

**TENDER 234/2013 SECTION 33 PROCESS FOR  
INNOVATIVE GREEN ECONOMY  
PROGRAMMES/PROJECTS.**

**MAY 2018**

**ONDERSTEPOORT FACILITY CONTRACTS**

**PACK “2”**

- 1. INFORMATION STATEMENT TO THE SERVICE AGREEMENT**
- 2. DRAFT SERVICE AGREEMENT**
- 3. INFORMATION STATEMENT TO THE LEASE AGREEMENT**
- 4. DRAFT LEASE AGREEMENT**

## **INFORMATION STATEMENT**

### **CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**INFORMATION STATEMENT IS HEREBY GIVEN** in terms of section 33 of the Local Government: Municipal Finance Act, No. 56 of 2003 that the City of Tshwane Metropolitan Municipality ("the City") intends entering into a long term contract relating to the establishment of a clean Multipurpose Recovery Facility (MPRF) as Onderstepoort landfill site as a replication of the existing Kgwaggasrand MRF, on land owned by the city.

In terms of section 33(1)(a)(i)(aa) and (bb) of the Local Government: Municipal Finance Management Act 56 of 2003, read with section 21A of the Local Government: Municipal Systems Act 32 of 2000, the City of Tshwane hereby publishes the following Information Statement summarizing the obligations of the Municipality with the accompanying draft contract that relates to provision of processing services to the City of Tshwane in respect of all recyclable and non-recyclable household and business waste collected by the City of Tshwane's fleet or that of its contractors. The aforementioned services shall be provided in terms of services agreements. The MPRF will constitute a transfer station, composting section and a section for building rubble crushing and tyre crumbling.

These facilities intend to be used for the provision of processing services to the City of Tshwane in respect of recyclable and non-recyclable households and business waste collected by the city of Tshwane's fleet or that of its contractors from certain regions within the City of Tshwane's jurisdictional area.

This contract will impose financial obligations on the Municipality for a period longer than three (3) financial years.

The City has on its annual budget 2018/19 (as well as its multiyear expenditure plan) made provision for the contract.

## **1. PURPOSE**

The City of Tshwane intends entering into a long term contracts with a private sector entity (the “Service Provider”) for the to the establishment of a clean Multipurpose Recovery Facility (MPRF) as Onderstepoort landfill site as a replication of the existing Kgwaggasrand MRF, on land owned by the city which will provide processing services .

These facilities will be utilized for the provision of processing services in respect of all recyclable and non-recyclable household and business waste in certain regions within the City of Tshwane's jurisdictional area, namely the Portion of Portions 135,136 and 137 of the Farm Witfontein 301-JR and a Portion of Portion 201 of the farm Onderstepoort 300 JR where the Onderstepoort landfill site is located (the "**Property**".) as owned by the City.

The City of Tshwane shall enter into a Service Agreement which agreement shall govern the provision of the above mentioned services .

## **2. BACKGROUND**

In November 2013 the City has issued a tender regarding the Request for Information (CB 234 / 2013) for the interested parties to participate in an RFI for the purpose of assessing the types and extent of innovative green economy programmes / projects available for implementing within the City of Tshwane for the possible inclusion into a database of initiatives to be implemented as part of the City's Green Economy Transition Process. Following a thorough and intensive screening and evaluation process, recommendations for the award by the City` s Executive Adjudication Committee (EAC) has been made in January 2017, subject to the successful completion of the section 33 process as stipulated in the MFMA. A detailed project specification contained in Tender No: CB234/2013 is available on the City's website.

## **3. CONTRACT PERIOD**

The contract shall run for a period of twenty (20) years.

## **4. OBLIGATIONS**

The Service Provider shall provide waste processing services to the City of Tshwane in respect of all recyclable and non-recyclable household and business waste collected by the City of Tshwane's fleet or that of its contractors from certain regions of the City of Tshwane's jurisdictional area.

The City of Tshwane shall pay the Service Provider a fee at a rate equal to the refuse removal portion of the bulk tariff less 10%, as per the City of Tshwane's prevailing Refuse Services Schedule – Refuse Removal Services Tariff. The conversion factor from cubic meters to tons is 2.2 cubic meters per ton. The Service Provider's fee will increase in line with increases in the Municipality's Refuse Services Schedule – Refuse Removal Services Tariff. The service Provider's invoice for a given month shall be payable within 30 days of presentation to the City of Tshwane. The waste disposal fee shall be based on the greater of actual volumes disposed of at the Property or the minimum values as prescribed by the Contract.

The City of Tshwane shall procure that all the recyclable and non-recyclable waste collected from regions 1, 2, 3 and 4 of its municipal area is delivered to the Property. A minimum of 1000 tons per month of dry, sorted-at-source, household and business, recyclable waste will be disposed of by the City of Tshwane at Phase 1A of the Facility.

The City of Tshwane shall ensure that no services, similar to the services to be provided by the Service Provider, will be offered by it or its agents in regions 1, 2, 3 and 4 of its municipal area.

The City of Tshwane shall ensure that the weighbridge slips for its contractors in respect of the collection of recyclable and non-recyclable waste form part of the documents submitted by its contractors for payment to such contractors and shall not make payments to such contractors without legitimate weighbridge slips.

The Service Provider indemnifies the City of Tshwane against any claim for damages and/or personal injuries or death caused to it or to a third party on the property, which may be instituted

against the City of Tshwane with regard to any cause whatsoever, including injuries caused by slippery or uneven surfaces, floors, stairways, corridors or any other cause of any kind. The Service Provider further indemnifies the City of Tshwane against any claim or action arising from any damage or losses relating to the contents of the property or any structures thereon which may arise from any cause whatsoever.

The City of Tshwane shall be entitled to charge R40 per ton, inflation included, for disposal of compacted and bale waste at its landfill sites. Where the Ondertepoort Facility or the Service Provider delivers unbaled waste, which will not be further processed at the landfill site, it will be charged at the land filling tariff rates charged to the public for bulk disposal. Ownership of the waste and residual waste product shall vest in the Municipality but the Service Provider shall be entitled to process and divert as much waste as possible from the landfill site and the Property for beneficiation. Residual waste meant for thermal treatment or any alternative waste treatment technology is anticipated to have a calorific estimated value of between 12 and 14 MJ/kg.

As the Onderstepoort Facility is designed to service the City of Tshwane and is located on City of Tshwane owned land, the City of Tshwane shall upon termination or cancellation of the Service Agreement, except as a result of a breach by the Service Provider, immediately pay to the Service Provider certain payments. These payments include amounts payable for any services performed and provided for in terms of which a price is stated in the Contract as well as the cost of equipment and/or material ordered for the rendering of the services or for the City of Tshwane which have been delivered to the Service Provider and/or its subcontractors or of which the Service Provider is liable to accept delivery.

In addition, the City of Tshwane will be required to pay to the Service Provider the cost of the removal of any temporary works and the Service Provider's equipment from the site and the return of these items to the Service Provider in South Africa, any other cost or liability which in the circumstances was reasonably incurred by the Service Provider and/or its sub-contractors in the expectation of completing the Contract; all breakage fees and costs incurred by the Service

Provider (including all breakage fees and costs payable by the Service Provider to its service providers, funders and/or its sub-contractors and the cost of repatriation of the Service Provider's and any of its sub-contractor's staff and labour employed wholly in connection with the Service Agreement as at the date of termination. Furthermore, if the termination or cancellation of the Service Agreement is as a result of a breach by the City of Tshwane or as a result of any change in legislation, certain amounts shall be payable to the Service Provider by the City of Tshwane as a result of the termination or cancellation of the Services Agreement.

The Service Provider and the City of Tshwane shall 24 (twenty four ) months prior to the date of termination agree to an Exit Plan, which Exit Plan shall detail the proposed transfer process of the Services to the City of Tshwane and provide a description of the continuing provision of the Services throughout the handover period.

## **5. EXPECTED BENEFITS TO THE CITY**

Saving waste management operations costs; Diverting waste to landfill sites; increasing the lifespan of landfill sites; enhancing the City's waste minimisation programme and financial benefits through rental revenue.

**Notice is further given** in accordance with 33(1)(a)(i) (bb) of the Local Government: Municipal Finance Management Act 56 of 2003, read with Section 21A and Section 21 of the Local Government: Municipal Systems Act (Act 32 of 2000) that:

1. The local community and other interested persons or parties are invited to submit written comments or representations to the City in respect of the proposed draft request. Such comments or representations must be received by no later than 13 July 2018 via email to [sellomp@tshwane.gov.za](mailto:sellomp@tshwane.gov.za) or hand delivery or land post to the addresses provided below.
2. Copies of the draft contract and a summary of the City's obligations in terms of the draft contracts are available for perusal at all regional customer care centres and municipal

libraries in Tshwane. They can also be downloaded from the City of Tshwane's official public website ([www.tshwane.gov.za](http://www.tshwane.gov.za)).

3. Enquiries may also be made by dialling 012 358 8747/6321 or sending an email to [sellomp@tshwane.gov.za](mailto:sellomp@tshwane.gov.za).

PHYSICAL ADDRESS	POSTAL ADDRESS
City of Tshwane Metropolitan Municipality Office of the Executive Mayor City Sustainability Unit Sello Mphaga Tshwane House 2 <sup>nd</sup> Floor Block B East Wing 320 Madiba Street	City of Tshwane Metropolitan Municipality Office of the Executive Mayor City Sustainability Unit PO Box 440 Pretoria 0001

Submissions must be marked **Tender 234/2013 Section 33 process for innovative green economy programmes/projects**.

Persons with physical disabilities or who cannot write but need to participate in the process may present themselves during office hours at the physical address above where a staff member will assist them to transcribe the relevant comments or representations.

Dr Moeketsi Mosola  
CITY MANAGER

## **SERVICES AGREEMENT**

between

### **NEW GX ENVIRO SOLUTIONS AND LOGISTICS HOLDINGS PROPRIETARY LIMITED**

Herein represented by Mr. Masopha Moshoeshoe, in his capacity as Director of New GX Enviro Solutions and Logistics Holdings Proprietary Limited.

and

### **THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

Herein represented by Mr. Moeketsi Mosola, in his capacity as the City Manager, duly authorised in terms of section 59 of the Municipal Systems Act, 2000 (Act No. 32 of 2000).



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## 1. Introduction

- 1.1 The Facility is situated on the Property.
- 1.2 The Municipality has appointed the Service Provider to provide the Services in terms of a resolution of the EAC passed on 29 March 2017.
- 1.3 The Service Provider is equipped with the necessary personnel, skill and knowledge to render the Services on behalf of the Municipality.
- 1.4 The Municipality has appointed the Service Provider to undertake the Services and the Service Provider has accepted the appointment to provide such Services.
- 1.5 The Parties accordingly wish to enter into this Agreement to record the terms and conditions on which the Service Provider shall render the Services to the Municipality.

## 2. Definitions and interpretation

- 2.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
  - 2.1.1 **"Agreement"** means this services agreement, including the Annexes, as amended from time to time in terms of clause 18.5;
  - 2.1.2 **"Annexe(s)"** means the annexe(s) attached to this Agreement;
  - 2.1.3 **"Applicable Legislation"** means:
    - 2.1.3.1 the Labour Relations Act, 66 of 1995;
    - 2.1.3.2 the Basic Conditions of Employment Act, 75 of 1997;
    - 2.1.3.3 the Compensation for Occupational Injury and Diseases Act, 139 of 1993;

2.1.3.4		the Occupational Health and Safety Act, 85 of 1993;
2.1.3.5		the Unemployment Insurance Act, 63 of 2001 and the Unemployment Insurance Contributions Act, 4 of 2002;
2.1.3.6		the VAT Act; and
2.1.3.7		any other relevant legislation applicable to the Service Provider and/or the Municipality, and their respective representatives, from time to time;
2.1.4	<b>"Business Day"</b>	means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
2.1.5	<b>"EAC"</b>	means the Executive Acquisition Committee, a committee of the Municipality;
2.1.6	<b>"Effective Date"</b>	means the date on which the last of the Suspensive Conditions has been fulfilled or waived, as the case may be;
2.1.7	<b>"Facility"</b>	means the multipurpose waste recycling facility, the waste transfer facility and related facilities situated on the Property;
2.1.8	<b>"Loss"</b>	includes, without limitation, all claims, losses, damages, costs, charges, liabilities, penalties, interest, fines and expenses (including legal and other professional charges and expenses on an attorney and own client scale, and VAT thereon);
2.1.9	<b>"Municipality"</b>	means the City of Tshwane Metropolitan Municipality, a metropolitan municipality duly established and instituted in terms of Section 12 of

the Local Government Structures Act 1998 (Act 117 of 1998) as amended;

- 2.1.10            **"New GX Enviro"**            means New GX Enviro Solutions and Logistics Holdings Proprietary Limited, registration number 2011/110668/07, a private company incorporated in accordance with the laws of the Republic of South Africa;
- 2.1.11            **"Nobomate"**                        means Nobomate Proprietary Limited, registration number 2011/110653/07, a private company incorporated in accordance with the laws of the Republic of South Africa, which is a wholly-owned subsidiary of New GX Enviro and which will act as an agent of New GX Enviro for purposes of providing the Services under this Agreement as contemplated in clause 18.7.6;
- 2.1.12            **"Onderstepoort landfill site"**            means a permitted Municipality landfill site situated on Portion 201 of the Farm De Onderstepoort 300 JR;
- 2.1.13            **"Parties"**                                means the parties to this Agreement, being the Municipality and the Service Provider and **"Party"** shall refer to either one of them as the context may require;
- 2.1.14            **"Property"**                                means a Portions 135, 136 and 137 of the Farm Witfontein 301-JR as well as a Portion of Portion 201 of the Fram Onderstepoort 300-JR where the Onderstepoort landfill site is located;
- 2.1.15            **"Rand" or "R"**                        means South African Rand, the lawful currency of the Republic of South Africa;

- 2.1.16            **"Service Period"**            means, a period of 20 years commencing on the Effective Date and ending on the Termination Date, subject to the provisions of clause 11;
- 2.1.17            **"Service Provider"**            means New GX Enviro ;
- 2.1.18            **"Services"**                        means the services to be provided by the Service Provider to or on behalf of the Municipality as set out in **Annexe A**, and any and all other services to be rendered by the Service Provider to the Municipality from the Property after the Effective Date;
- 2.1.19            **"Signature Date"**            means, when this Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;
- 2.1.20            **"Surviving Provisions"**            means clauses 2, 3, 11, 16 to 18 (with the exception of clause 18.7) and any other provisions of this Agreement, which are expressed to continue in force after termination or which by necessary implication must continue after termination;
- 2.1.21            **"Termination Date"**            means the last day of the Service Period;
- 2.1.22            **"VAT"**                                means value-added tax levied in terms of the VAT Act; and
- 2.1.23            **"VAT Act"**                        means the Value-Added Tax Act 89 of 1991.
- 2.2                In this Agreement:
- 2.2.1                references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.2                words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;

- 2.2.3 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.5 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 2.2.6 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 2.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.2.8 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- 2.2.9 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 2.2.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

- 2.2.11 any reference to "law" means law, legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any governmental authority, which have force of law or which it would be an offence not to obey, and the common law, as amended, replaced, re-enacted, restated or re-interpreted from time to time;
- 2.2.12 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.
- 2.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.
- 2.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the *contra proferentem* rule), shall not apply.

### 3. **Suspensive Conditions**

- 3.1 The rights and obligations of the Parties under this Agreement (other than the Surviving Provisions which shall be unconditional and of immediate force and effect on and with effect from the Signature Date), are subject to, and conditional upon, the fulfilment or waiver of the following Suspensive Conditions on or before [●] (the "**Long Stop Date**") (or such later date as is notified or agreed under clause 3.3 below):
- 3.1.1 the Parties obtaining the approval of this Agreement required under section 33 of the Local Government: Municipal Finance Management Act, 2003 and the Municipal Supply Chain Management Regulations; and

- 3.1.2 the signing of lease agreements in respect of the Property by the parties thereto and registration of the lease agreements as long term lease agreements against the title deeds of the Property.
- 3.2 The Parties shall use their respective reasonable endeavours to procure the fulfilment of the Suspensive Conditions on or before the Long Stop Date.
- 3.3 The Suspensive Conditions are for the benefit of the Parties. The Parties may by agreement in writing by no later than the Long Stop Date extend the period for their fulfilment, it being recorded that the Suspensive Conditions shall not be capable of waiver.
- 3.4 If any of the Suspensive Conditions is not timeously fulfilled, this Agreement shall be null and void *ab initio*, save for the Surviving Provisions which shall continue to be binding, and no Party shall have any claim against any other Party of any nature, except such claims as may result from a breach of its obligations in terms of clause 3.2.

#### 4. **Appointment**

- 4.1 With effect from the Effective Date, the Municipality hereby appoints the Service Provider to provide the Services on a continuous basis in accordance with the terms and conditions of this Agreement, which appointment the Service Provider hereby accepts.
- 4.2 The relationship between the Parties shall be that of independent contractors and nothing in this Agreement, whether express or implied, shall:
- 4.2.1 be construed as creating an employment or labour-broking relationship between the Service Provider and its employees, on the one hand, and the Municipality, on the other;
- 4.2.2 be construed as creating a partnership or joint venture between the Parties;
- 4.2.3 constitute either Party as an agent or representative of the other Party; or
- 4.2.4 entitle either Party to bind or attempt to bind the other Party, or to represent to any third person that it has the authority to bind the other Party or to confer



any obligation on the other Party, unless specifically mandated to do so in writing by the other Party.

## 5. **Duration**

This Agreement shall commence on the Effective Date and shall continue until the Termination Date, subject to the provisions of clause 11.

## 6. **Provision of the Services**

- 6.1 In providing the Services, the Service Provider shall (without limiting any other obligation under this Agreement):
  - 6.1.1 comply with all laws, including the Applicable Legislation;
  - 6.1.2 not unduly interfere with the Municipality's business;
  - 6.1.3 act in good faith towards the Municipality at all times;
  - 6.1.4 adhere to and comply with all reasonable and lawful directions and instructions of the Municipality pertaining to the provision of the Services; and
  - 6.1.5 comply with any reasonable site requirements of the Municipality, including any safety and management plans, occupational health and safety requirements and environmental requirements, and ensure that any area occupied by the Service Provider is left in a safe, secure and clean condition.
- 6.2 The Service Provider assumes full responsibility for the actions of its employees and agents in performing the Services and shall be solely responsible for their supervision, direction and control.
- 6.3 Where the Facility transports waste for disposal at Municipal landfill sites, it will bring compacted and baled waste and the Service Provider's fee is inclusive of compacting, baling and transportation. Ownership of the waste and residual waste product shall vest in the Municipality but the Service Provider shall be entitled to process and divert as much waste as possible from the Onderstepoort landfill site and the Property for beneficiation. Residual waste meant for thermal treatment is anticipated to have a calorific value of between 12 and 14 MJ/kg. This estimation is subject to confirmation by the Service Provider one month prior to the issue of a

Request for Proposal by the Municipality for alternative waste treatment technologies.

- 6.4 After twenty-four (24) months of commencement of the operations of the Facility, the Municipality will introduce a charge of forty rand (R40) per ton, inflation included, for disposal of compacted and baled waste.
- 6.5 Where the Facility delivers unbaled inorganic waste, it will be charged at the land filling tariff rates charged to the public for bulk disposal unless that unbaled waste will be further processed at the Municipal landfill site.

## 7. **Scope of the Services**

The Service Provider shall render the Services as set out in **Annexe A**, subject to the terms and conditions of this Agreement.

## 8. **Payment of fees and invoicing**

- 8.1 In consideration of the Service Provider rendering the Services in accordance with the provisions of this Agreement, the Municipality shall pay the Service Provider a fee at a rate equal to the refuse removal portion of the bulk tariff less 10% as per the Municipality's prevailing Refuse Services Schedule – Refuse Removal Services Tariff. The current Refuse Services Schedule – Refuse Services Tariff 2017-2018, is attached to this Agreement as **Annexe B**. The conversion factor from cubic meters to tons is 2.2 cubic meters per ton. The Service Provider's fee will increase in line with increases in the Municipality's Refuse Services Schedule – Refuse Removal Services Tariff. The Service Provider's invoice for a given month shall be payable within 30 days of presentation to the Municipality. The waste disposal fee shall be based on the greater of actual volumes disposed of at the Property or the minimum volumes set out in clause 9.1.1.
- 8.2 All amounts payable by the Municipality to the Service Provider in terms of this Agreement shall be made to the Service Provider's bank account as detailed below (without set-off, deduction or withholding of any nature whatsoever):
  - 8.2.1 Bank Name: Standard Bank of South Africa Limited
  - 8.2.2 Branch and Branch Code: Hatfield 051001

8.2.3 Account Number: 011944390

8.2.4 Account Holder: Nobomate (Pty) Ltd.

8.3 All amounts payable in terms of this Agreement shall be in the currency of the Republic of South Africa and shall be exclusive of VAT.

## **9. Municipality's support obligations**

9.1 In order to make it possible for the Service Provider to carry out its obligations under this Agreement, the Municipality shall:

9.1.1 procure that all the recyclable and non-recyclable waste collected from Region 1 (one) and 2 (two) as well as Regions 3 (three) and 4 (four) of its municipal area is delivered to the Properties. A minimum of 1000 tons per month per month of dry, sorted-at-source, household and business, recyclable waste will be disposed of by the Municipality at Phase 1A of the Property from the commercial operation of the Property;

9.1.2 ensure that no services similar to the Services will be offered by it or its agents in regions 1 and 2 as well as regions 3 and 4 of its municipal area;

9.1.3 ensure that the weighbridge slips for its contractors in respect of the collection of recyclable and non-recyclable waste form part of the documents submitted by its contractors for payment to such contractors and shall not make payments to such contractors without legitimate weighbridge slips.

9.2 The Service Provider indemnifies the Municipality against any claim for damages and/or personal injuries or death caused to it or to a third party on the Property, which may be instituted against the Municipality with regard to any cause whatsoever, including injuries caused by slippery or uneven surfaces, floors, stairways, corridors, or any other cause of any kind.

9.3 The Service Provider further indemnifies the Municipality against any claim or action arising from any damage or losses relating to the contents of the Property or any structures thereon which may arise from any cause whatsoever.

## 10. Warranties and indemnity

- 10.1 Each of the Parties hereby warrants and undertakes to the other, as at the Signature Date, the Effective Date and for the duration of the Service Period, that:
- 10.1.1 it is duly constituted, organised and validly existing under the laws of the Republic of South Africa;
  - 10.1.2 it has the full right, power and authority to enter into and perform its obligations under this Agreement;
  - 10.1.3 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
  - 10.1.4 the execution of this Agreement and the performance of its obligations hereunder does not and shall not:
    - 10.1.4.1 contravene any law or regulation to which that Party is subject;
    - 10.1.4.2 contravene any provision of that Party's constitutional documents; or
    - 10.1.4.3 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and
  - 10.1.5 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
  - 10.1.6 it is entering into this Agreement as principal (and not as agent or in any other capacity);
  - 10.1.7 the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
  - 10.1.8 save as set out in clause 18.7.6, no other Party is acting as a fiduciary for it; and
  - 10.1.9 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.

- 10.2 In addition to the warranties and undertakings set out in clause 10.1, the Service Provider hereby warrants and undertakes to the Municipality, as at the Signature Date, the Effective Date and for the duration of the Service Period, that:
- 10.2.1 it has an adequate number of employees with the necessary skill, knowledge and know-how to render the Services in accordance with the provisions of this Agreement;
- 10.2.2 it has the required governance, risk management, information technology and internal controls in place to perform the Services, and shall maintain and enhance such systems and controls for the duration of this Agreement;
- 10.2.3 its employees are appropriately experienced, qualified and available to provide the Services to the Municipality in accordance with this Agreement;
- 10.2.4 the Services will be supplied and performed in accordance with the requirements of this Agreement.
- 10.3 Each of the representations and warranties given by the Parties in terms of this clause shall:
- 10.3.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement; and
- 10.3.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement.
- 10.4 A Party must, if requested by the other Party, furnish to the latter sufficient evidence of the authority of a person who takes any action or executes any documents under this Agreement on behalf of the Party so requested.

## 11. Breach

- 11.1.1 If a Party breaches any material provision of this Agreement and fails to remedy the breach within 30 days of written notice to do so, that Party will be in default.

- 11.1.2 If a Party is in default the other Party will be entitled, in addition to all other remedies in terms of this Agreement or at law, to cancel the Agreement by written notice to the Party in default.

## 12. Early Termination

- 12.1 In the event of termination or cancellation of this Agreement prior to the Termination Date for whatever reason or cause arising, the Municipality shall without prejudice to the Service Provider's other rights (including to payment of other amounts) in terms of this Agreement or otherwise, immediately pay to the Service Provider:
- 12.1.1 the value of the Services performed by the Service Provider which shall include:
- 12.1.1.1 the amounts payable for any Services performed or provided for which a price is stated in this Agreement;
- 12.1.1.2 the cost of equipment and/or materials ordered for the rendering of the Services to the Municipality which have been delivered to the Service Provider and/or its sub-contractors or of which the Service Provider and/or its sub-contractors is liable to accept delivery: this equipment, materials and any plant shall become the property of (and be at the risk of) the Municipality when all amounts owing to the Service Provider under or in terms of this Agreement including the equipment, materials and any plant which have been paid for by the Municipality and the Service Provider shall place the equipment, materials and any plant at the Municipality's disposal;
- 12.1.1.3 the cost of removal of any temporary works and the Service Provider's equipment from the site and the return of these items to the Service Provider in South Africa;
- 12.1.1.4 any other cost or liability which in the circumstances was reasonably incurred by the Service Provider and/or its sub-contractors in the expectation of completing this Agreement;

- 12.1.1.5 all breakage fees and costs incurred by the Service Provider (including all breakage fees and costs payable by the Service Provider to its service providers, funders and/or its sub-contractors); and
- 12.1.1.6 the cost of repatriation of the Service Provider's and any of its sub-contractor's staff and labour employed wholly in connection with this Agreement as at the Termination Date; and
- 12.1.2 if the termination or cancellation is as a result of a breach by the Municipality of this Agreement or as a result of any change in legislation, all amounts (together with all interest and penalties thereon) that the Service Provider is required to pay to any funder of the Facility or part thereof ("**Funders**"), all equity raised by the Service Provider and any coupon thereon, all borrowing costs, hedging costs, transaction costs and the like plus an amount equal the amount which would be required by the Service Provider in order to achieve the IRR of 24.95%. For the purposes of this clause, "**IRR**" shall mean the interest rate at which the net present value of all the cash flows (both positive and negative) arising from the provisions of the Services in terms of this Agreement equal to zero; or
- 12.1.3 if the termination or cancellation is as result of the Force Majeure event contemplated in clause 15: all amounts (together, with all interest and penalties thereon) that the Service Provider is required to pay to the Funders, all equity raised by the Service Provider and any coupon thereon, all borrowing costs, hedging costs, transaction costs and the like plus an amount equal to 50% (fifty percent) of the amount which would be required by the Service Provider in order to achieve the IRR.
- 12.2 If there is a dispute in respect of any aspect of this clause 12 (including, without limitation, the amount that the Municipality is obliged to pay to the Service Provider and/or the Municipality's right to terminate) then it shall be resolved in accordance with the dispute process contemplated in clause 17; however, for the avoidance of doubt, the Municipality shall not withhold payment of any amounts which are not in dispute and shall immediately make payment of such amounts on demand from the Service Provider.

- 12.3 If clause 12.1 applies and at such point in time the shareholders of the Service Provider have, pursuant to the project contemplated in this Agreement, actually achieved, realised and received an aggregate IRR of at least the aggregate IRR which they would have achieved, realised and received had this Agreement not been terminated or cancelled pursuant to clause 12.1 (the "**Break Even Point**") then, without derogating from the provisions of clause 12.1:
- 12.3.1 the Parties shall, within 10 Business Days of either of them sending a written notice to the other requesting a meeting, meet to agree that value of the Services at such point in time by applying a discount rate equal to the IRR to future cash flows (the "**Services Value**"). If the Parties do not meet within the aforesaid 10 Business Days or do meet within such period but fail to reach agreement on the Services Value within 5 Business Days after such a meeting then either Party shall be entitled to refer the matter to an Expert for determination in terms of clause 12.5. Within 10 Business Days of the date upon which the Services Value is agreed by the Parties or determined by an Expert pursuant to clause 12.5 (as the case may be), the Municipality shall pay the Service Provider an amount equal to the Services Value.
- 12.4 For the avoidance of doubt, the total amount payable to the Service Provider shall in terms of this clause<sup>12</sup> never be less than the amount the Service Provider is required to pay to the Funders and any coupon thereon, including all borrowing costs and transaction costs.
- 12.5 For the purposes of clause 12.3.1, "**Expert**" shall mean an independent firm of Chartered Accountants agreed upon by the Parties:
- 12.5.1 who shall determine the Services Value as soon as possible in the circumstances;
- 12.5.2 who shall act as an expert and not as an arbitrator, and may receive and consider such information as he or she may deem necessary;
- 12.5.3 who shall give each Party an opportunity to make written submissions to him/her concerning the manner in which the Services Value is to be determined;
- 12.5.4 who shall hear the matter informally and as soon as possible; and



- 12.5.5 whose decision (except for manifest error) shall be final and binding on the Parties and may be made an order of court.

### 13. Exit Plan

- 13.1 The Parties shall use all reasonable endeavours to agree to an exit plan ("**Exit Plan**") by no later than 24 months before the Termination Date.
- 13.2 The Exit Plan shall as a minimum, contain the following:
- 13.2.1 a detailed description of the proposed transfer process of the Services to the Municipality (or to a replacement supplier), which will include but not be limited to the Municipality making its own people available to the Service Provider for purposes of familiarising themselves with the Services and the rendering thereof;
  - 13.2.2 a description of the continuing provision of the Services throughout the handover period;
  - 13.2.3 a description of any other Service Provider's obligations on termination of the Agreement, which shall include an obligation on the Service Provider to perform all activities and provide all information and assistance as may be reasonably requested by the Municipality from time to time for the purposes of ensuring the orderly and uninterrupted handover and transfer of the Services to the Municipality (or to a replacement supplier) of the Services; and
  - 13.2.4 the period after the Termination Date during which the Municipality will require support from the Service Provider (which will be about 24 months from the Termination Date) as well as the fees payable by the Municipality to the Service Provider for such post-Termination Date support.
- 13.3 Should the Parties (both acting reasonably and in good faith) be unable to agree an Exit Plan or if this Agreement is terminated or expires prior to the Parties agreeing an Exit Plan, the Service Provider shall, in addition to performing its obligations under clause 13.2, assist the Municipality in facilitating a seamless transfer of the Services back to the Municipality (or to a replacement supplier).

#### **14. Information and audit access**

- 14.1 The Service Provider shall provide to the Municipality all information, documents, records and the like in the possession of, or available to, the Service Provider as may reasonably be requested by the Municipality for the purpose of complying with any of its statutory obligations including its reporting obligations under the Applicable Legislation.
- 14.2 To this end the Service Provider shall use all reasonable endeavours to ensure that all such information in the possession of any counter-party to any project document shall be made available to the Municipality and the Service Provider has included, or shall include, appropriate provisions to this effect in all project documents.
- 14.3 Without limiting the generality of the foregoing, the Service Provider shall:
- 14.3.1 provide and shall procure that its sub-contractors shall provide all such information as the Municipality may reasonably require from time to time to enable the Municipality to provide reports and returns as required by law, including reports and returns regarding the physical condition of any site occupied by the Municipality, health and safety, national security, and environmental safety; and
- 14.3.2 note and facilitate the Municipality's compliance with the Promotion of Access to Information Act, 2000 in the event that the Municipality is required to provide information to any person pursuant to that Act.

#### **15. Force Majeure**

- 15.1 For the purposes of this Agreement, circumstances beyond the control of a Party will include but not necessarily be limited to any of the following matters:
- 15.1.1 war, invasion, act of foreign enemy, hostilities or warlike operations (whether that be declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power, confiscation or destruction or requisition by order of any Government or any public authority, or any other Act of state, including prevention or denial of trade, sanctions or closure of borders;
- 15.1.2 earthquake, flood, fire, drought or other physical disaster;

- 15.1.3 strike or lockout or other industrial action by employees;
- 15.1.4 any other circumstances beyond the reasonable control and not within the reasonable expectation of either Party.
- 15.2 If either Party to this Agreement is prevented from or delayed in performing any of its obligations under this Agreement by circumstances beyond the control of such Party as set out in this clause, then it will forthwith notify the other Party in writing of the nature and expected duration of such circumstances and of the obligation, performance of which is delayed or prevented and both Parties will thereupon be excused from the performance or punctual performance, as the case may be, of their respective obligations from the date of such notification, for so long as the circumstances or prevention or delay may continue.
- 15.3 If by virtue of the foregoing, the Parties are excused from the performance or punctual performance of any obligation for a continuous period of four (4) months and provided that such performance is still excused, then either Party may at any time thereafter, by written notice to the other Party, terminate this Agreement. Each Party will absorb its own costs and losses occasioned by such lack of performance or punctual performance and neither of the Parties shall have the right to claim damages or any other amount from the other.

## 16. Confidentiality

- 16.1 Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:
  - 16.1.1 the details of this Agreement, the details of the negotiations leading to this Agreement, and the information handed over to such Party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in this Agreement; and
  - 16.1.2 all information, know-how, reports and documents, technical as well as economic and financial information relating to the business or the operations and affairs of each of the Parties, including without limitation, books, instruction books, guidelines, applicable forms, policy information and policy documents, premium rates and calculations, products, software programs

and manuals, and financial information which may come to the attention of a Party pursuant to the terms and conditions of this Agreement,

(together "**Confidential Information**").

- 16.2 The Parties agree to keep all Confidential Information confidential and to disclose it only to their officers, directors, employees, consultants and professional advisers who:
- 16.2.1 have a need to know (and then only to the extent that each such person has a need to know);
  - 16.2.2 are aware that the Confidential Information should be kept confidential;
  - 16.2.3 are aware of the disclosing Party's undertaking in relation to the Confidential Information in terms of this Agreement; and
  - 16.2.4 have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.
- 16.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to Confidential Information that:
- 16.3.1 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such Confidential Information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality;
  - 16.3.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who disclosed such Confidential Information.
- 16.4 The Parties shall be entitled to disclose Confidential Information that is required by the provisions of any law, statute or regulation, or during any court proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed, provided that the Party that is required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other

Party prior to making such disclosure. Subject to the provisions of clause 16.3.2, any Confidential Information disclosed in terms of this clause 16.4 shall remain subject to the Parties' confidentiality obligations under this clause 16.

16.5 The Parties undertake to co-operate with each other in relation to any announcements concerning any transaction contained in this Agreement, and in particular undertake not to make any announcements, statements or disclosures or issue any documentation relating to the transactions contemplated herein without the prior written approval of the other Parties (which approval will not be delayed or withheld unreasonably), save that any announcements required to be made by law or the rules of any stock exchange by any Party shall not require the prior written approval of the other Parties, provided that the Party required to make such announcement shall first advise the other Parties of such requirement, shall provide a copy of a draft announcement to the other Parties and shall consult with them in relation to the scope, form and substance of such announcement.

16.6 The confidentiality obligations set forth in this clause 16 shall survive the termination or expiration of this Agreement.

## 17. Mediation and arbitration

### 17.1 **separate, divisible agreement**

This clause is a separate, divisible agreement from the rest of this Agreement and shall:

17.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall be subject to arbitration in terms of this clause; and

17.1.2 remain in effect even if the Agreement terminates or is cancelled.

### 17.2 **disputes subject to mediation and arbitration**

Any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement including, without limitation, any dispute concerning:

- 17.2.1 the existence of the Agreement apart from this clause;
- 17.2.2 the interpretation and effect of the Agreement;
- 17.2.3 the Parties' respective rights or obligations under the Agreement;
- 17.2.4 the rectification of the Agreement;
- 17.2.5 the breach, termination or cancellation of the Agreement or any matter arising out of the breach, termination or cancellation; or
- 17.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the Agreement apart from this clause is valid and enforceable, shall first be referred to the Chief Executive Officer of NewGX Enviro and the City Manager of the Municipality (or their nominees) for resolution and if still not resolved by such persons within 15 Business Days (or such additional period as the Parties may agree in writing, such matter shall be decided by arbitration as set out in the remainder of this clause.

### 17.3 **appointment of arbitrator**

- 17.3.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("**AFSA**"). If agreement is not reached within 10 Business Days after either Party in writing calls for agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.
- 17.3.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Party who may, within 7 days, submit written comments on the request to the addressor of the request.

### 17.4 **venue and period for completion of arbitration**

The arbitration shall be held in Pretoria and the Parties shall endeavour to ensure that it is completed within 90 Business Days after notice requiring the claim to be referred to arbitration is given.

#### 17.5 **Arbitration Act - rules**

The arbitration shall be governed by the Arbitration Act 42 of 1965 or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

#### 17.6 **arbitrator may apply equity**

The arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.

#### 17.7 **application to court for urgent interim relief**

The provision of this clause 17 will not preclude any Party from access to a competent division of the High Court of South Africa for urgent and/or interim relief pending the outcome of an arbitration in terms hereof or in respect of arbitration proceedings in terms hereof. The Parties shall use their reasonable endeavours to ensure that the arbitration is expedited.

### 18. **Miscellaneous matters**

#### 18.1 **addresses and notices**

18.1.1 For the purposes of this Agreement, including the giving of notices and the serving of legal process, each Party chooses its *domicilium citandi et executandi* at:

18.1.1.1 in the case of the Service Provider:

address	35 Ferguson Road 4 <sup>th</sup> floor Illovo Johannesburg 4150
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email	masopha@newgx.co.za,
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for the attention of: Masopha Moshoeshoe;

18.1.1.2 in the case of the Municipality:

address Tshwane House  
320 Madiba street  
East Wing  
2<sup>nd</sup> Floor  
Pretoria  
0001

email sellomp@tshwane.gov.za

for the attention of: Sello Mphaga

18.1.2 The notice shall be deemed to have been duly given:

18.1.2.1 on delivery, if delivered to the Party's physical address in terms of either this clause 18.1 before 17h00 on a Business Day, or if delivered on a Business Day but after 17h00 on that Business Day, or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was delivered;

18.1.2.2 on despatch, if sent to the Party's then fax number or email address before 17h00 on a Business Day, or if sent on a Business Day but after 17h00 on that Business Day, or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was sent,

unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

18.1.3 A Party may change that Party's address, fax number or e-mail address by notice in writing to the other Party, provided that a Party's address shall remain a physical address in the Republic of South Africa. Such change to be effective only on and with effect from the seventh Business Day after the giving of such notice.

18.1.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that the notice or communication was not sent to or delivered or served at that Party's chosen *domicilium citandi et executandi*.



18.2 **entire contract**

This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

18.3 **no stipulation for the benefit of a third person**

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

18.4 **no representations**

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

18.5 **variation, cancellation and waiver**

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

18.6 **indulgences**

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

18.7 **cession and delegation**

18.7.1 A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

18.7.2 The Parties acknowledge and represent that the financing for the Facility or any part thereof will be provided by a third party financier ("**Financier**") pursuant to financing agreements to be concluded between the Financier and the Service Provider. The Parties agree that should the Service Provider

fail to carry out its obligations under this Agreement or commit a material breach of this Agreement, which would entitle the Municipality to cancel this Agreement, the Municipality shall not be entitled to cancel this Agreement without prior written notification of such failure to perform or breach and/or its intention to cancel this Agreement first having been given to the Financier, and the Financier being given the opportunity to exercise its step-in-rights in terms of clause 18.7.3.

- 18.7.3 Upon receipt of the notification referred to in clause 18.7.2, the Financier shall be entitled to exercise its step-in-rights within a period of 30 (thirty) days from the date of receipt of such notification, which step-in-rights will entitle the Financier to assign all the rights and obligations of the Service Provider to perform the Services and carry out the Service Provider's obligations under this Agreement, on behalf of the Municipality.
- 18.7.4 In terms of the step-in-rights referred to in clause 18.7.3, the Financier shall operate the Facility as an agent of, and on behalf of, the Service Provider.
- 18.7.5 The Service Provider shall procure that the Financier shall ensure that security interests granted in its favour and obligations under financing documents in respect of the Facility are adequately perfected. The Service Provider shall procure that the Financier shall include an obligation in the finance documents in respect of the Facility relating to the perfection of any security interest granted to the Financier within applicable time limits in terms of this Agreement.
- 18.7.6 Notwithstanding anything to the contrary contained in this Agreement, the Service Provider shall be entitled to:
- 18.7.6.1 appoint, with prior written notice to the Municipality, any company within the Service Provider's group of companies, as an agent on the Service Provider's behalf, which agent will exercise the Service Provider's rights to use, occupy, control and/or manage the Facility and provide the Services in terms of this Agreement. The Municipality hereby consents to the Service Provider's appointment of Nobomate as an agent, as contemplated in this clause; and

18.7.6.2                    appoint agents to exercise on its behalf, any of its rights to use, occupy, control or the Facility in terms of this Agreement and/or delegate any of its obligations under this Agreement to any financial institution or lender who has funded the Facility or part thereof, upon the enforcement by such financial institution or lender of its security rights against the Service Provider, with prior written notice to the Municipality.

**18.8                    applicable law**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

**18.9                    jurisdiction of South African courts**

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, North Gauteng High Court, Pretoria for any proceedings arising out of or in connection with this agreement.

**18.10                  costs**

18.10.1                  Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

18.10.2                  Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

**18.11                  signature in counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

**18.12                  independent advice**

Each of the Parties hereby respectively agrees and acknowledges that:

18.12.1                  it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such

independent legal advice or has dispensed with the necessity of doing so;  
and

18.12.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

18.13 **good faith**

The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

18.14 **co-operation**

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

Signed at on 2018

**Witness** for **New GX Enviro Solutions and Logistics Holdings Proprietary Limited**

.....

.....  
Masopha Moshoeshoe duly authorised  
and warranting such authority

Signed at on 2018

**Witness** for **The City of Tshwane Metropolitan Municipality**

.....

.....  
Moeketsi Mosola duly authorised and  
warranting such authority

**Annexe A****Services**

The waste processing services to be provided by the Service Provider to the Municipality in respect of all the recyclable and non-recyclable household and business waste collected from Region 1 (one) and 2 (two) and Region 3 (three) and Region 4 (four) of the Municipality's jurisdictional area include:

- Waste trucks will enter the Facility are weighed on the weighbridge fully loaded.
- The waste trucks will then proceed to the relevant phase of the Facility, enter the waste receiving area, dump on the dumping platform and then exit the building.
- The waste trucks will proceed to the exit, are weighed on the weighbridge without their waste and exit the Facility. A weigh bridge report with the waste collector company's name, entrance time, gross weight, exit time, net weight and the weight of the waste disposed of will be given to the waste truck driver. These weigh bridge reports form part of the invoice pack that the contractors submit to the Municipality to verify their productivity. A separate record of this information will be communicated electronically to the Municipality.
- The waste disposed of by the waste trucks is then fed into a waste in feed by either a mechanical grab or front-end loader.
- The waste is then processed into a inorganic and organic component. The residual, non recyclable component will be baled, if possible or loaded into open top containers.
- The baled recyclable waste is then stored prior to transportation to off-takers. The baled inorganic component will then be lifted by forklift onto flat deck trucks and then sent either to Garankuwa landfill or any other designated Municipal landfill or stockpiled, for use as a feedstock for waste-to-energy processes. The organic or non-combustible component will then be disposed of at an operational Municipality landfill site at no charge to the Service Provider.
- Where the Facility transports waste to be disposed of at Municipal landfill sites, it will bring residual, processed waste and the fee payable for the Services is inclusive of processing, loading and transportation costs to a Municipal landfill site.
- After 24 months of commencement of the operations of the Facility, the Municipality will introduce a charge of R40 (forty Rand) per ton for any waste disposed of at Municipal landfill sites.

- Where the Facility disposes of unbaled inorganic waste at Municipal landfill sites, it will be charged the landfilling tariff rates charged to the public for bulk disposal unless that unbaled waste will be further processed at the Municipal landfill site.
- The services are as provided for in the EAC resolution annexed hereto and marked annexure "D".
- In addition to and in order to complement the Services set out above, the Service Provider shall provide the following on site green waste Services to the Municipality, at no additional cost:
  - shred green waste at the Municipality's infrastructure in Region 1 (one) and 2 (two) as well as Region 3 (three) and Region 4 (four) and/or loading green waste into the Service Provider's trucks and transport same to the Properties leased by the Service Provider or another designated or permitted site; and
  - stockpiling the shredded green waste until it is loaded into trucks and transported to the Properties or another designated or permitted site.

**Annexe B**

**Refuse Services Schedule – Refuse Removal Services Tariff 2017-2018**

**Annexe D**

**EAC resolution passed on 29 March 2017***[Drafting note: Please insert]*



## INFORMATION STATEMENT

### CITY OF TSHWANE METROPOLITAN MUNICIPALITY

**INFORMATION STATEMENT IS HEREBY GIVEN** in terms of section 33 of the Local Government: Municipal Finance Act, No. 56 of 2003 that the City of Tshwane Metropolitan Municipality ("the City") intends entering into a long term contract relating to the establishment of a clean Multipurpose Recovery Facility (MPRF) as Onderstepoort landfill site as a replication of the existing Kgwaggasrand MRF, on land owned by the city.

In terms of section 33(1)(a)(i)(aa) and (bb) of the Local Government: Municipal Finance Management Act 56 of 2003, read with section 21A of the Local Government: Municipal Systems Act 32 of 2000, the City of Tshwane hereby publishes the following Information Statement summarizing the obligations of the Municipality with the accompanying draft contract that relates to the lease of property to a service provider for the purposes of providing processing services to the City of Tshwane in respect of all recyclable and non-recyclable household and business waste collected by the City of Tshwane's fleet or that of its contractors. The aforementioned services shall be provided in terms of services agreements. A Notarial Agreement of Lease shall be concluded in order for the services to be provided to the City of Tshwane. The purpose of this information statement is to provide information regarding the Notarial Agreement of Lease.

The MPRF will constitute a transfer station, composting section and a section for building rubble crushing and tyre crumbling.

These facilities intend to be used for the provision of processing services to the City of Tshwane in respect of recyclable and non-recyclable households and business waste collected by the city of Tshwane's fleet or that of its contractors from certain regions within the City of Tshwane's jurisdictional area.

This contract will impose financial obligations on the Municipality for a period longer than three (3) financial years.

The City has on its annual budget 2018/19 (as well as its multiyear expenditure plan) made provision for the contract.

### **1. PURPOSE**

The City of Tshwane intends entering into a long term contracts with a private sector entity (the “Service Provider”) for the establishment of a clean Multipurpose Recovery Facility (MPRF) as Onderstepoort landfill site as a replication of the existing Kgwaggasrand MRF, on land owned by the city.

These facilities are utilized for the provision of processing services in respect of all recyclable and non-recyclable household and business waste in certain regions within the City of Tshwane's jurisdictional area, namely a Portion 135, 136 and 137 of the farm Witfontein 301-JR and a Portion of Portion 201 of the Farm Onderstepoort 300-JR. as owned by the city.

The City of Tshwane will enter into an Agreement of Lease; which agreement will be required in order for the services to be provided to the City of Tshwane

### **2. BACKGROUND**

In November 2013 the City has issued a tender regarding the Request for Information (CB 234 / 2013) for the interested parties to participate in an RFI for the purpose of assessing the types and extent of innovative green economy programmes / projects available for implementing within the City of Tshwane for the possible inclusion into a database of initiatives to be implemented as part of the City's Green Economy Transition Process. Following a thorough and intensive screening and evaluation process, recommendations for the award by the City's Executive Adjudication Committee (EAC) has been made in January 2017, subject to the successful completion of the section 33 process as stipulated in the MFMA. A detailed project specification contained in Tender No: CB234/2013 is available on the City's website.

### **3. CONTRACT PERIOD**

The contract shall run for a period of twenty (20) years.

#### 4. OBLIGATIONS

The Service Provider shall not make payment and the City of Tshwane shall not expect receipt of rental in terms of the Agreement of Lease and the Service Provider shall be entitled to withdraw from the Contract without the City of Tshwane having any claim whatsoever against the Service Provider in the event that, inter alia, the Service Provider does not successfully obtain a Waste Management License for the implementation of Phases 2 and 3 of the Development on the Property in terms of the National Environmental Management: Waste Act, 2008 (Act No. 58 of 2008) and the National Environmental Management Act, 1998 (Act No.107 of 1998) within 18 months of the Effective Date.

The City of Tshwane shall for the duration of the Contract be obliged to procure amendments to its current Waste Management By-laws applicable within its area of jurisdiction in order to implement waste minimization initiatives in certain regions and make waste minimization initiatives that have been implemented compulsory for residents and businesses to support such initiatives, recognize and promote waste recycling facilities similar to the Development at all the City of Tshwane's licensed waste dumping sites within the City of Tshwane's area of jurisdiction by way of which such waste recycling facilities are, from a statutory point of view, recognized as an integral part of the waste management obligations and services to be rendered by the City of Tshwane. Furthermore, the City of Tshwane shall be obliged to take all reasonable steps to, as an integral part of its procurement policy to incorporate preference of recycled material or products in order to encourage the establishment of waste recycling facilities throughout its area of jurisdiction and to promote the utilization of such products and material.

The City of Tshwane shall receive market related rental each month from the Service Provider which rental shall annually cumulatively escalate and is payable on a monthly basis. The Service Provider shall pay the rental amount from the first month of commercial opening of Phase 1 of the Development which amount includes VAT and which amount shall annually cumulatively escalate.

The Service Provider shall at its own costs procure the authorizations, consents, licenses and permits which are required for the lawful conduct of the Second and Third Phase of the Development.

The City of Tshwane is required to make budget available for the education of communities within certain regions of the City of Tshwane's jurisdictional area to enable members of such communities to understand the sorting of waste at source. The City of Tshwane shall also make budget available annually to procure plastic bags required for sorting waste at the source for all residents and businesses in certain regions of the City of Tshwane's area of jurisdiction. In addition, the City of Tshwane shall be obliged to separately collect the recyclables and non-recyclables in certain regions of the City of Tshwane's area of jurisdiction.

The City of Tshwane shall for the duration of the Agreement of Lease effectively and on a continuous and uninterrupted basis supply all recyclable waste from specific regions of the City of Tshwane's jurisdiction exclusively to the Property (with effect that the City of Tshwane shall not be entitled to procure services which are identical or similar to the Services from third parties within the area in which the Service Provider provides the Services. Furthermore, the City of Tshwane shall for the duration of the Agreement of Lease effectively and on a continuous and uninterrupted basis endeavor to make it compulsory, through the passing of by-laws, for households and businesses in the City of Tshwane's jurisdictional area, to sort waste at source.

The City of Tshwane shall procure that all waste supplied to the Service Provider shall in no way be subject to any diversion or extraction actions by any third party/parties and shall in its original raw form as collected from the source be supplied to the Service Provider at the Property and proof of disposal of such waste at the Property shall be a condition for payment by the City of Tshwane to its contractors for waste collection and delivery.

City of Tshwane or shall, as part of its Green Economy Strategic Framework, procure that, as far as reasonably practical, its departments shall purchase products made from recycled materials in order to support the recycling activities contemplated in the Agreement of Lease.

The Service Provider is entitled to charge a waste disposal fee for the operation of the waste recycling and disposal facility to the City of Tshwane and/or any third party, at the price per cubic meter per lift for waste/refuse removal as per the current refuse removal tariff promulgated by the City of Tshwane.

The City of Tshwane may dispose of non-recyclable waste at the Property, such non-recyclable waste will be compacted, transported and disposed of by the Service Provider in bulk to a licensed municipal landfill sites on the terms and subject to the conditions to be determined by the Service Provider and the City of Tshwane.

The City of Tshwane is the registered owner and/or lawful occupier of the Property and is entitled to grant to the Service Provider the rights provided for in the Agreement of Lease.

The Service Provider shall, at its cost, be responsible for all the maintenance of the Property, structures and facilities erected thereon. Furthermore, the Service Provider shall be required to keep safe and maintain the Property in a reasonable hygienic and acceptable state of affairs to the reasonable satisfaction of the City of Tshwane.

## 5. EXPECTED BENEFITS TO THE CITY

Saving waste management operations costs; Diverting waste to landfill sites; increasing the lifespan of landfill sites; enhancing the City's waste minimization programme and financial benefits through rental revenue.

**Notice is further** given in accordance with 33(1)(a)(i) (bb) of the Local Government: Municipal Finance Management Act 56 of 2003, read with Section 21A and Section 21 of the Local Government: Municipal Systems Act (Act 32 of 2000) that:

- a) The local community and other interested persons or parties are invited to submit written comments or representations to the City in respect of the proposed draft request. Such comments or representations must be received by no later than 31 July 2018 via email to [sellomp@tshwane.gov.za](mailto:sellomp@tshwane.gov.za) or hand delivery or land post to the addresses provided below.

- b) Copies of the draft contract and a summary of the City's obligations in terms of the draft contracts are available for perusal at all regional customer care centres and municipal libraries in Tshwane. They can also be downloaded from the City of Tshwane's official public website ([www.tshwane.gov.za](http://www.tshwane.gov.za)).
- c) Enquiries may also be made by dialling 012 358 8747/6321 or sending an email to [sellomp@tshwane.gov.za](mailto:sellomp@tshwane.gov.za).

PHYSICAL ADDRESS	POSTAL ADDRESS
City of Tshwane Metropolitan Municipality Office of the Executive Mayor City Sustainability Unit Sello Mphaga Tshwane House 2 <sup>nd</sup> Floor Block B East Wing 320 Madiba Street	City of Tshwane Metropolitan Municipality Office of the Executive Mayor City Sustainability Unit PO Box 440 Pretoria 0001

Submissions must be marked **Tender 234/2013 Section 33 process for innovative green economy programmes/projects**.

Persons with physical disabilities or who cannot write but need to participate in the process may present themselves during office hours at the physical address above where a staff member will assist them to transcribe the relevant comments or representations.

Dr Moeketsi Mosola  
CITY MANAGER

# NOTARIAL AGREEMENT OF LEASE

Made and entered into by and between

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**(Lessor)**

**AND**

**NEW GX ENVIRO SOLUTIONS AND LOGISTICS HOLDINGS PROPRIETARY  
LIMITED**

**(Lessee)**

**(IN RESPECT OF A PORTION 135, 136 AND 137 OF THE FARM WITFONTEIN 301-JR AS WELL AS A PORTION OF PORTION 201 OF THE FARM ONDERSTEPSPOORT 300-JR)**

## 1. HEADINGS

The clause headings used in this Agreement are for easy reference purposes only, do not form part of the provisions of this Agreement and shall not be used for interpretation of the contents hereof.

## 2. DEFINITIONS

In this Agreement, the following words and expressions shall have the meanings set opposite them respectively unless the contrary appears or unless it is irreconcilable with the contents thereof.

**Act:** The Local Government: Municipal Finance Management Act of 2003 (Act 56 of 2003) and its regulations, i.e. the Asset Transfer Regulations of 2008 published in Government Gazette 31346 of 22 August 2008 and any amendments to such Act or Regulations;

**Agreement:** This Agreement of lease made and entered into by and between the Parties set out *infra*, including all annexures thereto;

**Council:** The Council of the Lessor constituted from time to time;

<b>Council Resolution:</b>	A resolution of the Council passed on [●];
<b>Date of Signature:</b>	The last date on which this Agreement is signed by a party hereto;
<b>Decision:</b>	The written decision of the Lessor to award the Tender to the Lessee, dated 10 May 2017 and a copy of which is attached hereto marked as <b>Annexure A</b> ;
<b>Development:</b>	A Multi-Purpose Waste Recycling Facility and transfer station, consisting of 3 (three) Phases, by way of which the Lessee will ultimately render the Service in respect of all of regions 1 (one) and 2 (two), as defined in the RSDF for the South-Western Region as amended from time to time, including any of the three phases;
<b>Effective Date:</b>	The date on which this Agreement has formally been registered against the Property by the Registrar of Deeds in the Deeds Office;
<b>Land Use Rights:</b>	The 'Municipal Purposes' land use rights which currently vests in the Property in terms of the Scheme and which rights sanction the Development on the Property and the use thereof by the Lessee in terms of this Agreement;
<b>Lease Period:</b>	The time period set out in clause 5 of this Agreement;
<b>Lessee:</b>	New GX Enviro Solutions and Logistics Holdings Proprietary Limited, a company with limited liability, duly registered in terms of the company laws of South Africa with registration number 2011/110668/07 and main place of business 35 Ferguson Road, 4th Floor, Illovo, Sandton herein represented by Masopha Moshoeshoe in his capacity as Director, duly authorised thereto;
<b>Lessor:</b>	The City of Tshwane Metropolitan Municipality, a metropolitan municipality duly established and instituted in terms of Section 12 of the Local Government Structures Act 1998 (Act 117 of 1998) as amended and herein represented by Moeketsi Mosola in his capacity



as City Manager duly authorised thereto by virtue of powers delegated to him by the Municipal Council in terms of the Council Resolution;

- Nobomate:** Nobomate Proprietary Limited, a company with limited liability, duly registered in terms of the company laws of South Africa with registration number 2011/110653/07 and main place of business 35 Ferguson Road, 4th Floor, Illovo, Sandton, a subsidiary of the Lessee;
- Ordinance:** The Town Planning and Townships Ordinance, Ordinance 15 of 1986 and any regulations published thereunder, including any amendments of the Ordinance and such regulations;
- Parties:** The Lessor and the Lessee;
- Phases:** The envisaged phases in which the Development is to be completed comprehensively set out in clause 16.2 hereof;
- Property:** Portions 135, 136 and 137 of the Farm Witfontein 301-JR as well as a Portion of Portion 201 of the Farm Onderstepoort 300-JR, held by Title Deed numbers T9516/1989 and T8447/1992 respectively, the location of which is depicted on the plan, attached as **Annexure B**;
- Rates:** All municipal assessment rates, taxes, fees, contributions, levies, engineering service availability charges, and other such or similar charges and expenses, including Value-Added Tax, payable or chargeable in respect of the Property excluding however consumption charges for such engineering services utilised by the Lessee;
- Rental:** The rental payable by the Lessee to the Lessor for the use of the Property during the Lease Period set out in clause 5 hereof.

- RSDF:** The Regional Spatial Development Framework of the Lessor for Region 1 and 2 for the South-Western Region dated June 2012 as amended from time to time.
- Scheme:** The Tshwane Town Planning Scheme, 2008 as amended.
- Service:** The rendering of multi-purpose waste recycling and ancillary services from the Property by way of the Development;
- Service Delivery Criteria:** The service delivery and performance requirements set by the Lessor and to be achieved by the Lessee by way of this lease and in terms of the Tender, the detail of which is attached hereto and marked as **Annexure C**;
- Tender:** The tender awarded by the Lessor to the Lessee on 10 May 2017 under reference number CB234/2013 in terms of section 41(2) of the Act and the Regulations;
- Use:** The use of the Property, by the Lessee in terms of this Agreement, shall be for purposes of establishing and conducting the Development and all ancillary and subservient activities thereon on and from the Property as a fully-fledged multi-purpose waste recycling facility, in terms of the Council Resolution;
- Works:** The physical construction work necessary and required to establish, erect and complete the Phases on the Property for purposes of the Use.

### 3. RECITAL

- 3.1 **WHEREAS** the Lessor is the registered owner of the Property; and
- 3.2 **WHEREAS** the Lessor is, to the general benefit of its jurisdictional area, desirous to procure an extended waste recycling facility on the Property as an integral part of its statutory obligations to comply with the National Environmental Management: Waste Act 2008 (Act 59 of 2008) and the National Waste Management Strategy; and

- 3.3 **WHEREAS** the abovementioned Waste Act and strategy, *inter alia*, require all metropolitan municipalities, secondary cities and large towns to by 2016 initiate programs for waste separation in an endeavour to divert 25% of recyclables from landfill sites for re-use, recycle or recovery; and
- 3.4 **WHEREAS** the Lessor has, in order to realise the aforementioned requirement embarked on the Tender; and
- 3.5 **WHEREAS** the Tender has by way of due statutory process successfully been awarded to the Lessee, during 2017; and
- 3.6 **WHEREAS** the Lessee wishes to engage NOBOMATE as its agent for the purposes of carrying out its functions and management of the Property in terms of this Agreement and the Lessor wishes to consent to such agency arrangement; and
- 3.7 **WHEREAS** the Lessee, in order to render the Service in a sustainable and viable manner, requires access to and use of the Property, which property the Lessor is willing to make available by way of a notarial lease over the Property; and
- 3.8 **WHEREAS** the Lessee has consequently by virtue of the allocated Tender applied to lease the Property from the Lessor for the establishment of the Development and the use thereof; and
- 3.9 **WHEREAS** the Lessor is prepared to lease the Property to the Lessee for such purposes subject to the terms and conditions contained in this Agreement.

**NOW THEREFORE THE PARTIES WISH TO REDUCE THEIR INTER-PARTIES AGREEMENT TO WRITING AND AGREE AS FOLLOWS:**

#### **4. SUBJECT OF LEASE**

The Lessor lets the Property to the Lessee, the latter who in turn rents the Property from the Lessor on the terms and conditions set out in this Agreement.

#### **5. DURATION OF LEASE AGREEMENT**

- 5.1 This Agreement shall, notwithstanding the date of signature of this Agreement, commence on the Effective Date and shall thereafter, subject to the provisions of clause 25 hereof, endure for a period of 20 (twenty) years.
- 5.2 This Agreement, in view of the provisions of clause 5.1 hereof, constitutes a long term lease for purposes of which same shall duly be registered against the Title Deed of the Property at the cost of the Lessee and for purposes of which the Lessee shall, at its cost, appoint a practicing Conveyancer.
- 5.3 The Lessor shall be obliged, for purposes of registration of this lease, to sign all documentation which may be required for such purpose upon request of the Lessee or the Conveyancer referred to in clause 5.1.

## 6. RENTAL

- 6.1 Subject to the Lessor complying with the provisions of clause 9.1.3 in full, the Lessee shall pay to the Lessor a Rental amount of R[•] ([•]) per month in arrears from the first month of commercial opening of Phase 1 of the Development, which amount includes VAT and which amount shall annually cumulatively escalate at a rate of [•] ([•]) per cent effective from [•]. The Lessee shall ensure that Commercial opening of Phase 1 of the Development is achieved within a period of 6 (six) months from the conclusion of all contracting and permitting as required under this Agreement.
- 6.2 The Rental, as set out in clause 6.1 above, shall for the duration of this Agreement, either be payable in cash at the Lessor's *domicilium citandi et executandi* or such other address as the Lessor may indicate in writing from time to time, or by way of electronic or cheque deposit into the account of the Lessor as stipulated hereunder, or as may be indicated in writing by the Lessor to the Lessee:

ACCOUNT HOLDER NAME: \_\_\_\_\_

BANK NAME: \_\_\_\_\_

ACCOUNT NAME: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

BRANCH NUMBER: \_\_\_\_\_

REFERENCE: \_\_\_\_\_

- 6.3 The Rental shall be paid on a monthly basis to the Lessor on or before the 1<sup>st</sup> day of each and every month and if the 1<sup>st</sup> day falls on a Sunday or a public holiday, same shall be payable on the following business day.
- 6.4 All payments to be made by the Lessee to the Lessor or its nominee in terms hereof shall subject to the provisions of this clause be made free of bank commission and other such charges. Only the official receipts or official cheque endorsements of the Lessor or its nominee in respect of such payments will be recognised as formal Rental payments in terms of this Agreement.
- 6.5 Without prejudice to the Lessor's right to cancel this Agreement as a result of any Rental not paid on the due date in terms of clause 25 any Rental in arrear shall bear interest at a rate equal to the prime overdraft rate levied by the bank of the Lessor, which interest shall be payable from the date on which such payment becomes payable until the date on which it is actually paid.
- 6.6 Any Certificate issued and signed by any Branch Manager of the Bank of the Lessor indicating the aforesaid rate of interest, shall, in the absence of manifest error, be sufficient proof thereof for purposes of Summary Judgment.
- 6.7 All payments made by the Lessee, shall first be utilised to settle the interest on the Rental in arrear (if any) and thereafter on the Rental amount.

## **7. RETENTION OF RENTAL**

Notwithstanding anything to the contrary contained in this Agreement, the Lessee shall not be entitled to withhold, retain, deduct and/or off-set any Rental or part thereof from the Lessor whether or not such retention, deduction, withholding, and/or setting-off resulted from any alleged claim for damages or any other cause of any sort whatsoever.

## **8. PURPOSE OF HIRE**

- 8.1 The Lessee shall utilise the Property exclusively for the Use.

- 8.2 The Use of the Property as contemplated in clause 8.1 hereof, shall at all times be exercised in accordance with, where applicable, any rules, policy or by-law of the Lessor, *civilliter modo*, without causing any inappropriate nuisance or disturbance of any kind to the Lessor or the surrounding properties or residents.
- 8.3 The Lessee will not utilise the Property for any purpose other than the Use stipulated in clause 8.1, or run any other business on or from the Property without prior written consent from the Lessor, which consent shall not unreasonably be withheld or delayed.

## 9. CONDITIONS PRECEDENT

- 9.1 The Parties record that notwithstanding signature hereof the Lessee shall not make payment, and the Lessor shall not expect receipt of Rental in terms of clause 6 hereof, and the Lessee shall not be obliged to proceed to Phases 2 (two) and 3 (three) of the Development and moreover shall be entitled to resile from this Agreement without the Lessor having any claim whatsoever against the Lessee, in the event that the following events are not successfully achieved within the periods stipulated hereinafter:
- 9.1.1 the Lessee shall, if required and within 1 (one) month from signature of this agreement, lodge an application for the required Waste Management License and provide the Lessor with proof thereof, and shall successfully within 18 (eighteen) months calculated from the Effective Date, at its own cost obtain a Waste Management License for implementation of Phases 2 (two) and 3 (three) of the Development on the Property in terms of the National Environmental Management: Waste Act, 2008 (Act No. 58 of 2008) and the National Environmental Management Act, 1998 (Act No.107 of 1998) in conjunction with its Regulations and amendment, and if required also environmental authorisation, from the relevant authorities in terms of the National Environmental Management Act (Act 107 of 1998) and all other applicable prevailing legislation, regulations, Ordinances and by-laws which may be required for the lawful operation of the Development on the Property. The Lessee shall, every 3 (three) months from signature of this agreement, update the Lessor of the progress in the application for such license.
- 9.1.2 the Lessee shall successfully at its own cost and within 3 (three) months in respect of Phase 1, and 6 (six) months in respect of

Phases 2 (two) and 3 (three) calculated from the signature date or within any such reasonable period as may be extended by the Lessor due to the process for the applications, obtain an approved site development plan in terms of the Scheme, and approved building plans from the Lessor in terms of the National Building Regulations and Building Standards Act 1977 in respect of existing structures to be utilised on the Property and in respect of structures to be erected in the Development of Phase 1, Phase 2 (two) and Phase 3 (three) thereof.

- 9.1.3 the Lessor shall as far as reasonably possible and lawfully permissible subject to the provisions of clause 11 support the applications for land use change, the applications for licences and authorisations envisaged in clauses 9.1 and 9.1.1 and in circumstances where the Lessor acts as a planning authority and/or commenting authority come to final decisions in that regard, and/or submit its comments in favour of such applications, as expeditiously as possible.

## **10. OBLIGATIONS OF AND WARRANTIES BY LESSOR**

The Lessor, upon signature hereof, warrants that:

- 10.1 the Property is currently in terms of the Scheme, zoned "Municipal Purposes" which zoning authorises the Lessee to lawfully exercise the Use and embark on the first Phase of the Development on the Property as from the Effective Date;
- 10.2 this Agreement, in the format of a long-term notarial lease, and the activities contemplated in this Agreement, including without limitation, the Development, have been authorised, by way of due and lawful statutory process in terms of the Act and Regulations and all other statutory requirements and that signature of this Agreement by and or on behalf of the Lessor, has duly been authorised in terms of its internal administrative procedures prescribed in terms of its empowering legislation and attached hereto as Annexure E;
- 10.3 there, with effect from the signature date, shall be no statutory or other impediment against the Lessee embarking on or conducting the first Phase of the Development on and the Use of the Property; and

- 10.4 the Property is suitable for the Development and the Works.
- 10.5 The Lessor shall moreover, for the duration of this Agreement, be obliged to:
- 10.5.1 use its best endeavours to, as soon as reasonably possible, procure amendments to its current Waste Management Bylaws applicable within its area of jurisdiction in order to, *inter alia*, implement waste minimisation initiatives in all of Region 1 and 2 and make any waste minimisation initiatives that have been implemented compulsory for residents and businesses to support such initiatives, recognise and promote waste recycling facilities similar to the Development at all the Lessor's licenced waste dumping sites within its area of jurisdiction by way of which such waste recycling facilities are, from a statutory point of view, recognised as integral part of the waste management obligations and services to be rendered by the Lessor;
  - 10.5.2 take all reasonable steps to, as integral part of its procurement policy incorporate preference of recycled material or products in order to encourage the establishment of waste recycling facilities throughout its area of jurisdiction and to promote the utilisation of such products and material;
  - 10.5.3 use its best endeavours to make budget available for the education of communities within Region 1 (one) and 2 (two) of its area of jurisdiction to enable members of such communities to understand sorting of waste at source as well as making budget available to procure plastic bags for sorting waste at source for all residents and businesses in Region 1 (one) and 2 (two) of its area of jurisdiction, to distribute those plastic bags to residents in Region 1 (one) and 2 (two) of its area of jurisdiction, to separately collect the recyclables from the non-recyclables in Region 1 (one) and 2 (two) of its area of jurisdiction and dispose of all the recyclable and non-recyclable material from Region 1 (one) and 2 (two) of its area of jurisdiction at the Development at the Property;
  - 10.5.4 the Lessor shall, for the duration of this Agreement, effectively and on a continuous and uninterrupted basis:



- (a) supply all the recyclable and non-recyclable waste from Regions 1 (one) and 2 (two) of its area of jurisdiction, as defined in the RSDF as amended from time to time, exclusively to the Property (with the effect that the Lessor shall not be entitled to procure services which are identical or similar to the Services from third parties within the area in which the Lessee provides the Services);
- (b) endeavour to make it compulsory, through the passing of by-laws, for households and businesses in areas where the Lessor provides the Services, to sort waste at source; and

- 10.5.5 The Lessor shall procure that all such waste supplied to the Lessee in terms of clause 10.5.3 shall in no way be subject to any diversion or extraction actions by any third party/parties and shall in its original raw form as collected from the source be supplied to the Lessee at the Property and proof of disposal of such waste at the Property shall be a condition for payment by the Lessor to its contractors for waste collection and delivery;
- 10.5.6 The Lessee shall be entitled to charge a waste disposal fee for the operation of the waste recycling and disposal facility to the Lessor and/or any third party, at the price per cubic meter per lift for waste/refuse removal as per the prevailing refuse removal tariff promulgated by the Lessor (which prices will adjust annually after promulgation of the tariffs for the financial year and adjustment will become effective on the date of implementation of the promulgated tariffs by the Lessor).
- 10.5.7 the Lessor shall, as part of its Green Economy Framework, procure that, as far as reasonably practical, its departments shall purchase products made from recycled materials in order to support the recycling activities contemplated in this Agreement;
- 10.5.8 the Lessor is aware of, and understands the requirements and objectives of the Lessee in relation to its Use of the Property;
- 10.5.9 to the best of the Lessor's knowledge and belief, save in relation to the approvals in respect of Phases 2 and 3 as stipulates elsewhere in this Agreement, the exercise by the Lessee of its

rights in terms of this Agreement and occupation of the Property for the purposes as contemplated in this Agreement, will not contravene the rights of any third party, title deeds, town planning schemes, township conditions, any law, by-law, statutory regulations, provision(s) of any licence or required consents, relating to or affecting the Property or the occupation and Use thereof;

10.5.10 the Lessor is the registered owner and/or lawful occupier of the Property and is entitled to grant to the Lessee the rights provided for in this Agreement.

- 10.6 "The Lessor may dispose of non-recyclable waste at the Property, such non-recyclable waste will be compacted, transported in bulk and disposed of by the Lessee at a licensed municipal landfill site on the terms and subject to the conditions to be determined by the Parties."
- 10.7 If the conditions precedent set forth in clauses 9.1 to 9.1.2 have not been fulfilled within the time limits stipulated therein, and no extension of time has been agreed to in terms of clause 10.7 hereof, or if applicable, such conditions precedent have not been waived in terms of clause 10.7 hereof (to the extent that they are capable of waiver), then
- (a) This Agreement shall on agreement between the Parties be continued in respect of the first Phase only, and the Rental payable shall be adjusted accordingly. Alternatively, the Parties may agree to cancel this Agreement and, unless otherwise provided for herein, no Party shall have any claim whatsoever against the other. Either Party shall have a claim against the other where the failure to fulfil the condition/s precedent was the result of the other Party's wilful act or omission.
  - (b) Provided that should the parties agree to continue with this Agreement on the first Phase basis only the same shall, *ab initio*, occur at a proportionate share of the Rental stipulated in clause 6 hereof, while all the other provisions of this Agreement shall *mutatis mutandis* apply to such partial continuation of this Agreement.

- (c) Provided further that, should the parties agree to cancel this agreement, the Lessor shall be obliged to reimburse the Lessee for all the costs which the Lessee has incurred in respect of fixed improvements to the Property in order to render the First Phase of the Development effective and operational.

10.8 The Lessor or Lessee may at any time prior to expiry of the time limits stipulated in clause 9, upon receipt of a written motivated request from the Lessee or Lessor, consent to the extension of time periods involved and such consent shall not unreasonably be withheld or delayed.

10.9 It is recorded that the conditions precedent set forth in clause 9 above have been inserted for the benefit of the Lessee and the Lessee may at any time in its sole discretion prior to the expiry of the time limits stipulated therein by way of a written notice to the Lessor, to that effect, waive the said conditions precedent (to the extent that they are capable of waiver).

## **11. CO-OPERATION COMMITMENT**

11.1 The Lessee and Lessor undertake to take all reasonable steps, which shall include where applicable the issuing of a power of attorney by the Lessor in its capacity as land owner to enable the Lessee to lodge the applications mentioned in clauses 9.1 to 9.1.2 in order to legally exercise the Use on the Property and the Parties moreover undertake to do whatever may be required or necessary to procure the expeditious and timeous fulfilment of the conditions precedent set forth in such clauses above: Provided however that the Lessor's conclusion of this Agreement and its involvement as a party hereto shall in no way whatsoever impose a contractual obligation on the Lessor as authorised Local and Planning Authority to approve the possible land use change of the Property or building or site Development plans in respect of the Property or any application, envisaged in clauses 9.1 to 9.1.2 lodged by the Lessee on behalf of the Lessor, it being recorded that such approvals will be granted if they comply with the relevant legislative requirements. It is further recorded that the lodgement of such land use change applications or applications for the approval of building and/or site development plans will be at the risk and cost of the Lessee and refusal thereof by the Lessor on the merits thereof will not constitute a breach of the co-operation obligation contained in this clause subject to the provisions of clause 9 not constitute a breach of the cooperation obligation contained in this clause provided that such refusal is not manifested with malice and prejudice.

- 11.2 The Lessee shall be liable for payment of all reasonable costs of and incidental to fulfilment of the conditions precedent set forth in clauses 9.1 to 9.1.2 above.

## **12. DEFECTS**

If the Lessee on the Effective Date found that any keys, locks, taps, sanitary, electrical and/or other installations or structures on the Property are defective, the Lessee must notify the Lessor within 21 (twenty one) days from the Effective Date, in writing of any such defects, failing which it will be assumed that the Lessee has taken occupation of the Property in good order and condition and that no such defects were present.

## **13. STATUTORY OBLIGATIONS**

The Lessee shall be obliged to adhere to all municipal provisions, Ordinances, regulations any other statutes or by-laws, relating to or affecting the Use of the Property by the Lessee and the latter is forbidden to carry on any activities on the Property which may be in conflict or permit the contravention of such laws, regulations, statutes and/or Ordinances.

## **14. STRUCTURAL ALTERATIONS TO THE PROPERTY**

- 14.1 Subject to clause 14.2 below, the Lessee shall not be allowed to effect any structural changes or make additions of any kind to the Property which does fall within the ambit or are directly related to the Development and reasonably required for the rendering of the Service.
- 14.2 The Lessee may however, at the Lessee's own expense, subject to approved building plans, erect structures on the Property and install such devices, equipment and appurtenances in or onto such structures which may reasonably be necessary for the Use of the Property, completion of the Development or the rendering of the Service. The cost of such structures, as evidenced by 3 (three) valuations obtained by the Parties from 3 (three) independent valuers appointed jointly by the Parties and whose costs shall be shared equally by the Parties, shall be offset against the Rental due and payable by the lessee for the Property and ownership of such structures shall pass to the lessor at the end of the lease and upon the implementation of such offset.

- 14.3 If this Agreement is terminated due to lapse of time or for any other reason whatsoever, the Lessee, unless the Lessor agrees in writing to purchase same from the Lessee at their market value (determined by 3 (three) independent valuers appointed jointly by the Parties and whose costs shall be shared equally by the Parties), shall be entitled to remove all movable structures and devices, equipment or appurtenances or any portion thereof erected on or installed on the Property by virtue of the provisions of clause 14.1, the ownership of immovable structures, devices, equipment and appurtenances shall with compensation being paid at market value determined in terms of the provisions of this clause, automatically vest in the Lessor.

## 15. DESTRUCTION OF PROPERTY

- 15.1 If the Property or any structures thereof is destroyed or damaged to the extent that it becomes unsuitable for use in terms of this Agreement, this Agreement in the sole discretion of the Lessee, shall be terminated unless the Lessor in writing accepts the responsibility to, at its exclusive cost, and to the satisfaction of the Lessee restore the Property and/or such structure to its status quo ante state before being destroyed or damaged as soon as possible in order to make beneficial occupation and Use by the Lessee possible.
- 15.2 The Lessee shall subject to the provisions of clause 15.5.1 not be liable for payment of Rental, levies or other municipal charges for as long as the Lessee would be deprived of such beneficial occupation and Use of the Property in terms of clause 15 hereof.
- 15.3 If any part of the Property and/or the structures or facilities thereon, is destroyed without same being unusable, for Use or occupation in terms hereof this Agreement same shall not be cancelled, but the Rental payable by the Lessee will be reduced pro-rata or be suspended in *toto* for as long as the Lessee is denied from the beneficial occupation and Use of the Property, such structures or facilities.
- 15.4 If any dispute arises between the Parties regarding the extent of the destruction of the Property, or with respect to such period of suspension or pro-rata payment of Rental, such dispute will be referred for arbitration in accordance with the provisions of clause 28 hereof.

15.5 Notwithstanding anything to the contrary herein contained, if any damage to the Property or the destruction thereof or any structures or facilities thereon, is caused by an act or omission for which:

15.5.1 either party is responsible in terms of this Agreement or in law, the other party shall not be precluded by reason of any of the foregoing provisions of this clause 15 from exercising or pursuing any alternative or additional right of action or remedy available to the latter party under the circumstances (whether in terms of this Agreement or in law);

15.5.2 the Lessee is responsible in terms of this Agreement or in law, the Lessee shall continue to on due date pay all amounts including Rental payable by the Lessee in terms of this Agreement;

15.5.3 neither party is responsible and such act is a *force majeure*, then no party shall be liable to the other party for any of the obligations under this Agreement.

## 16. LESSEE'S OBLIGATIONS

The Lessee shall, for the duration of this Agreement:

16.1 punctually pay the Rental and the Municipal service consumption charges in respect of the Property;

16.2 render the Service satisfactorily and in accordance with the performance and Service Delivery Criteria as set out in the Tender documents and the Council Resolution;

16.3 subject to the provisions of this Agreement, use its best endeavours to, as expeditiously as reasonably possible, procure the completion of the Development on the Property in the following Phases:

**Phase 1:** This Phase will involve the installation of a Materials Recovery Facility and mixed waste processing facility at the already operational landfill site on the Property, comprising an area of approximately 2.36ha. Such facility will incorporate the existing infrastructure and enhance the throughput rate and recycling capacity of the existing facility

**Phase 2:** This phase will cater for green waste generated from garden refuse and park- and sport field-maintenance work which waste will be stockpiled and fed into a windrow composting facility. Such phased facility will be known as the Green Waste Composting Facility, comprising of approximately 16ha of the Property

**Phase 3:** During this Phase approximately 8ha of the subject property will be demarcated and utilised for the stockpiling of building rubble or waste tyres to be crushed or crumbed in a plant on the same property. Crushed or crumbed material will be distributed for filling material for local construction projects and such facility will be known as the Building Rubble or Tyre Crumbing Facility;

16.4 at its own cost and with the assistance of the Lessor, procure the authorisations, consents, licences and permits which may be required for the lawful conduct of the Second and Third Phase of the Development subject to the provisions of clause 11;

16.5 the Lessee shall for the duration of this Agreement, be entitled to:

16.5.1 in its sole discretion, charge a waste disposal fee in respect of all waste disposed on the Property;

16.5.2 accept waste from any other source in addition to the supply from the Lessor provided that such acceptance of other waste shall not negatively impact on the Lessee's ability to render the primary Service in respect of the waste sourced from the Lessor.

## **17. EXCLUSION OF LESSOR FROM CERTAIN LIABILITY AND INDEMNITY**

17.1 The Lessee upon signature hereof indemnifies the Lessor against any claim for damages and/or personal injuries or death caused to it or to a third party on the Property, which may be instituted against the Lessor with regard to any cause whatsoever, including injuries caused by slippery or uneven surfaces, floors, stairways, corridors or any other cause of any kind.

17.2 The Lessee moreover, upon signature of this Agreement, indemnifies the Lessor against any claim or action arising from any damage or losses relating to the contents of the Property or any structures thereon which may arise from any cause whatsoever.

## **18. LIABILITY FOR PAYMENT OF SERVICES AND INTERRUPTION THEREOF**

- 18.1 From the date of signature of this agreement, the Lessee shall, in addition to the Rental, be liable for payment for consumption of all municipal services, levied by the Lessor in respect of the Property for water, electricity, sewerage and sanitation services and Rates and shall conclude a contract directly with the Local Authority or other service provider for delivery of such municipal services.
- 18.2 The Lessee shall, with the assistance of the Lessor, make all arrangements necessary to procure the supply to the Property of electricity, water and sanitation and shall be responsible for the payment of all Rates and connection fees which may be chargeable in respect of the Property.
- 18.3 The Lessor will do everything in his power to ensure beneficial occupation and Use of the Property by the Lessee, but shall not be liable for any interruption of services relevant to the Property or for any damages incurred arising from it.
- 18.4 The Lessee will notify the Lessor immediately of any defects in or interruption of the municipal services of the Property.

## **19. ELECTRICITY AND WATER INSTALLATIONS**

- 19.1 The Lessee shall in no way make use of electrical equipment and machinery on the Property which may lead to the overloading of electrical installations on or to the Property.
- 19.2 The Lessee shall, save as may be required or necessary for the propose envisaged in clause 14, not interfere with or make changes to the electrical system on the Property and shall not install any air-, fan- or heating device or any other similar devices on the Property without prior written consent from the Lessor which consent shall not unreasonably be withheld in which event the Lessee shall be responsible for the maintenance of all such devices to the reasonable satisfaction of the Lessor, provided that the provisions of this clause shall not preclude the Lessee from installing whatever electrical equipment and machinery required to effectively exercise the Use on such Property.



- 19.3 Any removal, moving and/or change to, or upgrade of the existing electrical network that may become necessary due to the nature of the Development as envisaged in clauses 19.2 and 19.3 hereof, or the structural changes envisaged in terms of clause 14 will be for the Lessee's cost.
- 19.4 The Lessee shall be entitled to install lighting devices, if necessary, on the Property and or any structures or facilities erected thereon solely for the provision of lighting and shall be responsible for the replacing of any light bulbs and florescent tubes of such devices at the Lessee's own expense.

## **20. MAINTENANCE**

- 20.1 The Lessee will, at its cost, be responsible for all reasonable maintenance of the Property, structures and facilities erected thereof and also to keep safe and maintain the Property in a reasonable hygienic and acceptable state of affairs to the reasonable satisfaction of the Lessor.
- 20.2 The Parties record that any substantial or structural defects in the Property or existing structures thereon of which the Lessee notified the landlord of, in terms of clause 12 hereof, will within 30 (thirty) days after receipt of such notice, at the cost of the Lessor, be repaired, failing which the Lessee shall be entitled to reasonably restore or repair such defects at the expense of the Lessor, with the prior written notice to the Lessor.

## **21. SECURITY MEASURES**

The Lessee shall, with the prior written consent of the Lessor be entitled to, at its own expense, install or implement reasonable security measures and/or systems to the Property, and the provisions of clauses 14 and 20 hereof shall apply mutatis mutandis to such systems and measures upon termination of this Agreement.

## **22. RISK, PROFIT AND LOSS**

The risk, profit and loss in respect of the Property shall pass to the Lessee on the Effective Date.

## **23. BUILDINGS AND IMPROVEMENTS**

- 23.1 The Lessee shall subject to the provisions of clause 23.2 be entitled, prior to the Effective Date, to occupy the Property and to, at its cost, but subject

to the provisions of clause 14, erect any buildings and/or structures on the Property or to effect any improvements to existing structures on the Property for purposes of the Use;

- 23.2 No new building Works on the Property shall be commenced with by the Lessee in terms of clause 23 prior to the written approval of the plans thereof by the Lessor, first having been obtained and such buildings shall be erected strictly in accordance with such approved plans. All buildings and structures on the Property shall comply with the reasonable requirements of the Lessor.
- 23.3 Should the Lessee commit or permit the commission of any breach of the provisions of clauses 23.1 and 23.2 above, the Lessor shall have the right to demand that any such buildings and/or structures erected on or improvements effected to the Property be altered, removed or demolished at the Lessee's cost, without prejudice to any other rights which the Lessor may then have against the Lessee.

## **24. BUILDER'S LIEN**

Without the prior written consent of the Lessor being had and obtained, no builder's lien may be created in respect of any buildings or structures which may be erected by or on behalf of the Lessee on the Property in terms of clause 23 while any amount in respect of the Rental or interest on such outstanding Rental owing in terms hereof have not been paid in full to the Lessor, in which circumstances such buildings or structures shall remain as security to the Lessor or its nominee for the due fulfilment by the Lessee of all the obligations of the Lessee hereunder.

## **25. BREACH**

- 25.1 If any party fails to fulfil any obligation contained in this Agreement timeously, and they, after 30 (thirty) days' written notice to fulfil such obligation still fails to fulfil the obligation, the party to whose detriment such failure is, shall be entitled, without prejudice to any other common law remedy available to it to:

25.1.1 cancel this Agreement; and

25.1.2 claim damages due to such breach; or

25.1.3 claim specific performance in accordance with the stipulations of this Agreement.

25.2 Should the Lessee, while still in occupation of the Property and carrying on with the Services, dispute the Lessor's right to cancel this Agreement in terms of clause 25.1 above, then pending the determination of such dispute, the Lessee shall be obliged to continue payment of all amounts payable by it in terms hereof on the due dates thereof and the Lessor shall be entitled to recover and accept those payments on the Lessor's or its nominee's behalf without prejudice to its claim for cancellation or any other rights of the Lessor whatsoever.

25.3 In the event of the Lessor cancelling this Agreement for any reason in terms of the provisions hereof, or this Agreement being legally cancelled by the Lessee for any reason whatsoever, the Lessee and/or all persons permitted by it to be in occupation of the Property or in occupation of any buildings erected thereon shall, subject to the provisions of clause 14.2 be obliged to vacate the Property and such buildings and to give occupation of the Property and occupation of such buildings to the Lessor.

## **26. INSPECTION**

The Lessor and/or its proven duly authorised agent shall, if applicable, be entitled at all reasonable times (limited to once a quarter) to inspect all buildings erected or being erected on the Property and all improvements effected or being effected thereto for the purpose of ensuring compliance by the Lessee with the provisions hereof relating to such buildings and improvements.

## **27. CESSION**

27.1 The Lessee shall not be entitled to cede, assign or make over any of its rights to use, occupy, control or manage the Property in terms of and/or delegate any of its obligations under this Agreement, to any third party without the prior written consent of the Lessor being had and obtained, which consent shall not unreasonably be withheld or delayed but may be given subject to such conditions which the Lessor may deem reasonable and appropriate, regard being had to the intent and import of this Agreement.

- 27.2 The Lessee shall not be entitled to sublease the Property or any part thereof without the prior written consent from the Lessor, which consent however shall not unreasonably be withheld or delayed.
- 27.3 The Parties acknowledge and represent that the financing for the Development will be provided by a third party financial institution such as but not limited to a development finance institution ("**Financier**") pursuant to financing agreements to be concluded between the Financier and the Lessee. The Parties agree that should the Lessee fail to carry out its obligations under this Agreement or commit a material breach of this Agreement, which merit the cancellation hereof, the Lessor shall not be entitled to cancel this Agreement without prior written notification of such failure to perform or breach and/or its intention to cancel this Agreement first having been given to the Financier, and the Financier being given the opportunity to exercise its step-in-rights in terms of clause 27.4.
- 27.4 Upon receipt of the notification referred to in clause 27.3, the Financier shall be entitled to exercise its step-in-rights within a period of 30 (thirty) days from the date of receipt of such notification, which step-in-rights will entitle the Financier to assign all the rights and obligations of the Lessee to perform the Works and carry out the Lessee's obligations under this Agreement and the Tender, on behalf of the Lessee.
- 27.5 In terms of the step-in-rights referred to in clause 27.3, the **Financier** shall, operate the Development as agents of, and on behalf of, the Lessee.
- 27.6 The Lessee shall procure that the Financier shall ensure that security interests granted in its favour and obligations under financing documents in respect of the Development are adequately perfected. The Lessee shall procure that the Financier shall include an obligation in the finance documents in respect of the Development relating to the perfection of any security interest granted to the Financier within applicable time limits in terms of this Agreement.
- 27.7 Notwithstanding anything to the contrary contained in this Agreement, the Lessee shall be entitled to:
- 27.7.1 Appoint an agent, on its behalf, to exercise its rights to use, occupy, control and/or manage the Property in terms of this Agreement to any company within the Lessee's group of companies, with prior written notice to the Lessor. The Lessor

hereby consents to the Lessee's appointment of Nobomate as an agent, as contemplated in this clause.

27.7.2 appoint agents to exercise on its behalf, any of its rights to use, occupy, control or sublease the Property in terms of and/or delegate any of its obligations under this Agreement, to any financial institution or lender who has funded the Development or part thereof, upon the enforcement by such financial institution or lender of its security rights against the Lessee, with prior written notice to the Lessor.

## **28. ARBITRATION**

28.1 Should any dispute arise between the Parties in connection with:

28.1.1 the formation or existence of;

28.1.2 the implementation of;

28.1.3 the interpretation or application of the provisions of;

28.1.4 the Parties' respective rights and obligations in terms of or arising out of this Agreement or its breach or termination;

28.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;

28.1.6 any documents furnished by the Parties pursuant to the provisions of, this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, that dispute shall, unless resolved amongst the Parties to the dispute, subject to the provisions of clause 28.2 hereof, be referred to and determined by arbitration in terms of this clause.

28.2 Any party to this Agreement may demand that a dispute be determined in terms of this clause by written notice given to the other parties.

28.3 This clause shall not preclude any party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the Arbitrator.

28.4 The arbitration shall be held:

28.4.1 at Pretoria;

28.4.2 with only the legal and other representatives of the Parties to the dispute present thereat;

28.4.3 *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, No 59 of 1959, the Rules made in terms of the Act and the practice of the Division of the High Court referred to in clause 28.8;

28.4.4 otherwise in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as possible.

28.5 The Arbitrator shall be, if the matter in dispute is principally:

28.5.1 a legal matter, a retired Judge of the High Court of South Africa or a practicing advocate or attorney of Pretoria of at least 15 (fifteen) years standing;

28.5.2 an accounting matter, a practicing chartered accountant of PRETORIA of at least 15 (fifteen) years standing;

28.5.3 any other matter, an independent person, agreed upon between the Parties to the dispute.

28.6 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.

28.7 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 28.2, the arbitrator shall be appointed at the request of either party to the dispute by the president for the time being of the Law Society for the Northern Provinces according to the provisions of clause 28.5.

28.8 The decision of the arbitrator shall be final and binding on the Parties to the dispute, shall not be subject to appeal or review and may be made an

order of the Court referred to in clause 28.8 at the instance of any of the Parties to the dispute.

28.9 The Parties hereby consent to the jurisdiction of the North Gauteng High Court, Pretoria, Republic of South Africa in respect of the proceedings referred to in clause 28.2.

28.10 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of any order to be made in terms of clause 28.7.

28.11 The provisions of this clause,

28.11.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions.

28.11.2 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

## 29. SIGNING ON BEHALF OF A COMPANY OR A CLOSE CORPORATION

Should this Agreement be signed by a person purporting to act for and on behalf of a company or a close corporation already incorporated or any other validly constituted juristic person, such juristic person is purportedly the Lessee in terms hereof, such person shall be deemed to warrant to the Lessor that he is duly authorised to act for and on behalf of such juristic person and shall be deemed personally bound to the Lessor by his signature hereto as surety for and co-principal debtor *in solidum* with such juristic person, under renunciation of the benefits of excussion, division and cession of action, for the due fulfilment of all such juristic person's obligations hereunder to the Lessor.

## 30. DOMICILIA CITANDI ET EXECUTANDI

30.1 The Parties choose and appoint as their respective *domicilia citandi et executandi* for the sending of any correspondence and the service of any notices and pleadings resulting from this Agreement, the addresses reflected against their names *infra*:

30.1.1 THE LESSOR:

2<sup>ND</sup> FLOOR, EAST WING,  
TSHWANE HOUSE

320 MADIBA STREET

**PRETORIA, GAUTENG**

E-mail Address: [sellomp@tshwane.gov.za]

**30.1.2 THE LESSEE:**

4<sup>TH</sup> FLOOR

35 FERGUSON ROAD, ILLOVO,

JOHANNESBURG, GAUTENG

E-mail Address: masopha@newgx.co.za

30.2 Any party shall be entitled to change its chosen *domicilium citandi et executandi* by way of 7 (seven) days written notice to that effect to the other party.

30.3 Any notice or letter addressed to any of the Parties in terms of this Agreement shall be sent by pre-paid registered post and by way of telefax transmission and shall be deemed to have been received by the addressee unless the contrary is proven, if sent by registered post, on the third day after the date of mailing thereof and if sent by way of telefax transmission on the day following the date of transmission. The first date of notification envisaged *supra* shall serve as date of commencement of the 14 (fourteen) day period referred to in clause 25.

### **31. REPRESENTATION**

The Parties acknowledge that no representations other than those contained in this Agreement, have been made inducing any of the Parties to enter into this Agreement.

### **32. ENTIRE AGREEMENT**



This Agreement represents the entire agreement between the Parties and no deviation, deletion or addition thereto shall be valid unless same has been reduced to writing and has been signed by the Parties hereto.

### **33. CHOICE OF LAW**

This Agreement shall in all respects be subject to the provisions of the law of the Republic of South Africa and shall be interpreted and enforced in terms of that law.

### **34. JURISDICTION**

The Parties agree, on signature of this Agreement, in terms of Section 28 and 45 of the Magistrates Court Act, to the jurisdiction of the Magistrates Court in relation to any action arising from the existence of this Agreement which may result, with the provision that the said agreement will not deprive a party the right to in its sole discretion institute action in an appropriate division of the High Court of South Africa.

### **35. TERMINATION OF AGREEMENT OTHER THAN ARISING OUT OF BREACH AND LAPSE OF TIME**

The Parties acknowledge that if the Lessee at any time during the existence of this Agreement objectively and on reasonable grounds cease or become unable to render Service for which the Property is to be used in terms hereof, the Lessor is entitled, in its sole discretion, but on reasonable grounds to terminate this Agreement by 90 (ninety) days prior written notice to the Lessee.

### **36. COSTS**

- 36.1 The Lessee shall be liable for payment to the Lessor or its nominee on demand of all legal costs incurred by or on behalf of the Lessor, on the scale as between attorney and own client, in recovering from the Lessee any amount owing and payable by it under this Agreement and/or in exercising any of the Lessor's rights in terms hereof against the Lessee as a result of any breach by it of any of the terms and conditions hereof.
- 36.2 The Parties agree that the Parties shall each be liable for its own costs incurred for purposes of the drafting of this Agreement, consultations in this regard and all ancillary costs required to procure signature of this Agreement. Any costs arising out of or in connection with any amendments of or variations to this Agreement effected at the Lessor's request shall however be borne and paid by the Lessor on demand.

SIGNED at ..... on this ..... day of .....2017

**AS WITNESSES:**

1. ....

2. ....

.....  
on behalf of **NEW GX ENVIRO  
SOLUTIONS AND LOGISTICS  
HOLDINGS PROPRIETARY LIMITED**

SIGNED at **PRETORIA** on this ..... day of ..... **2017**

**AS WITNESSES:**

1. ....

2. ....

.....  
on behalf of **THE CITY OF TSHWANE  
METROPOLITAN MUNICIPALITY**