

SOSOIL PTY LTD

SERVICE AGREEMENT

Terms and Conditions

THIS AGREEMENT is dated the date stated as the 'Date of Agreement' in the Schedule.

BETWEEN **SOSOIL PTY LTD A.C.N. 150 009 313**

(Company, we, our, us)

AND **THE PARTY NAMED AS THE CUSTOMER IN THE SCHEDULE**

(Customer, you, your)

1. BACKGROUND

- 1.1 The Company provides the Services.
- 1.2 This Agreement records the terms upon which the Company is engaged by the Customer on the basis specified in this agreement.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement, unless the context requires another meaning:

Applicable Laws means all laws, including legislation and any principle or rule of common law or equity, relevant to the activities a party may perform pursuant to this Agreement, including but not limited to the *Environmental Protection Act 1994(QLD)*.

Commencement Date means the day shown above as the date of this Agreement.

Confidential Information means information held by, or relating to, the other party which has been acquired as a consequence of, or in the performance of this Agreement, other than information that is generally known or available by publication or commercial use and includes, without limitation:

- (a) any information a party advises to another party, orally or in writing, is to be regarded as confidential;
- (b) marketing databases;
- (c) financial information;
- (d) product development information;
- (e) present or future business and marketing plans; and
- (f) intellectual property.

Corporations Act means the *Corporations Act 2001* (Cth) and any regulations prescribed under that Act.

GST has the meaning given to this term by the GST Legislation.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), any regulations prescribed under that act, and any determination or ruling under it.

Hazardous Waste or **Toxic Waste** means – solid, liquid or gaseous wastes (other than the Medical / Sanitary Waste) which (through toxicity, carcinogenicity, mutagenicity, teratogenicity, flammability, explosivity, chemical reactivity, corrosivity, infectiousness or other biologically damaging properties) may present danger to the life or health of living organisms when released into the environment.

Insolvent means in respect of a party:

- (a) any step taken (including without limitation, an applicable application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for:
 - (i) the winding up, dissolution, or administration of the party; or
 - (ii) the party entering into any arrangement, compromise or composition with, or assignment for, the benefit of its creditors or any class of them,except for the purposes of a solvent reconstruction or amalgamation; or
- (b) a controller (as defined in the *Corporations Act*), administrator or similar officer is appointed with respect to or takes control of the party or any of its assets and undertakings.

Liquid Waste means liquid or semi-liquid wastes and which do not include Medical / Sanitary Waste, Regulated Waste or Hazardous Waste.

Medical / Sanitary Waste means waste (excluding radioactive waste) produced by a hospital, clinic, medical or related practice or laboratory, or waste collected from designated sanitary hygiene units.

Oils means any oils which must:

- (a) be combustible only and must not contain any flammables;
- (b) must not contain any amount of water;
- (c) must not contain any glycols.

Payment Terms mean the Payment Terms specified in the Schedule.

Regulated Waste, means any waste which is not Medical / Sanitary Waste, Hazardous Waste or Liquid Waste and which requires special treatment or handling by the Applicable Laws.

Regulator means the ASIC, the Australian Prudential Regulation Authority, the Commissioner of Taxation, the Environmental Protection Agency Qld or any other government authority responsible for administering the Applicable Laws.

Schedule means the schedule to this Agreement.

Service Fees means the fees specified for the Services, or for any services not specified in the Services and provided by the Company to the Customer, the fees equal to the reasonable market rates for such services.

Services means the services stated in the Schedule, including services for the removals of Waste.

Site means the site or location at which the Services are to be carried out and specified in the Schedule.

Waste means Oils, Liquid Waste and other waste which is not (unless agreed to in writing prior to entering in to this Agreement):

- (a) Medical / Sanitary Waste;
- (b) Hazardous Waste; or
- (c) Regulated Waste.

In this Agreement, unless the context requires otherwise:

- (a) singular includes the plural and vice-versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to the Agreement includes any schedules attached to the Agreement;
- (d) a reference to a party includes that party's employees, contractors and/or successors;
- (e) a reference to a financial year means the 12 months beginning 1 July and ending 30 June;
- (f) a reference to a person includes a natural person and a corporation;
- (g) a reference to a company related to the Customer means any company of which the Customer is a director or officer;
- (h) a reference to a related company has the same meaning as that given to "related body corporate" in the Corporations Act;
- (i) a reference to legislation or an Act includes:
 - (i) that legislation or Act, as amended, modified, enacted or re-enacted from time-to-time;
 - (ii) any successor legislation which supersedes that legislation and/or Act; and
 - (iii) regulations, orders and rules made under the legislation or Act and policy statements, circulars or guidelines, however described, issued or adopted from time-to-time by the Regulator under such legislation, as amended, modified, enacted or re-enacted from time-to-time.

3. COMMENCEMENT AND TERM

- (a) If the 'Annual Agreement' in the Schedule is stated as 'Yes':
 - (i) this Agreement shall be deemed a periodic agreement which starts on the Commencement Date and shall continue a period of one (1) year from the date of signing, and shall be automatically renewed from year to year unless either

- party shall give written notice of termination to the other at least thirty (30) days prior to the annual anniversary of the Commencement Date.
- (ii) The Company shall give notice to the Customer at least 60 days prior to the annual anniversary of the Commencement Date notifying of the Customer of:
- (A) the date on which the Agreement shall automatically renew; and
- (B) specifying any changes to the fees for Services which will apply as at the date of renewal.
- (iii) Unless the Customer terminates this Agreement pursuant to sub-clause (a) herein, the Customer will be deemed to agree to the fees notified by the Company to the Customer which shall then apply on and from the date of renewal.
- (iv) The Company agrees that should the Customer no longer require any collection or disposal service for its Waste, through cessation of its business, relocation outside the area in which the Company provides collection service, or similar reason, the Customer may terminate this agreement upon written notice given to the Company at least thirty (30) days prior to the intended termination date, but only upon payment of all amounts owing to the Company.
- (b) Alternatively, if the 'Annual Agreement' in Schedule is stated as 'No', the terms of this Agreement will apply from the Commencement Date to all purchase and call in orders made by the Customer until the terms of this Agreement are amended by the Company in writing.
- (c) The Company reserves the right to terminate the contract:
- (i) by giving 60 days written notice at any time;
- (ii) immediately if the Customer fails to pay money to the Company when it is due;
- (iii) immediately if the Customer breaches any term of the Agreement;
- (iv) immediately if the Customer is unable to pay their debts when they are due or the Customer enters into any arrangement with the Customer's creditors; and
- (v) immediately if the Customer changes the location of the Site to an area not serviced by the Company.
- 4. THE COMPANY'S OBLIGATIONS**
- The Company:
- (a) shall carry out all activities in relation to this Agreement efficiently, honestly and fairly;
- (b) shall exercise reasonable care and skill in carrying out its activities in relation to this Agreement;
- (c) where relevant to the activities performed under this Agreement, comply with all Applicable Laws and maintain any licensing required of the Company to provide the Services;
- (d) shall comply with the Customer's policies, procedures and reasonable directions whilst remaining on the Site.
- 5. REMUNERATION**
- 5.1 The Company and the Customer agree that the Customer will pay to the Company the Service Fees for all Services.
- 5.2 The Customer shall pay the Company for the collection, disposal and any waste container rental provided by the Company (including all charges for waste container maintenance) in accordance with the Service Fees.
- 5.3 Payment shall be made by the Customer to the Company as per the Payment Terms and time shall be of the essence. In the event that any payment is not made when due the Company at its option may at any time terminate this agreement on giving notice in writing to the Customer and recover any or all of the Company's waste containers from the Site or any other premises of the Customer.
- 5.4 The Company and the Customer agree that where the Services consist of several services, the charges are calculated by reference to each of the services severally. The Company will be entitled to charge for each of the services constituting the Services in accordance with the Service Fees stated in the Schedule.
- 5.5 The Service Fees are subject to amendment in the event of any levies, taxes or other charges being introduced or amended by the Government or any Regulator during the term of this Agreement, and such amendments shall reasonably reflect such additional Government levies, taxes or other charges.
- 5.6 The Company reserves the right to charge the Customer and the Company agree that the Customer will pay the Company's parking, tolls and any other disbursements of the Company incurred with respect to, or incidental to the Services;
- 5.7 Unless otherwise stated, all amounts referred to in this Agreement are GST exclusive. To the extent that any part of the amount payable is in respect of a taxable supply, the recipient of the supply will also pay an amount equal to the GST at the then prevailing rate of GST on the amount payable.
- 6. VARIATION OF SERVICES**
- 6.1 Changes in frequency of collection service, number capacity and type of waste container shall be agreed to in writing by the parties and not otherwise.
- 7. ACCESS**
- 7.1 The Customer warrants to the Company that any access provided by the Customer from waste container location to the most convenient public way is sufficient to bear the weight of all of the Company's equipment and vehicles reasonably required to perform the Services. The Company shall not be responsible for damage to any private pavement or accompanying sub-surface of any access or other route reasonably necessary to perform the service.
- 8. WASTE TRACKING - DEHP**
- 8.1 The Customer authorises the Company to act as an agent in accordance with s 81U(3) of the *Environmental Protection Regulation 2008*.
- 9. ENGAGEMENT OF THE COMPANY**
- 9.1 This clause applies only if the item 'Exclusivity' in the Schedule is marked 'Yes'.
- 9.2 The Customer will only:
- (a) engage the Company for conducting the Services; and
- (b) will not engage any other party to conduct the Services for the Company while this Agreement is in force.
- 10. MUTUAL OBLIGATIONS**
- Each party agrees:
- (a) to provide information which the other party reasonably requires to perform its obligations under this Agreement;
- (b) to provide, both during the term of this Agreement and after its termination, information and assistance which the other party reasonably requires to:
- (i) deal with any issues, enquiries and customer complaints arising pursuant to, or as a consequence of, this Agreement or the Services; or
- (ii) to comply with Applicable Laws;
- (c) to use its best endeavours to perform its obligations under this Agreement within agreed timeframes;
- (d) to fulfil its obligations under this Agreement in a professional, ethical, efficient and business-like manner; and
- (e) to meet all its obligations as and when required under Applicable Laws.
- 11. THE CUSTOMER'S RESPONSIBILITIES AND WARRANTIES**
- (a) Any waste container provided by the Company is for the storage and collection of the waste type specified on the container label.
- (b) The Customer shall be responsible for the safekeeping of any such waste containers.

- (c) The Customer shall not make any alterations or improvements to any waste containers supplied without the prior written consent of the Company.
- (d) The Customer shall not overload any waste containers, nor use them for incineration purposes, and shall be liable to the Company for loss or damage in excess of reasonable wear and tear.
- (e) The Customer warrants that waste delivered to or collected by the Company hereunder will only contain Waste unless the Company has agreed to collect any other waste in writing prior to collection or delivery by the Company.
- (f) No mechanical means will be used to compact the contents being placed in the waste container unless the compaction waste container is supplied for that purpose by the Company.
- (g) Any waste container furnished by the Company for use by the Customer which the Customer has not purchased, shall remain the property of the Company and the Customer shall have no right, title or interest in such waste container.
- (h) The Customer will compensate the Company for any loss or damage, which damage is beyond fair wear and tear, caused to any waste container supplied by the Company at the current market value valued at the time of the reporting of the loss or damage. The Customer must report in writing any loss or damage to any waste container provided by the Company to the Company immediately upon its happening.
- (i) The Customer agrees to defend, hold harmless and indemnify the Company against all claims, lawsuits and any other liability or injury to persons or damage to property or the environment connected with or relating to the use of any waste container by the Customer or breach of any warranty by the Customer or the use of the means of access provided by the Customer to the Company.
- (j) On collection day, the Company's vehicle shall have clear access to the waste container(s). If access is blocked to prohibit collection, the Customer will be notified, and any further attempts made for collection will be classified 'extra service' and charged the relevant Service Fee.
- (k) All waste that is not Waste and that is delivered to, collected by or otherwise handled by the Company, remains the property of the Customer and is at the Customer's risk.
- (l) The Customer warrants to the Company that:
- (i) the Customer clearly labels the Waste to be collected by the Company;
 - (ii) the Customer correctly labels all Hazardous Waste; and
 - (iii) the Waste to be collected by the Company complies with all relevant laws.
- 12. TERMINATION**
- 12.1 Either party may terminate this Agreement immediately if the other party:
- (a) commits a material breach of this Agreement and, if capable of remedy, is not remedied within 14 days after the non-offending party gives the offending party notice to do so;
 - (b) ceases to carry on business;
 - (c) ceases to hold a licence required by the party to comply with this Agreement or with the Applicable Laws; or
 - (d) is Insolvent.
- 12.2 The Company may terminate this Agreement immediately if:
- (a) the Customer engages in an activity which, in the Company's reasonable opinion, is dishonest, fraudulent, wilfully misleading or deceptive, or is likely to cause the Company's name (or the name of a company related to the Company) to be brought into disrepute;
 - (b) the Customer is convicted of a criminal offence as a consequence of a breach of Applicable Laws;
 - (c) any other circumstances existing in which, in the Company's reasonable opinion, warrants immediate termination;
- 12.3 Upon termination of this Agreement, the Customer must:
- (a) not act in a way which would cause a person to believe the Customer has a continuing association or relationship with the Company;
 - (b) cease to use, and delete from the Customer systems, all intellectual property of the Company;
 - (c) return to the Company all materials (and all copies of such materials) within two business days of termination, whether in printed, magnetic or electronic form, supplied by the Company, and all our other Confidential Information in the Customer's possession or control;
 - (d) allow the Company access to the Customer's business premises and records, files and other documents (whether held in electronic, magnetic, paper or other form) for the purpose of retrieving all intellectual property of the Company and to ensure compliance with the provisions of this clause 12.3.
- 12.4 Nothing in this clause operates to discharge a party from its obligations arising under or in connection with this Agreement prior to the date of termination.
- 13. CONFIDENTIALITY**
- 13.1 The parties agree to:
- (a) keep confidential;
 - (b) not use directly or indirectly; and
 - (c) not disclose directly or indirectly,
 - (d) all Confidential Information, except:
 - (i) as contemplated by, and for the proper purposes of a party performing its obligations under, this Agreement;
 - (ii) where the party or person to whom the information relates has given specific written consent; or
 - (iii) to the extent the party is permitted or compelled to disclose the information by law.
- 13.2 The parties agree to take all reasonable steps to prevent disclosure or improper use of Confidential Information in its possession or control.
- 13.3 The duty of confidentiality and proper use of Confidential Information continues after termination of this Agreement until the information becomes public knowledge otherwise than as a result of a breach of this clause 13.
- 14. INDEMNITY**
- 14.1 The Company indemnifies the Customer from and against:
- (a) all actions, suits, claims, proceedings, judgments and demands brought against the Customer; and
 - (b) all claims, liabilities, costs and expenses which the Customer may suffer,
- as a result of, or arising from:
- (c) a breach by the Company of this Agreement;
 - (d) a breach by the Company of any Applicable Laws; or
 - (e) the Company's wilful misconduct or negligence in the performance of this Agreement or any act or transaction contemplated by this Agreement.
- 14.2 The Customer agree to indemnify the Company from and against:
- (a) all actions, suits, claims, proceedings, judgments and demands brought against the Company; and
 - (b) all claims, liabilities, costs and expenses which the Company may suffer,
- as a result of, or arising from:
- (c) a breach by the Customer of this Agreement or of the Customer's breach of its warranties pursuant to this Agreement; or
 - (d) the Customer's wilful misconduct or negligence in the performance of this Agreement or any act or transaction contemplated by this Agreement.
- 15. GENERAL**
- 15.1 Nature of Agreement**
- The parties agree that nothing in this Agreement constitutes, or is to be construed to constitute, an employment relationship, a partnership

or joint venture, or a franchise agreement, unless expressly provided for in the Agreement.

15.2 Waiver

The failure, delay or omission by a party to exercise a power or right conferred on that party by this Agreement does not operate as a waiver of that power or right, and any single exercise of a power or right does not preclude another exercise of that power, or the exercise of another power or right under this Agreement.

15.3 Read down

If any provision of this Agreement is void, voidable, unenforceable, or illegal in its terms, but would not be void, voidable, unenforceable or illegal if it were read down, and it is capable of being read down, that provision is read down accordingly.

15.4 Severance

If, despite the preceding clause, a provision is still void, voidable, unenforceable or illegal:

- (a) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed, and the remainder of this Agreement is of full force and effect.

15.5 Remedies Cumulative

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

15.6 Entire Agreement

This Agreement and any schedules hereto contains the entire agreement between the parties on its subject matter. All previous negotiations, representations or warranties, relating to its subject matter are replaced by this Agreement is of no effect. No explanation or information provided by any party to the other:

- (a) affects the interpretation of this Agreement; or
- (b) constitutes any collateral agreement, warranty or representation between the parties.

15.7 Existing Agreements

Any existing agreements between the Company and us are terminated upon the commencement of this Agreement except, in relation to any pre-existing debts or accrued benefits under those agreements.

15.8 Counterparts

This Agreement may be executed by any number of counterparts and all counterparts when executed and taken together, will constitute this Agreement.

15.9 Assignment

This Agreement is personal to the Company and may not be assigned, charged or otherwise dealt with without the Company's prior written consent.

15.10 Variations

No variation, modification or waiver of any provision of this Agreement, nor consent to any departure by any party from its terms, is in any event of any force or effect unless the same is confirmed in writing, signed by the parties, and then such variation, modification, waiver or consent is effective only to the extent for which it may be made or given.

15.11 Law

This Agreement is governed by, and construed in accordance with, the law as it applies for the time being in the State of Queensland.

15.12 Courts

The parties submit to the non-exclusive jurisdiction of the Courts of Queensland in relation to all matters arising under, or relating to, this Agreement.

15.13 Surviving Provisions

A provision contained in this Agreement will survive performance or termination of this Agreement **if by sense and context it is intended to survive.**

15.14 Expenses

Except as otherwise agreed in writing between the parties, the Customer must bear all expenses incurred by the Customer in the execution and performance of this Agreement.

15.15 Force Majeure

No failure or omission by either party to perform or observe the terms and conditions of this Agreement will, except in relation to obligations to make payments under it:

- (a) give rise to any right of action or claim against the defaulting party; or
- (b) be treated for any purpose as a breach of this Agreement, if such failure or omission arises directly from any cause reasonably beyond the control of that party.

15.16 Notices

A notice or other communication required or permitted to be given by a party to the other party must be in writing and delivered personally or sent by prepaid post to the address of the addressee, or sent by email or facsimile transmission to the email address or facsimile number most recently advised by the addressee to the other party.

A notice or other communication is treated as having been given if:

- (a) delivered personally, upon delivery;
- (b) sent by post, 4 days after posting; and
- (c) sent by email transmission, on the day on which it is sent except that:
 - (i) if transmitted after 4.00pm local time on a business day in the place to which it is sent; or
 - (ii) if the day on which it is sent is not a business day in the place to which it is sent,then it will be taken to have been given on the next business day in the place to which it is sent.

Unless otherwise notified, the addresses of each party are the addresses of each parties specified in the Schedule of this Agreement.

16. OWN ADVICE

The Customer acknowledges that the arrangements recorded in this Agreement involve complex legal and taxation issues and:

- (a) the Customer has obtained its own legal and tax advice before signing this Agreement,
- or
- (b) the Customer was afforded a reasonable opportunity to obtain own legal and tax advice before signing this Agreement, but chose not to do so.