Schedule 14 – Soil

Part B (Fixed Price)

Part B applies if specified in the Contract Particulars

[***Drafting Note: Either Part A (TOC) or Part B (Fixed Price) of Schedule 14 should be selected. The Part that is not used should not be included in the contract. Whether fixed price or an ITC in respect of soil risk is appropriate should be considered on a project specific basis, noting that the default position should be fixed price. The schedule should be reviewed on a project specific basis to ensure it reflects the commercial intent.***]

# Definitions

1. **Baseline Offsite Disposal or Consignment Volume** means the mathematical sum of the volumes in tonnes identified under the heading Baseline Offsite Disposal or Consignment Volume in section 3(as adjusted in accordance with this deed), including the Baseline Category A Volume, the Baseline Category B Volume, the Baseline Category C Volume, the Baseline Category D Volume, the Baseline Clean Fill Volume and the Baseline Soil Containing Asbestos Only Volume.
2. **Baseline Onsite Reuse Volume (Soil)** means the volume in tonnes identified as the Baseline Onsite Reuse Volume in section 3 (as adjusted in accordance with this deed).
3. **Baseline Category A Volume** means the volume in tonnes identified as Category A material forming part of the Baseline Offsite Disposal or Consignment Volume in section 3 (as adjusted in accordance with this deed).
4. **Baseline Category B Volume** means the volume in tonnes identified as Category B material forming part of the Baseline Offsite Disposal or Consignment Volume in section 3 (as adjusted in accordance with this deed).
5. **Baseline Category C Volume** means the volume in tonnes identified as Category C material forming part of the Baseline Offsite Disposal or Consignment Volume in section 3 (as adjusted in accordance with this deed).
6. **Baseline Category D Volume** means the volume in tonnes identified as Category D material forming part of the Baseline Offsite Disposal or Consignment Volume in section 3 (as adjusted in accordance with this deed).
7. **Baseline Clean Fill Volume** means the volume in tonnes identified as Clean Fill material forming part of the Baseline Offsite Disposal or Consignment Volume in section 3 (as adjusted in accordance with this deed).
8. **Baseline Soil Containing Asbestos Only Volume** means the volume in tonnes identified as Soil Containing Asbestos Only material forming part of the Baseline Offsite Disposal or Consignment Volume in section 3 (as adjusted in accordance with this deed).
9. **Baseline Total Volume Cap (Soil)** means the volume in tonnes identified as the Baseline Total Volume Cap in section 3 (as adjusted in accordance with this deed).
10. **Baseline Volumes (Soil)** means the Baseline Total Volume Cap, Baseline Onsite Reuse Volume, the Baseline Category A Volume, the Baseline Category B Volume, the Baseline Category C Volume, the Baseline Category D Volume, the Baseline Clean Fill Volume and the Baseline Soil Containing Asbestos Only Volume.
11. **Category A** means the Waste Classification for material listed as Category A in the table in section 2.
12. **Category B** means the Waste Classification listed for material as Category B in the table in section 2.
13. **Category C** means the Waste Classification listed for material as Category C in the table in section 2.
14. **Category D** means the Waste Classification listed for material as Category D in the table in section 2.
15. **Clean Fill** means the Waste Classification listed for material as Clean Fill in the table in section 2.
16. **Cumulative Estimated Budget (Soil)** means the aggregate of the Estimated Budgets (Soil).
17. **Cumulative Revised Budget** **(Soil)** means the aggregate of the Revised Budgets (Soil).
18. **Estimated Budget (Soil)** means the mathematical products of each of:
    1. the Baseline Onsite Reuse Volume (Soil) and the Onsite Reuse Rate (Soil);
    2. the Baseline Category A Volume and the Relevant Category A Disposal or Consignment Rate;
    3. the Baseline Category B Volume and the Relevant Category B Disposal or Consignment Rate;
    4. the Baseline Category C Volume and the Relevant Category C Disposal or Consignment Rate;
    5. the Baseline Category D Volume and the Relevant Category D Disposal or Consignment Rate;
    6. the Baseline Clean Fill Volume and the Relevant Clean Fill Disposal or Consignment Rate; and
    7. the Baseline Soil Containing Asbestos Only Volume and the Relevant Soil Containing Asbestos Only Disposal or Consignment Rate.
19. **Excavation Volume Register** means the register described in section 8(a).
20. **Offsite Disposal or Consignment Rates** means the rates in $/tonne shown as the Offsite Disposal or Consignment Rates in section 4, and each rate is the **Offsite Disposal or Consignment Rate** for the corresponding Waste Classification in the table.
21. **Offsite Volume Discount Disposal or Consignment Rates** means the rates in $/tonne shown as the Offsite Volume Discount Disposal or Consignment Rates in section 4 which apply to the total volume of material in each Waste Classification disposed or consigned offsite if the total volume disposed or consigned exceeds the Offsite Volume Discount Threshold, and each rate is the **Offsite Volume Discount Disposal or Consignment Rate** for the corresponding Waste Classification in the table.
22. **Offsite Volume Discount Threshold** means the volume in tonnes shown as the Offsite Volume Discount Threshold for the corresponding Waste Classification identified in section 3A.
23. **Onsite Reuse Rates (Soil)** means the rates in $/tonne shown as the Onsite Reuse Rate identified in section 4, and each rate is the **Onsite Reuse Rate** for the corresponding Waste Classification in the table.
24. **Relevant Rate** means each of the Relevant Category A Disposal or Consignment Rate, Relevant Category B Disposal or Consignment Rate, Relevant Category C Disposal or Consignment Rate, Relevant Category D Disposal or Consignment Rate, Relevant Clean Fill Disposal or Consignment Rate and Relevant Soil Containing Asbestos Only Disposal or Consignment Rate for the corresponding Waste Classification in the table.
25. **Relevant Category A Disposal or Consignment** **Rate** means:
    1. where the volume of Category A soil requiring offsite consignment does not exceed the Offsite Volume Discount Threshold for Category A material, the rate in $/tonne shown as the Offsite Disposal or Consignment Rate for Category A material in section 4; or
    2. where the volume of Category A soil requiring offsite consignment exceeds the Offsite Volume Discount Threshold for Category A material, the rate in $/tonne shown as the Offsite Volume Discount Disposal or Consignment Rate for Category A material in section 4.
26. **Relevant Category B Disposal or Consignment Rate** means:
    1. where the volume of Category B soil requiring offsite disposal or consignment does not exceed the Offsite Volume Discount Threshold for Category B material, the rate in $/tonne shown as the Offsite Disposal or Consignment Rate for Category B material in section 4; or
    2. where the volume of Category B soil requiring offsite disposal or consignment exceeds the Offsite Volume Discount Threshold for Category B material, the rate in $/tonne shown as the Offsite Volume Discount Disposal or Consignment Rate for Category B material in section 4.
27. **Relevant Category C Disposal or Consignment Rate** means:
    1. where the volume of Category C soil requiring offsite disposal or consignment does not exceed the Offsite Volume Discount Threshold for Category C material, the rate in $/tonne shown as the Offsite Disposal or Consignment Rate for Category C material in section 4; or
    2. where the volume of Category C soil requiring offsite disposal or consignment exceeds the Offsite Volume Discount Threshold for Category C material, the rate in $/tonne shown as the Offsite Volume Discount Disposal or Consignment Rate for Category C material in section 4.
28. **Relevant Category D Disposal or Consignment Rate** means:
    1. where the volume of Category D soil requiring offsite disposal or consignment does not exceed the Offsite Volume Discount Threshold for Category D material, the rate in $/tonne shown as the Offsite Disposal or Consignment Rate for Category D material in section 4; or
    2. where the volume of Category D soil requiring offsite disposal or consignment exceeds the Offsite Volume Discount Threshold for Category D material, the rate in $/tonne shown as the Offsite Volume Discount Disposal or Consignment Rate for Category D material in section 4.
29. **Relevant Clean Fill Disposal or Consignment Rate** means:
    1. where the volume of Clean Fill soil requiring offsite disposal or consignment does not exceed the Offsite Volume Discount Threshold for Clean Fill material, the rate in $/tonne shown as the Offsite Disposal or Consignment Rate for Clean Fill material in section 4; or
    2. where the volume of Clean Fill soil requiring offsite disposal or consignment exceeds the Offsite Volume Discount Threshold for Clean Fill material, the rate in $/tonne shown as the Offsite Volume Discount Disposal or Consignment Rate for Clean Fill material in section 4.
30. **Relevant Soil Containing Asbestos Only Disposal or Consignment Rate** means:
    1. where the volume of Soil Containing Asbestos Only soil requiring offsite disposal or consignment does not exceed the Offsite Volume Discount Threshold for Soil Containing Asbestos Only material, the rate in $/tonne shown as the Offsite Disposal or Consignment Rate for Soil Containing Asbestos Only material in section 4; or
    2. where the volume of Soil Containing Asbestos Only soil requiring offsite disposal or consignment exceeds the Offsite Volume Discount Threshold for Soil Containing Asbestos Only material, the rate in $/tonne shown as the Offsite Volume Discount Disposal or Consignment Rate for Soil Containing Asbestos Only material in section 4.
31. **Risk Sharing Percentage** means the percentage identified as the Risk Sharing Percentage in section 5.
32. **Revised Budget (Soil)** means the mathematical products of each of:
    1. the Baseline Onsite Reuse Volume (Soil) as updated in the Revised Contamination Baseline Information and the Onsite Reuse Rate (Soil);
    2. the Baseline Category A Volume as updated in the Revised Contamination Baseline Information and the Relevant Category A Disposal or Consignment Rate;
    3. the Baseline Category B Volume as updated in the Revised Contamination Baseline Information and the Relevant Category B Disposal or Consignment Rate;
    4. the Baseline Category C Volume as updated in the Revised Contamination Baseline Information and the Relevant Category C Disposal or Consignment Rate;
    5. the Baseline Category D Volume as updated in the Revised Contamination Baseline Information and the Relevant Category D Disposal or Consignment Rate;
    6. the Baseline Clean Fill Volume as updated in the Revised Contamination Baseline Information and the Relevant Clean Fill Disposal or Consignment Rate; and
    7. the Baseline Soil Containing Asbestos Only Volume as updated in the Revised Contamination Baseline Information and the Relevant Soil Containing Asbestos Only Disposal or Consignment Rate.
33. **Soil Containing Asbestos Only** means the Waste Classification for material listed as Soil containing asbestos only in the table in section 2.
34. **Soil Management Plan** means the Project Plan referred to as the Soil Management Plan in section [10].
35. **Waste Classifications** means the list of waste classifications listed in the table in section 2.
36. **Waste Classification Guidelines** mean:
    1. the Industrial Waste Guidelines published in Special Gazette S177 on 9 June 2009 as in force from time to time, until the date that the *Environment Protection Act 1970* (Vic) is repealed; and
    2. the Waste Disposal Categories – characteristics and thresholds, as released by the Environment Protection Authority from time to time, on and from the date that the *Environment Protection Act 1970* (Vic) is repealed.

# Waste Classifications

1. Waste classifications of soils are determined by:

### the characteristics of those soils, with reference to the criteria and thresholds contained in the Industrial Waste Guidelines published in Special Gazette S177 on 9 June 2009 as in force from time to time, until the date that the *Environment Protection Act 1970* (Vic) is repealed; and

### the characteristics of those soils, with reference to the criteria and thresholds contained in any designation issued by the Environment Protection Authority for a particular contaminant or type of priority waste, and if there is no designation, the criteria and thresholds contained in the Waste Disposal Categories – characteristics and thresholds, as released by the Environment Protection Authority from time to time, on and from the date that the *Environment Protection Act 1970* (Vic) is repealed.

**Table [1]: Waste classification**

| 1. **Category number** | 1. **Waste Classification** |
| --- | --- |
|  | 1. Category A |
|  | 1. Category B |
|  | 1. Category C |
|  | 1. Category D |
|  | 1. Clean Fill |
|  | 1. Soil containing asbestos only |

# Baseline volumes [Note to Tenderers: to be bid in returnable schedule]

The Baseline Volumes (Soil) in respect of the [Site / Key Contamination Risk Areas] are specified in Table [2] below.

**Table [2]: Baseline Volumes (Soil)**

|  |  |  |
| --- | --- | --- |
| **Baseline Total Volume Cap (tonnes)** | | [x] |
| **Baseline Onsite Reuse Volume (Soil) (tonnes)** | | [x] |
| 1. **Baseline Offsite Disposal or Consignment Volume (tonnes)** | 1. Category A | [x] |
| 1. Category B | [x] |
| 1. Category C | [x] |
| 1. Category D | [x] |
| 1. Clean Fill | [x] |
| 1. Soil containing asbestos only | [x] |

# 3A. Baseline volume discounts for disposal or consignment outside the Site [*Note to Tenderers: to be bid in returnable schedule*]

An Offsite Volume Discount Disposal Rate will apply to the total volume of material [on Site / in the Key Contamination Risk Areas] of each Waste Classification that is disposed of or consigned off-Site where the total volume of that Waste Classification exceeds the Offsite Volume Discount Threshold specified in Table [3] below.

**Table [3]: Offsite Volume Discount Thresholds**

| 1. **Category number** | 1. **Waste Classification** | 1. **Offsite Volume Discount Threshold (tonnes)** |
| --- | --- | --- |
|  | Category A | 1. [x] |
|  | 1. Category B | 1. [x] |
|  | Category C | 1. [x] |
|  | 1. Category D | 1. [x] |
|  | 1. Clean Fill | 1. [x] |
|  | 1. Soil containing asbestos only | 1. [x] |

# Rates [Note to Tenderers: to be bid in returnable schedule]

**Table [4]: Rates**

| 1. **Category number** | 1. **Waste Classification** | 1. **Onsite Reuse Rate ($ per tonne)** | 1. **Offsite Disposal Rates ($ per tonne)** | 1. **Offsite Volume Discount Disposal Rates ($ per tonne)** |
| --- | --- | --- | --- | --- |
|  | 1. Category A | 1. N/A | 1. [x] | 1. [x] |
|  | 1. Category B | N/A | 1. [x] | 1. [x] |
|  | 1. Category C | N/A | 1. [x] | 1. [x] |
|  | 1. Category D | N/A | 1. [x] | 1. [x] |
|  | 1. Clean Fill | [x] | 1. [x] | 1. [x] |
|  | 1. Soil containing asbestos only | N/A | 1. [x] | 1. [x] |

### The Onsite Reuse Rates include:

#### internal site haulage and earthworks for placement;

#### costs associated with onsite storage, stockpiling, containment, treatment, and remediation of contaminated soil for reuse;

#### costs related to work health and safety (**WHS**) management of asbestos during excavation, loading, haulage and reuse (including costs for a hygienist, air monitoring etc);

#### costs related to WHS management of contaminated material during excavation, loading, haulage and reuse; and

#### costs related to treatment or preparation of contaminated material for reuse.

### The Offsite Disposal or Consignment Rates and Offsite Volume Discount Disposal or Consignment rates include:

#### offsite haulage;

#### the landfill levy, tip fees and charges;

#### costs related to WHS management of asbestos during excavation, loading, haulage and disposal (inc. hygienist, air monitoring etc);

#### costs related to WHS management of contaminated material during excavation, loading, haulage and disposal; and

#### costs associated with onsite storage, stockpiling, containment, treatment, and remediation of contaminated soil for offsite disposal or consignment.

### The following:

#### Contamination Investigation and testing costs;

#### waste classification reporting;

#### excavation works;

#### profit and overhead; and

#### any other Works in any way relating to Soil Works or other materials that are required to be performed for the Contractor to comply with this Deed and are not expressly listed in sections 4(a) and 4(b) ,

* 1. are not included in the Onsite Reuse Rates or the Offsite Disposal or Consignment Rates and have been allowed for in the lump sum components of the Contract Sum.

# Risk Sharing Percentage

**Table [5]: Risk Sharing Percentages**

| **Clause** | **Risk Sharing Percentage (%)** |
| --- | --- |
| 6.1(a) (Cost saving sharing at Re-baseline Date) | [#]% |
| 6.1(b) (Cost increase sharing at Re-baseline Date) | [#]% |

# Payment amounts

## Re-baselining payment

If the Cumulative Revised Budget (Soil) is different to the Cumulative Estimated Budget (Soil), at the [Re-baseline Date], the Contractor will be entitled to make a payment claim for an amount calculated in accordance with the formula in paragraph (a) or (b) below (as applicable).

### **Cost saving or sharing at [Re-baseline Date]**

* 1. At the Re-baseline Date, the Contractor will be entitled to a share of cost savings *CSS1* (if applicable). If the Cumulative Revised Budget (Soil) is less than the Cumulative Estimated Budget (Soil), the Contract Sum will be adjusted by, and the Contractor may, following [the Re-baseline Date], make a payment claim for an amount calculated in accordance with the following formula:
     1. *CSS1 = p × EA*
  2. Where:
  3. *p* is the Risk Sharing Percentage.

*EA* is the amount that the Cumulative Estimated Budget (Soil) exceeds the Cumulative Revised Budget (Soil).

### **Cost Increase sharing at Re-baseline Date**

* 1. At the [Re-baseline Date], the Contractor will be entitled to a share of the cost increase *CI* (if applicable). If the Cumulative Revised Budget (Soil) is more than the Cumulative Estimated Budget (Soil), the Contract Sum will be adjusted by, and the Contractor may, following [the Re-baseline Date], make a payment claim for an amount calculated in accordance with the following formula:
     1. *CI = p × EA*
  2. Where:
  3. *p* is the Risk Sharing Percentage.
  4. *EA* is the amount that the Cumulative Revised Budget (Soil) exceeds the Cumulative Estimated Budget (Soil).

## Monthly payment amount

### The Cumulative Revised Budget (Soil) is a fixed price that is payable to the Contractor in respect of the Soil Works.

### The Contractor may submit a monthly payment claim for the Soil Works in accordance with this Schedule 14 (Soil).

# Progress claims

### For each payment claim made under clause 20.2, the Contractor must give the Principal Representative (at the same time as the claim is made):

#### accurately calculated Soil Amounts and the Cumulative Revised Budget;

#### an Excavation Volume Register, that must be a tabulated register that clearly and accurately tracks and reports excavation quantities and that must:

##### include monthly tracking and cumulative quantities completed to date for all excavation volume types;

##### include cumulative totals of claimed volumes of soil that have been reused on the Site;

##### set out a clear breakdown by Waste Classification of cumulative totals of claimed volumes of soil that have been disposed of or consigned off-Site;

##### include the Baseline Total Volume Cap (Soil), Baseline Onsite Reuse Volume (Soil) and the Baseline Offsite Disposal or Consignment Volume; and

##### track quantities in tonnes;

#### for volumes reused on the Site a justification for the volume claimed; and

#### for volumes disposed of or consigned off-Site, copies of information provided to the person receiving the volume of soil, tip dockets and any information provided to the Environment Protection Authority for waste tracking, and identifying the Waste Classification in accordance with the Waste Classification Guidelines.

### The Contractor is not entitled to make any progress claim for Soil Amounts under this Schedule 14 (Soil) in respect of the reuse on the Site or disposal or consignment off-Site of any:

#### liquid waste;

#### materials encountered in any buildings and above ground structures that require demolition;

#### materials encountered in any basement or building foundation structures; or

#### general waste, on or above the ground surface, and not forming part of the soil mass.

# Audit

### The Contractor acknowledges and agrees that the Principal (or any other person nominated by the Principal) may on one Business Days' notice at any time carry out an audit of and copy the Contractor's documents, accounts and other records to the extent reasonably necessary to verify:

#### the Contractor’s:

##### system for waste tracking offsite disposal and consignment volumes; or

##### onsite practices; and

#### that any amounts claimed by the Contractor under this have been properly calculated,

* 1. except to the extent that the documents, accounts or records:

#### are subject to legal professional privilege; or

#### must not be disclosed in accordance with any Law.

### Each party will bear its own costs incurred in complying with this section 8, unless it is revealed, by the Principal exercising its rights under this section 8 that:

#### the Contractor has committed a breach of its obligations under this Deed; or

#### there is a material discrepancy between the information that has been disclosed to the Principal by the Contractor under this Deed and the result of any audit conducted under this section 8,

* 1. in which case any costs incurred by the Principal in connection with the exercise of its rights under this section 8 will be a debt due and payable by the Contractor to the Principal.

### The Contractor must:

#### provide the Principal, and any other person authorised by the Principal with such assistance as they may reasonably require in connection with their audit, including making all relevant documents available; and

#### supply to the Principal, and any other person authorised by the Principal, photocopies or electronic copies of information requested.

# General requirements

### The Contractor must:

#### without limiting section 9(c), sort all excavated soil (including separating soils that are a different Waste Classification); and

#### not intermix soils that have different Waste Classifications,

* 1. unless expressly authorised otherwise under an Approval.

### The Contractor must ensure, and must ensure that its Subcontractors ensure, that their respective employees, agents and contractors (as applicable) are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws and Approvals.

### The Contractor must:

#### perform the Works in a manner that minimises the amounts payable under this Schedule 14 (Soil) including by:

##### without limiting clause 12.8(e), carrying out all reasonable investigations on the Site as early as possible;

##### limiting the amount of any material disposed of at a higher Waste Classification than is necessary;

##### incorporating as much soil into the Works where this is technically feasible and permitted by Law;

##### prioritising the incorporation of material of a higher Waste Classification into the Works over that of a lower Waste Classification (where technically feasible and permitted by Law); and

#### keep complete, accurate and up to date records of all materials that are disposed of outside the Site including classification certificates and tip dockets for all loads.

# Soil Management Plan

### The minimum requirements for the Soil Management Plan are:

#### an explanation of the process that has been used to calculate the volumes specified in section 3;

#### key inputs that were used to calculate the volumes specified in section 3;

#### the workings associated with the calculation of the volumes specified in section 3;

#### written evidence to support the feasibility of the on-Site reuse, off-Site disposal or consignment in the volumes specified in section 3;

#### written evidence to support the Rates specified in section 4;

#### the approach that is proposed for the Soil Works for the duration of the Project, including quantities of soil in each Waste Classification that are proposed to be excavated, stockpiled, contained, reused, remediation consigned or disposed of during each month of the Project;

#### remediation, treatment storage and containment methodologies and technologies that are proposed in respect of the Soil Works;

#### details of any Approvals that are required in connection with the Soil Works;

#### risk controls, trigger points, monitoring program and contingency measures that are proposed in respect of the Soil Works;

#### the program for reporting to the Principal in respect of the Soil Works for the duration of the Project; and

#### such other information reasonably requested by the Principal.

### The Contractor must comply with the Soil Management Plan.