SERVICE LEVEL AGREEMENT

entered into between

The Eastern Cape Department of Health
(hereinafter referred to as the Department)

Represented herein by Patrick Mncedisi Mashumi in his duly
authorised capacity as the Senior Manager: Contract
Management

and

Compass Waste Services (Proprietary) Limited
Registration No: 2003/002007/07
(hereinafter referred to as the Contractor)

Represented by Ian Campbell Du Randt in his duly authorised
capacity as the Managing Director of the Contractor
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ANNEXURES

1. ANNEXURE “A” : SPECIFICATIONS
2. ANNEXURE “B” : CONDITIONS OF CONTRACT AND OPERATIONAL REQUIREMENTS
3. ANNEXURE “C” : GENERAL CONDITIONS OF CONTRACT
4. ANNEUXRE “D” : PRICING SCHEDULE
1. PARTIES

The Parties to this Agreement are:

1.1 The Eastern Cape Department of Health ("the Department"), represented herein by Patrick Mncedisi Mashumi, in his duly authorized capacity as the Senior Manager: Contract Management; and

1.2 Compass Waste Services, ("the Contractor"), a private limited company incorporated and registered according to the laws of South African with registration number 2003/002007/07, represented herein by Ian Campbell Du Randt, in his duly authorized capacity as the Managing Director of the Contractor.

2. PURPOSE

2.1 The purpose of this agreement is to establish a contractual relationship between the parties for the supply of containers and safe, effective handling of health care risk waste (hereinafter referred to as HCRW) through appropriate segregation, packaging, carting, storage, loading, transportation, treatment and safe disposal of HCRW/medical waste from the Eastern Cape Hospitals and waste generated from Provincial and municipal clinics, Provincial Community Health Centres, EMS and Forensic Pathology for a period of thirty six (36) months.

3. DEFINITIONS

3.1 In this Agreement unless inconsistent with or otherwise indicated by the context, the following words shall have the meaning assigned to them in this clause and the cognate meaning shall have a corresponding meaning.

3.1.1 "Agreement" means this Agreement and any Annexures and schedules attached hereto, the bid document and bid proposal;

3.1.2 "Business Day" means any day which is not a Saturday, Sunday or public holiday recognized as such under the Public Holidays Act, (Act 5 of 1952);

3.1.3 "Deliverables" means any duty, obligation, service, task, action, products, information, documents, program, advice, recommendation, report or disclosure required to be rendered, undertaken, executed, delivered, furnished, provided, made, done and/or compiled by a Party in terms of this Agreement;
3.1.4 “Department” means Eastern Cape Department of Health;

3.1.5 “Effective date” means the 1st of January 2012;

3.1.6 “Force Majeure” means any inability, on the part of any of the Parties, to perform any of its obligations in terms of this Agreement due to an event which was beyond its control, these events include war, civil war, armed conflict or terrorism, natural disasters such as violent storms, floods, earthquakes, destruction by lightning; explosions and fires;

3.1.7 “Parties” means the Parties to this Agreement;

3.1.8 “Persons under the control of the Contractor” means any person being an employee, partner, director, shareholder or legal person under the control of the Contractor, or a person acting on behalf or with the knowledge of the Contractor;

3.1.9 “PFMA” means the Public Finance Management Act, (Act 1 of 1999), as amended, together with applicable regulations;

3.1.10 “Services” means the scope of work as set out in this Agreement;

4. INTERPRETATION

4.1 In construing this Agreement and all related written instruments thereof, the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the terms of this Agreement.

4.2 If, however, the ordinary sense of the word leads to some absurdity or some repugnancy or inconsistency with the rest of the terms of this Agreement, then the words may be modified just so much as to avoid that absurdity, or repugnancy or inconsistency but no more.

4.3 Should paragraphs 5.1 and 5.2 be applied and fail to assist in the interpretation of this instrument then, the interpretation that will put an equitable construction upon this instrument and will not, unless the intention of the Parties is manifest, so construe the contract as to give one of the Parties an unfair or unreasonable advantage over the other should be explored.
4.4 However general the expressions in this instrument may be, they only include the matters in respect of which it appears that the contracting Parties intend to contract and not those which they did not contemplate.

4.5 Reference to one gender includes the other gender, singular includes the plural and vice versa, headings are only for convenience and shall not aid in the interpretation or modification of clauses within this Agreement.

4.6 All amounts payable or defined in terms of this Agreement shall be inclusive of VAT unless specifically provided to the contrary in this Agreement.

5. SCOPE OF AGREEMENT

5.1 The Parties herein enter into an Agreement in terms of which the Contractor will provide services for the removal of medical waste as provided for in Annexure “A”.

5.2 The Parties specifically record that:

5.3 The Parties mutually agree to be bound by the provisions of this Agreement, the specification (attached hereto as Annexure “A”) which outlines the deliverables to be performed by the Contractor; the Conditions of Contract and Operational Requirements (attached hereto as Annexure “B”); the General Conditions of Contracts (attached hereto as Annexure “C”), and the pricing schedule (attached hereto as Annexure “D”) which should be complied with when making payments in respect of services rendered in terms hereof.

6. DURATION

6.1 Notwithstanding the date of signature, this Agreement shall be binding to the Parties from the effective date and shall continue to be so binding for a period of thirty six (36) months, after which period this Agreement shall automatically come to an end, save for any variations made in terms of Clause 19.

7. CONTRACTOR'S OBLIGATIONS

7.1 GENERAL OBLIGATIONS

7.1.1 The Contractor shall provide services in accordance with the specifications and service levels detailed in this Agreement, the bid document, the proposal to the
extent it has been accepted by the Department and with any subsequent levels and specifications issued by the Department.

7.1.2 The Contractor shall receive instructions from and report to the Project Manager with regard to the operational aspects related to the service.

7.1.3 The Contractor shall provide a contingency plan for spillages and accidents.

7.1.4 The Contractor shall be proactive in reporting any matters which it may become aware of which may impact on the business continuity or operations of the Department at the relevant institution, clinic and/or office.

7.1.5 The Contractor shall, in the provision of the services observe and comply with all relevant provisions of all applicable legislation and regulations.

7.1.6 The Contractor shall ensure that it and its personnel, at all times, comply fully with any safety, fire, emergency and security procedures and policies applicable at the relevant institution.

7.1.7 Should the Department at any time believe that any member of Contractor’s personnel is failing to comply with any such procedures or policies, the Department shall be entitled to deny such personnel member access to the relevant premises and require contractor to replace such person without delay.

7.1.8 The Contractor shall ensure that its personnel shall, if at any time they believe that any matter constitutes a fire risk, report this immediately to the Department and take such remedial action as may be necessary.

7.1.9 The Department and/or its appointed Technical Support Manager shall carry out periodic checks (the intervals to be determined by the Department) the purpose of which shall be to determine whether the Contractor is providing the Services in accordance with the terms and conditions of the contract.

7.1.10 All service complaints, deviations, non-conforming services and suggestions that are reported to the Contractor by the Department, its appointed facilities manager, or any other party shall be given proper and speedy consideration by Contractor or
the Contractor shall investigate complaints, deviations and non-conforming services in accordance with procedures approved by the Department.

7.2 WASTE TO BE REMOVED

7.2.1 The Contractor shall collect all classes of waste as specified in the bid document - normal, non-hazardous, domestic waste is excluded.

7.2.2 The Contractor shall collect waste on a regular basis as per the specifications or as agreed to by Head Office and the contractor, and may be called upon to collect waste even before the scheduled time if the need arises.

7.2.3 The Contractor shall sign a manifest register completed by the institution during every collection recording the type and weight of the waste collected.

7.2.4 The Contractor shall use their mobile scales to weigh the waste collected from each institution.

7.2.5 The Contractor shall produce a calibration certificate to the Programme Manager before the scales are used.

7.2.6 The Contractor shall, in the presence of a Departmental official, weigh the waste collected and record it on the waste collection document (WCD). A representative of the institution must record the weight of the waste collected in the register maintained by the Institution which must be signed by the Contractor and the departments representative at the institution immediately after the weighing and loading has been completed as so not to delay the collection process beyond acceptable time frames.

7.2.7 The institution must advise the contractor in advance whether or not the institution will be open to collect waste on official public holidays. Failure to do so and in the event that the contractor cannot obtain access in the waste storage area on that day, the contractor shall be entitled to charge the institution for the cost of such futile trip. The Contractor must provide proof in terms of clause 9.3.3.6 that they were unable to access the waste storage area and the actual cost of the trip.
7.3 **LEGAL COMPLIANCE**

7.3.1 The Contractor must be in possession of a valid Landfill site permit, and a treatment facility permit or Agreement with the owner or permit holder if they are not the owners for use thereof for waste disposal.

7.3.2 The handling, transportation, treatment, disposal and storage of all health care risk waste must be done in compliance with all relevant legislation, guidelines and codes of practice as detailed but not limited to the bid document.

7.4 **CONTAINERS**

7.4.1 The Contractor shall supply all types of containers as is specified in the bid document appropriately marked with an adhesive warning label or indelible print "TOXIC WASTE" or "Hazardous WASTE".

7.4.2 Every container shall be properly marked with the Contractor's name, serial number where this is required and capacity.

7.4.3 The Contractor shall supply all bags/containers for collection and disposal of waste which shall be to the satisfaction of the Department.

7.4.4 The Department shall take reasonable care to protect and safeguard the Contractor’s containers but shall not be liable for loss/damage to the containers where such has been occasioned through no fault of the Department.

8. **MANAGEMENT**

8.1 A comprehensive waste management plan will be developed by the Contractor.

8.2 The Project Manager, Contractor and any other relevant person shall meet at least once every two (2) months, and shall, inter alia, continuously monitor and reassess the criteria and protocol of the service in the best interest of the Department.

8.3 Matters of interest, operational procedures, service levels and performance measurements may be revised from time to time at the meeting.
8.4 The Contractor shall provide monthly reports to the Department as per template to be provided by the Department.

8.5 The Contractor shall provide its own system of monitoring complementing that of the Department.

9. SERVICE LEVELS

9.1 The Department shall

9.1.1 Provide reasonable support to the Contractor to enable it to perform its duties;

9.1.2 Ensure that the Contractor is afforded access at all reasonable times to all relevant locations, systems and data reasonably required by the Contractor for the performance of the Contractor's obligations

9.2 The Department appoints Babongile Mhlongo as Project Manager.

9.3 The Department shall ensure that:

9.3.1 Each type of healthcare risk waste referred to in Annexure A is stored in healthcare risk waste containers appropriate for that type.

9.3.2 Sealed bags are sorted according to colour.

9.3.3 The premises used at each institution for the purposes of storing healthcare risk waste containers are, regard being had to the nature of the healthcare risk waste contained in such containers and the healthcare risks posed thereby

9.3.3.1 Kept free from infestation by rodents, insects and other animals;

9.3.3.2 Sufficiently large to accommodate the volume of waste to be stored therein, in accordance with the relevant law;

9.3.3.3 Secure from unauthorized access;
9.3.3.4 Separate from other areas of the facility;
9.3.3.5 Not used for the storage of waste that is not healthcare risk waste;
9.3.3.6 Are reasonably accessible by Compass for the purposes of rendering the services, provided that if such premises become inaccessible by Compass for whatsoever reason, Compass shall forthwith notify the management of the institution concerned thereof, whereafter the institution shall forthwith provide access for Compass;

9.4 All bags are sealed with cable ties prior to such bags being removed to waste storage areas. Without derogating from the aforesaid, the institution shall ensure that all bags are sealed with cable ties prior to being collected by Compass;

9.5 Sharps containers are not overfilled

9.6 Remove heavy metals such as mercury and cadmium;

9.7 Radioactive waste; and

9.8 Waste that is not healthcare risk waste is not disposed of in the healthcare risk waste containers

10. DEPARTMENT’S OBLIGATIONS

10.1 The quality of the services or levels upon which the services are, to be provided must be of high standards and as provided for in Annexure “A”.

10.2 The services to be provided in terms hereof are to be so provided for twenty four (24) hours for the duration of this Agreement as provided for in Clause 7.

10.3 The Contractor shall at all times keep full and accurate records of all Services provided in terms of the contract and shall retain such records for the duration of the contract.

10.4 The Department and/or its appointed Technical Support Manager shall carry out periodic checks (the intervals to be determined by the Department) the purpose of which shall be to determine whether the Contractor is providing the services in accordance with the terms and conditions of the contract.

10.5 The Contractor shall, upon receipt of written request from the Department or its appointed Technical Support Manager make available for inspection at the contractors premises copies of all Contractor’s operating procedures and processes relating to the services.
10.6 The Contractor will be held liable for any expenses that may be incurred by the Department as a result of damage to property and injury to personnel as a result of poor quality products.

10.7 The Contractor shall ensure that its personnel shall, if at any time they believe that any matter constitutes a fire risk, report this immediately to the Department and take such remedial action as may be necessary.

10.8 The Contractor shall comply fully with the energy management strategy implemented at the relevant institution from time to time and shall provide the services in an energy efficient manner.

11. INSPECTIONS AND RECTIFYING DEFICIENCIES

11.1 The Department, or its designee, has the right in its sole discretion, to conduct announced and unannounced inspections to investigate the nature, quality and quantity of services provided and all finances related to the provision of services.

11.2 In the event of the Department determining that there are deficiencies with respect to any area of the services being provided by the Contractor, the Department shall advise the Contractor in writing of any such deficiency or deficiencies to the satisfaction of the Department, failing which the Department will be entitled to cancel the agreement in terms of clause 16.

12. PRICES AND PAYMENT

12.1 The services to be rendered in terms hereof are not in any way a donation to the state but are rendered in exchange of a sum not exceeding seventy eight million five hundred and eighty two thousand eight hundred and fifty six rand and thirty seven cents (R78 582 856,37) as payment for the services rendered. Where the number of containers delivered or the volume collected is in excess of specification, the monthly charge shall be based on the actual quantities supplied or weight collected and shall be charged at the rates set out in the pricing schedule in Annexure D.

12.2 The contract price shall be firm throughout the duration of this contract.

12.3 The payment to the Contractor shall be made monthly by the Department within a period of thirty (30) days on receipt of the invoices from the Contractor, and such invoices shall be
within the amount stipulated in this clause which is in line with the pricing schedule as outlined in Annexure “D”.

12.4 Every invoice must be accompanied by a delivery note, a destruction certificate and or a waste collection document from hospitals and clinics.

13. CONFIDENTIALITY

13.1 Both Parties acknowledge that in their dealings with each other they may come across confidential information which may, if disclosed, compromise the business of the other Party and that they (Parties) heretofore undertake not to disclose such information to any third Party, save where such disclosure is authorized by law or by written consent from the other Party.

14. INDEMNITY AND INSURANCE

14.1 The Contractor hereby indemnifies and holds the Department harmless against any claim of whatever nature and however arising out of the wilful or negligent action or omission of the Contractor and its employees.

14.2 In the event any legal action, based on the wilful or neglect action or omission of either party is brought against the other party, the successful party shall be entitled to recover from the other party legal fees and disbursements on attorney-client scale.

14.3 The Contractor undertakes to take out any necessary insurance which may be required for the fulfilling of its obligations in terms of this Agreement.

15. BREACH & PENALTIES

15.1 The responsibilities and obligations imposed to and undertakings made by the Parties in terms hereof are meant to be performed and if they are not performed at all, performed late or performed in the wrong manner that would constitute breach to this Agreement.

15.2 Should breach contemplated in this Clause occur, the aggrieved Party shall, if that breach is material:

15.2.1 debit the amount equivalent to services that should have been rendered at the time of breach from the total amount that is due for that period;
15.2.2 serve the defaulting Party with a written notice of the default and demand the defaulting Party to make good the default within fourteen (14) days;

15.2.3 claim damages, if there are any damages sustained by that other Party due to the default; and

15.2.4 exercise rights provided for in Clause 14, if the defaulting Party failed to remedy the default within fourteen (14) days on receipt of a notice contemplated in this clause.

15.3 A Party shall not be liable for breach in terms hereof, if it establishes to the satisfaction of the other Party that such breach was due to force majeure.

15.4 A de-merit system with penalty points (as per Annexure "E") shall apply for certain aspects of non-compliance. Penalty points on a scale of one to ten will be given to all transgressions, which will translate into monetary deductions from all payments to be made to the Contractor.

15.5 The above should enhance security at all levels as the monitoring company’s interest will be in quality control and the Contractor will be forced to deliver service of a very high standard. Repeat offenders will be cautioned and the necessary steps will be taken if the level of service does not improve.

15.6 All theft/losses and transgressions will be recovered from the Contractor in conjunction with a demerit put in place. All offences will be converted to money for all the transgressions. The Contractor will be made to sign a credit note for the deductions of transgressions. Clients will be advised on all actions to be taken against the company.

16. DISPUTES

16.1 The Parties undertake to resolve dispute arising out of the implementation or interpretation of this Agreement amicably or by way of arbitration in terms of the Arbitration Act, (Act 42 of 1965).

16.2 The decision of the arbitrator shall be binding upon the Parties and the cost of the arbitration thereof shall be determined by the arbitrator himself or herself.

16.3 In the event the dispute concerns an amount claimed by the Department and the Contractor fails to rectify the dispute, the Department shall be entitled to deduct the disputed
amount from the amount payable in terms of the invoice for the following billing period and
the amount may then be referred to arbitration.

16.4 The provisions of this section shall not operate to prevent either Party from seeking urgent
interim relief, pending arbitration, by way of interdict or other legal action.

17. TERMINATION

17.1 This Agreement can only be terminated in the event of:

17.1.1 a material default on the part of any of the contracting Parties as provided for in clause
14;

17.1.2 The Contractor instituting insolvency proceedings or has insolvency proceedings
involuntarily instituted against it, and

17.1.3 "Force Majeure" if, as a result of "force majeure", the Parties can no longer continue
performing the obligation of the contract or it would be undesirable to continue with the
contract.

17.2 This Agreement shall be terminated by any of the Parties serving to the other Party a
written notice to that effect only on the grounds provided for in this clause.

18. CESSION, DELEGATION OR ASSIGNMENT

18.1 The Contractor may not, without the prior written consent of the Department, cede, delegate
or assign any of its rights or obligations in terms of this Agreement.

18.2 The Contractor shall not be relieved or excused of any responsibility, liability or obligation
in terms of this Agreement by the appointment of any third party. The Contractor shall remain
liable to the Department for the pricing, performance, acts, defaults, omissions, breaches and
negligence of all third parties engaged by the Contractor. All references in this Agreement to
any act, default, omission, breach or negligence of the Contractor shall be construed to include
any such act, default, omission, breach or negligence of any such third party.
19. AMENDMENTS/VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver, cession, delegation or assignment of any right or obligation arising from this Agreement or its breach or termination shall be of any force or effect unless reduced into writing and signed by all Parties or their duly authorised representatives.

20. DOMICILIIUM CITANDI ET EXECUTANDI

20.1 Any notice in terms of this Contract shall be delivered to the physical addresses of the Parties, or shall be sent by registered post to the postal addresses of the Party to whom it is addressed.

20.2 Any notice shall be deemed to have been received by the Party to whom it is addressed or delivered when receipt thereof is acknowledged by means of a signed delivery note.

20.3 The Department chooses for the purposes of this Agreement its domicilium citandi et executandi as follows:

20.3.1 Street Address: Eastern Cape Department of Health  
Dukumbana Building  
BISHO

20.3.2 Postal Address: Eastern Cape Department of Health  
Private Bag X0038  
BISHO  
5065

20.4 The Contractor chooses for the purposes of this agreement its domicilium citandi et executandi as follows:

20.4.1 Street Address: Compass Waste Services  
1471 Marion Naude Road  
BERLIN  
East London  
5660

20.4.2 Postal Address: PO Box 13584  
BERLIN  
5600
SIGNED at ________________________________ on this ______ day of ___________ 2012

_________________________________________
EASTERN CAPE DEPARTMENT OF HEALTH

AS WITNESSES: (1) __________________________ NAME: __________________________

(2) __________________________ NAME: __________________________

SIGNED at_________________________ on this __ day of ___________ 2012

______________________________
COMPASS WASTE SERVICES (Proprietary) Limited

AS WITNESSES: (1) __________________________ NAME: ________________

(2) __________________________ NAME: __________________________