with the prior written consent of the Contractor, which consent must not be unreasonably withheld.
- (b) The Contractor must not withhold its consent if the Participant demonstrates that, in the case of a transfer of rights and obligations to a third party:
  - i the proposed transferee is a local government under the *Local Government Act 1995 (WA)*;
  - ii the proposed transferee has at least equivalent financial capacity and waste resources to satisfy the financial and Wastes delivery obligations of the Participant, including providing evidence of a historical and forecast Wastes profile (including as to volume and timing for generation, collection and delivery of those Wastes) which are at least equivalent to the relevant Participant;

## RIVERS REGIONAL COUNCIL

- iii the proposed transferee enters into a deed of accession or a novation agreement such that it becomes bound to comply with the Agreement, the Participants Agreement and the Direct Deed and any other document to which both the Contractor and the relevant Participant are a party in respect of the RRF; and
  - iv the requirements of the Participants Agreement have been met in respect of the transfer of the Participant.
- (c) The Contractor must not withhold its consent if the Participant demonstrates that, in the case of the remaining Participants agreeing to meet the obligations of the withdrawing Participant:
- i the remaining Participants have access to sufficient waste resources to meet the Wastes delivery profile of the withdrawing Participant, as set out in the latest Waste Delivery Plan, including providing evidence of a historical and forecast Wastes profile (including as to volume and timing for generation, collection and delivery of those Wastes) which demonstrates that the total volume of Wastes set out in the latest Waste Delivery Plan will continue to be met following the withdrawal of the relevant Participant; and
  - ii the requirements of the Participants Agreement have been met in respect of the transfer of the Participant.
- (d) To avoid doubt, withdrawal of a Participant, or the Participant ceasing to be a party to the Agreement in any other way, does not reduce or otherwise affect the total aggregate quantity of Waste required to be delivered in accordance with **Clause 9.1**, which the Principal and any remaining or new Participants must procure is delivered (provided that the reference to Optional Waste being collected for and on behalf of the Participants and generated by the Participants is only a reference to the Participants who are a party to the Participants Agreement at the relevant time).

### 22.4. Shire of Murray

- (a) The obligation to deliver Wastes in this Agreement and the Participants Agreement and any undertakings given by the Shire of Murray in the Direct Deed in this regard, do not apply to the Shire of Murray until the commencement of the fifth Financial Year.
- (b) The Shire of Murray may, in its discretion, elect to start delivering Wastes in accordance with this Agreement before the commencement of the fifth Financial Year by Notice to the other Parties, in which case:
  - i the Principal and the Participants may amend the Committed Waste and Optional Waste tonnages set out in **Annexure 10** and in the Participants Agreement for one or more of the Participants for that Financial Year and subsequent Financial Years until the end of the fourth Financial Year to take account of the tonnes to be delivered by the Shire of Murray, provided that the aggregate Committed Waste to be delivered in each of those Financial Years is no less than the aggregate Committed Waste to be delivered in those Financial Years as set out in **Annexure 10**;
  - ii the amended **Annexure 10** and annexure 2 to the Participants Agreement replace **Annexure 10** and annexure 2 to the Participants Agreement respectively; and
  - iii the Contractor's consent to the amendment is deemed to have been given, subject to the amendment complying with the requirements of **Clause 22.4(b)i**.

## RIVERS REGIONAL COUNCIL

---

### 23. DIRECT DEED

- (a) Once the Key Contracts and the Financing Documents have been executed by all parties to those documents, the Parties must sign the Direct Deed.
- (b) The Direct Deed is conditional on Financial Close being achieved. Each of the Parties acknowledge and agree that, following Financial Close:
  - i the Agreement and the rights and obligations of each Party arising under the Agreement are to be construed subject to the provisions of the Direct Deed;
  - ii the rights and remedies of the Parties must be exercised in accordance with, and subject to, the terms of the Direct Deed; and
  - iii without limiting paragraphs i and ii, the limits on liability and exceptions to the limits of liability set out in **Clause 16** apply subject to clause 4.5 of the Direct Deed.

---

### 24. MISCELLANEOUS PROVISIONS

#### 24.1. Entire Agreement

The Agreement supersedes all prior agreements, arrangements and undertakings between all of the Parties relating to the Services and, together with the Direct Deed (once it comes into effect) and, in the case of the Principal and the Participants, the Participants' Agreement, constitutes the entire Agreement between each of the Principal, Participants and the Contractor relating to the Services provided.

#### 24.2. Subcontracting

- (a) The Contractor shall not, without the previous consent of the Principal in writing, assign, transfer, mortgage, charge, encumber, sublet or subcontract the Agreement, or any part thereof.
- (b) The Contractor is not relieved from and remains fully responsible for its obligations under the Agreement notwithstanding the engagement or termination of any subcontract and is liable to the Principal for the acts, omissions, defaults or negligence of any of its Subcontractors (and their subcontractors) as if they were the acts, omissions, defaults or negligence of the Contractor.
- (c) The Contractor shall not assign, transfer, mortgage, charge, or encumber, all or any of the moneys payable or to become payable or any other interest or benefit under the Agreement without the consent in writing of the Principal being first obtained.
- (d) Any consent shall not discharge the Contractor from any liability in respect of the Agreement, and shall extend only to the assignment or other transaction actually consented to and shall not be deemed a consent to any other assignment of transaction nor to prevent any proceedings for any subsequent breach of this condition and may be granted or withheld or made subject to conditions at the absolute discretion of the Principal.
- (e) Except as set out in **Clause 22**, neither the Principal nor any Participant may assign or novate the Agreement or assign any payment or any other right, benefit or interest under the Agreement other than to any local government (governed by the *Local Government Act 1995 (WA)*) who has the financial and Wastes resources to undertake the obligations of the assigning Party required by the Agreement. An assignment or novation of the Agreement by a Participant



## RIVERS REGIONAL COUNCIL

otherwise than in accordance with this **Clause 24.2(e)** will be a withdrawal by a Participant for the purpose of **Clause 22.3**.

### 24.3. Confidentiality

The details of the Agreement and any arrangement contemplated by the Agreement (**Confidential Information**) are to be held as confidential by the Contractor, unless:

- (a) the Confidential Information is necessarily made to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings;
- (b) the Confidential Information is required to be disclosed to a government agency;
- (c) the Confidential Information is required to be disclosed to any stock exchange;
- (d) the Confidential Information is disclosed to an employee, agent, advisor, Subcontractor, where that disclosure is reasonably necessary for the conduct of the Agreement and provided that the person to whom the information is disclosed is bound by the same confidentiality obligations;
- (e) the Confidential Information is disclosed to a financing party or bona fide prospective financing party or investor in the Contractor or to an agent, employee or advisor, subcontractor or contractor of a financing party or investor in the Contractor or prospective financing party for the purpose relating to a Financing Document or the financing of any project funding or equity investment and provided that the person to whom the information is disclosed is bound by the same confidentiality obligations; or
- (f) the disclosure was consented to in writing by the Principal.

The Principal or Participants may disclose Confidential Information when required by law under the *Freedom of Information Act 1992 (WA)* or under a Court order or as otherwise required by Law.

### 24.4. Publicity

The Contractor must not issue any press release or make any other public announcement relating to the Agreement other than as ordered or required by Law or in the course of administrative or judicial proceedings, or in accordance with the requirements of any applicable stock exchange, without prior written approval of the Principal.

### 24.5. Severability

- (a) If any part of the Agreement is or becomes for any reason invalid or unenforceable at Law, that part of the Agreement is deemed to be severed from the Agreement without affecting the remainder of the Agreement and the remainder of the Agreement continues to be valid and enforceable.
- (b) The Parties agree to use their reasonable endeavours to agree on an equitable adjustment to any provisions of the Agreement determined to be invalid, illegal or unenforceable with a view towards giving effect to the purposes of the Agreement.

### 24.6. Legal Costs

- (a) Except as set out in **Clause 2.2(h)ii**, each Party will bear its own legal and other costs and expenses relating directly or indirectly to the Agreement.
- (b) The Contractor must pay any stamp duty assessed in respect of the Agreement.

## RIVERS REGIONAL COUNCIL

### 24.7. Cumulative Rights

Subject to any express provision in the Agreement to the contrary, the rights of a Party under the Agreement are cumulative, and are in addition to any other rights of that Party.

### 24.8. Waiver

No forbearance, delay or indulgence by the Principal or a Participant in enforcing the provisions of the Agreement shall prejudice, restrict or limit the rights of the Principal or the Participants, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

### 24.9. Relationship of the Parties

Nothing in the Agreement constitutes or is intended to constitute a relationship of employer and employee, joint venture, principal and agent, or partnership between the Principal or Participants and the Contractor (including its employees or any related bodies corporate) or between the Principal and the Participants.

### 24.10. Rights and Remedies

The Principal and each Participant may exercise the rights herein conferred on it respectively in addition to all or any other rights or remedies which the Principal or the relevant Participant shall or may be entitled to against the Contractor whether at Law or under the Agreement.

### 24.11. Patent Rights / Copyright and Other Intellectual Property Rights

The Contractor warrants that neither the Services nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trade mark or name, copyright or other protected right and shall indemnify the Principal against any action, suit, claim, demand, loss, proceeding, liability, cost or expense resulting from any alleged infringement.

### 24.12. Survival

**Clauses 1** (Definitions and interpretation), **2.2(g)iii** (Financial Close), **2.2(h)** (Financial Close), **2.3(c)** (Security), **2.3(d)** (Security), **6.4(m)** (Commissioning), **11** (Service of Notices), **13.1(g)** (Calculation of the Fee and the Shortfall Fee), **13.4** (Goods and Services Tax), **13.5** (Deductions of Charges or Debt), **13.6** (Payment Direction) (to the extent that it applies to payment obligations which arose prior to the termination of the Agreement) **15** (Indemnity and liability), **16** (Limits on liability) (other than subclauses **16(g)** and **16(h)**), **17(f)** (Insurances), **20.1(c)** (Termination for default), **20.1(d)** (Termination for default), **23(b)iii** (Direct Deed) and **24** (Miscellaneous provisions) survive the termination of the Agreement or expiry of the Term.

RIVERS REGIONAL COUNCIL

# Signing page

Executed as an agreement

**PRINCIPAL**

The common seal of  
Rivers Regional Council

was hereunto affixed in the presence of:

*sign here*  
▶

\_\_\_\_\_  
**Chairperson**

*print name*

\_\_\_\_\_

*sign here*  
▶

\_\_\_\_\_  
**Chief Executive Officer**

*print name*

\_\_\_\_\_

**CITY OF ARMADALE**

The common seal of  
City of Armadale

was hereunto affixed in the presence of:

*sign here* ▶

\_\_\_\_\_  
**Mayor**

*print name*

\_\_\_\_\_

*sign here* ▶

\_\_\_\_\_  
**Chief Executive Officer**

*print name*

\_\_\_\_\_

**RIVERS REGIONAL COUNCIL**

**CITY OF GOSNELLS**

**The common seal of**

**City of Gosnells**

was hereunto affixed in the presence of:

*sign  
here ▶*

\_\_\_\_\_  
**Mayor**

*print  
name*

\_\_\_\_\_

*sign  
here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

**CITY OF MANDURAH**

**The common seal of**

**City of Mandurah**

was hereunto affixed in the presence of:

*sign  
here ▶*

\_\_\_\_\_  
**Mayor**

*print  
name*

\_\_\_\_\_

*sign  
here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

**RIVERS REGIONAL COUNCIL**

**CITY OF SOUTH PERTH**

**The common seal of**

**City of South Perth**

was hereunto affixed in the presence of:

*sign  
here ▶*

\_\_\_\_\_  
**Mayor**

*print  
name*

\_\_\_\_\_

*sign  
here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

---

**SHIRE OF MURRAY**

**The common seal of**

**Shire of Murray**

was hereunto affixed in the presence of:

*sign  
here ▶*

\_\_\_\_\_  
**Shire President**

*print  
name*

\_\_\_\_\_

*sign  
here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

---

**RIVERS REGIONAL COUNCIL**

**SHIRE OF SERPENTINE JARRAHDAL**

**The common seal of**

**Shire of Serpentine Jarrahdale**

was hereunto affixed in the presence of:

*sign  
here ▶*

\_\_\_\_\_  
**Shire President**

*print  
name*

*sign  
here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

**CITY OF CANNING**

**The common seal of**

**City of Canning**

was hereunto affixed in the presence of:

*sign  
here ▶*

\_\_\_\_\_  
**City of Canning  
Commissioner for the City of Canning**

*print  
name*

*sign  
here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

**RIVERS REGIONAL COUNCIL**

**CONTRACTOR**

Signed by  
**Kwinana WTE Project Co Pty Ltd**  
in accordance with section 127 of the *Corporations Act 2001* (Cth)

*sign  
here* ►

\_\_\_\_\_  
**Company Secretary/Director**

*print  
name*

\_\_\_\_\_

*sign  
here* ►

\_\_\_\_\_  
**Director**

*print  
name*

\_\_\_\_\_

\_\_\_\_\_

## RIVERS REGIONAL COUNCIL

**Annexure 1 – Contractor, Participants and Principal Details****Contractor's Name and ABN**

Name \_\_\_\_\_

ABN \_\_\_\_\_

**Contractor's Contact Details****Contractor's Address**

Street Address \_\_\_\_\_

\_\_\_\_\_

Suburb \_\_\_\_\_

State \_\_\_\_\_ Postcode \_\_\_\_\_

Postal Address \_\_\_\_\_

\_\_\_\_\_

Suburb \_\_\_\_\_

State \_\_\_\_\_ Postcode \_\_\_\_\_

**Contractor's Representative**

Name \_\_\_\_\_

**Contractor's Phone, Fax and Email Addresses**

Phone (Business Hours) \_\_\_\_\_

Phone (Emergency) \_\_\_\_\_

Facsimile \_\_\_\_\_

Email \_\_\_\_\_

**Contractor's Key Personnel**

<b>Name</b>	<b>Position</b>
Covanta Energy, LLC	Operation and maintenance contractor
POSCO E&C Australia Pty Ltd (ACN 152 588 102)	Engineering, procurement and construction contractor
Mitsubishi Heavy Industries Environment and Chemical Co.	Technology provider



## RIVERS REGIONAL COUNCIL

**Principal's Name and ABN**

**Name:** Rivers Regional Council

**ABN:** 80 479 097 483

**Principal's Contact Details****Principal's Address**

**Street Address:** 13 Third Road

**Suburb:** ARMADALE

**State:** Western Australia      **Postcode:** 6112

**Postal Address:** PO Box 459

**Suburb:** ARMADALE

**State:** Western Australian      **Postcode:** 6992

**Principal's Representative**

**Name:** Mr Alex Sheridan

**Principal's Phone, Fax and Email Addresses**

**Phone (Business Hours):** (08) 9497 5699

**Phone (Emergency):** 0439 915 766

**Facsimile:** (08) 9497 5922

**Email:** [admin@rrc.wa.gov.au](mailto:admin@rrc.wa.gov.au)

**City of Armadale**

**Name:** City of Armadale

**ABN:** 79 863 269 538

**City of Armadale's Contact Details****City of Armadale's Address**

**Street Address:** 7 Orchard Avenue

**Suburb:** ARMADALE

**State:** Western Australia      **Postcode:** 6112

**Postal Address:** Locked Bag No. 2

**Suburb:** ARMADALE

**State:** Western Australia      **Postcode:** 6992

## RIVERS REGIONAL COUNCIL

### City of Armadale's Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9394 5000

**Phone (Emergency):**

**Facsimile:** (08) 9394 5814

**Email:** [info@armadale.wa.gov.au](mailto:info@armadale.wa.gov.au)

### City of Gosnells

**Name:** City of Gosnells

**ABN:** 18 374 412 891

### City of Gosnells' Contact Details

#### City of Gosnells' Address

**Street Address:** 2120 Albany Highway

**Suburb:** GOSNELLS

**State:** Western Australia      **Postcode:** 6210

**Postal Address:** PO Box 662

**Suburb:** GOSNELLS

**State:** Western Australia      **Postcode:** 6990

#### City of Gosnells' Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9397 3000

**Phone (Emergency):**

**Facsimile:** (08) 9397 3333

**Email:** [council@gosnells.wa.gov.au](mailto:council@gosnells.wa.gov.au)

### City of Mandurah

**Name:** City of Mandurah

**ABN:** 43 188 356 365

### City of Mandurah's Contact Details

#### City of Mandurah's Address

**Street Address:** 3 Peel Street

**Suburb:** MANDURAH

**State:** Western Australia      **Postcode:** 6210

**Postal Address:** PO Box 210

**Suburb:** MANDURAH

**State:** Western Australia      **Postcode:** 6210

Agreement (No. 2015/1) – Receipt and Processing Waste for Resource Recovery

Page **58** of **70**

/

## RIVERS REGIONAL COUNCIL

### City of Mandurah's Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9550 3777

**Phone (Emergency):**

**Facsimile:** (08) 9550 3888

**Email:** [council@mandurah.wa.gov.au](mailto:council@mandurah.wa.gov.au)

### City of South Perth

**Name:** City of South Perth

**ABN:** 65 533 218 403

### City of South Perth's Contact Details

#### City of South Perth's Address

**Street Address:** Cnr Sandgate Street and South Terrace

**Suburb:** SOUTH PERTH

**State:** Western Australia      **Postcode:** 6151

**Postal Address:** Cnr Sandgate Street and South Terrace

**Suburb:** SOUTH PERTH

**State:** Western Australia      **Postcode:** 6151

#### City of South Perth's Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9474 0777

**Phone (Emergency):**

**Facsimile:** (08) 9474 2425

**Email:** [enquiries@southperth.wa.gov.au](mailto:enquiries@southperth.wa.gov.au)

### Shire of Murray

**Name:** Shire of Murray

**ABN:** 16 036 156 261

### Shire of Murray's Contact Details

#### Shire of Murray's Address

**Street Address:** 1915 Pinjarra Road

**Suburb:** PINJARRA

**State:** Western Australia      **Postcode:** 6208

**Postal Address:** PO Box 21

**Suburb:** PINJARRA

**State:** Western Australia      **Postcode:** 6208

Agreement (No. 2015/1) – Receipt and Processing Waste for Resource Recovery

Page **59** of **70**

/

## RIVERS REGIONAL COUNCIL

**Shire of Murray's Phone, Fax and Email Addresses****Phone (Business Hours):** (08) 9531 7777**Phone (Emergency):****Facsimile:** (08) 9531 1981**Email:** [mailbag@murray.wa.gov.au](mailto:mailbag@murray.wa.gov.au)**Shire of Serpentine Jarrahdale****Name:** Shire of Serpentine Jarrahdale**ABN:** 98 924 720 841**Shire of Serpentine-Jarrahdale's Contact Details****Shire of Serpentine-Jarrahdale's Address****Street Address:** 6 Paterson Street**Suburb:** MUNDIJONG**State:** Western Australia      **Postcode:** 6123**Postal Address:** 6 Paterson Street**Suburb:** MUNDIJONG**State:** Western Australian      **Postcode:** 6123**Shire of Serpentine-Jarrahdale's Phone, Fax and Email Addresses****Phone (Business Hours):** (08) 9526 1111**Phone (Emergency):****Facsimile:** (08) 9525 5441**Email:** [info@sjshire.wa.gov.au](mailto:info@sjshire.wa.gov.au)**City of Canning****Name:** City of Canning**ABN:** 80 227 965 466**City of Canning's Contact Details****City of Canning's Address****Street Address:** 1317 Albany Highway**Suburb:** CANNINGTON**State:** Western Australia      **Postcode:** 6107**Postal Address:** Locked Bag 80**Suburb:** WELSHPOOL**State:** Western Australia      **Postcode:** 6986

Agreement (No. 2015/1) – Receipt and Processing Waste for Resource Recovery

Page **60** of **70**

/

**RIVERS REGIONAL COUNCIL**

**City of Canning's Phone, Fax and Email Addresses**

**Phone (Business Hours):** (08) 9231 0606

**Phone (Emergency):**

**Facsimile:** (08) 9458 2353

**Email:** [customer@canning.wa.gov.au](mailto:customer@canning.wa.gov.au)

RIVERS REGIONAL COUNCIL

## Annexure 2 – Rate

Approved Rates schedule from Contractor to be inserted

RIVERS REGIONAL COUNCIL

## Annexure 3 – Minimum Technical Requirements

Approved plan from Contractor to be inserted

RIVERS REGIONAL COUNCIL

## Annexure 4 – Project Implementation Plan

Approved plan from Contractor to be inserted



RIVERS REGIONAL COUNCIL

## Annexure 5 – Products and Residue Management Plan

Draft plan from Contractor to be inserted

RIVERS REGIONAL COUNCIL

## Annexure 6 – Facility Performance Reporting Plan

Draft plan from Contractor to be inserted

RIVERS REGIONAL COUNCIL

## Annexure 7 – Community Waste Education Plan

Draft plan from Contractor to be inserted

RIVERS REGIONAL COUNCIL

## Annexure 8 – Waste Acceptance Protocol and Waste Delivery Plan

Draft protocol and plan from Contractor to be inserted

RIVERS REGIONAL COUNCIL

## Annexure 9 – Wastes

Types of Wastes to be received and collected by the Contractor to be listed here.

RIVERS REGIONAL COUNCIL

## Annexure 10 – Committed and Optional Waste Quantities