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ANNEXURE A – TERMS AND CONDITIONS

These terms and conditions are part of the agreement between Cessnock City Council (we, us) and the Interment Right Holder(s) (you, your).

1 Perpetual Interment Right

- 1.1 This agreement gives you the exclusive right to a specific burial place or place for ashes, permanently. This is called a Perpetual Interment Right. As the person who has this right, you are the Perpetual Interment Right Holder.
- 1.2 No more than two Perpetual Interment Rights in a cemetery can be held for any individual person.
- 1.3 As the Perpetual Interment Right Holder, you can nominate who is interred into the Interment Site. This is known as the 'person(s) to be interred'. You may nominate
 - (a) A person who is deceased, if you are buying the right 'at-need' - which means you need a burial place or a place for ashes now.
- 1.4 We issue a Certificate of Perpetual Interment Right, and list current Perpetual Interment Right Holders in our cemetery operator's register. We must keep this register up to date and available to the public for inspection or for copies to be made on payment of a fee, subject to any applicable privacy laws.
- 1.5 A Perpetual Interment Right is not effective until we issue the certificate and update the register. The Certificate of Perpetual Interment Right must be presented when booking an Interment service.
- 1.6 A replacement Certificate of Perpetual Interment Right may be issued if the original is lost, stolen or destroyed, on application to Council and payment of any associated fee.
- 1.7 A Perpetual Interment Right does not include any rights or title in the land, roads, building or other structures in the Interment Site or on the cemetery.
- 1.8 Both parties to this agreement (you and us) agree that changes to the *Cemeteries and Crematoria Act 2013* (the CC Act) and other laws can affect Perpetual Interment Rights.
- 1.9 If you buy a Perpetual Interment Right when you are 'at-need' the contract will describe the services that you have chosen.
- 1.10 We must issue an Order for Interment before a person can be buried or their ashes placed in the Interment Site. We will contact you if we require any further information in order to do this.

2 Memorials, maintenance and goods and services

- 2.1 As the Perpetual Interment Right Holder, you are the person authorised to place a memorial or monument at the Interment Site and deal with it in future as long as you comply with our requirements. Memorial ownership and all the responsibilities therein, reside with the Perpetual Interment Right Holder and his/her executor/heirs and successors.
- 2.2 You must have our written approval to place a memorial or monument at the Interment Site (if it is not purchased as part of This Contract). You also must place the memorial or monument in line with this approval. No existing memorial may be altered or removed without Council's prior written approval.
- 2.3 We will guide you on the type of memorial or monument that we will approve. We can prohibit, change or remove a memorial or monument if it does not have our approval or meet the requirements of the approval we provided.
- 2.4 Council may remove and/or dispose of any unauthorised item or alteration without notification to any person.
- 2.5 If an existing memorial impedes the conduct of the Interment, Council may require it to be removed, at the Perpetual Interment Right Holder's expense.
- 2.6 If you are buying a memorial or monument from us as part of This Contract then it is already approved, although some types of memorial/monument are only approved for specific Interment Sites. You can find out more by visiting Council offices or our website.



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- 2.7 You are not allowed to place anything at the Interment Site that we believe is a public safety risk. Anything we believe is hazardous may be removed by us without notice.
- 2.8 We must maintain the cemetery regularly, at least to the minimum standard the law requires us to meet. This includes vegetation, cemetery structures, roadways and associated infrastructure and your Interment Site, with the exception of any memorial or monument built on your site. We may reduce the maintenance level in the future where we are no longer offering future Interments at the cemetery.
- 2.9 You are responsible for the costs or activity needed to install or maintain a memorial or monument unless otherwise specified in This Contract.
- 2.10 If This Contract states we are responsible for maintaining the memorial or monument, we will take all reasonable steps to make sure that the maintenance:
- (a) is in line with agreed standards
 - (b) respects any religious, spiritual or cultural requirements in the contract.
- 2.11 We will take all reasonable steps to make sure that our goods and services meet any religious or cultural requirements outlined in This Contract.
- 2.12 You can buy extra goods and services from us after the agreement has started (which must be agreed in writing and will be a variation to this agreement). These items are not part of the total price. You must pay the rates that apply for them at the time.
- 2.13 No works within Council cemeteries are permitted to be undertaken by any person not licenced to work within Council cemeteries.

TRIBUTES

- 2.14 Lawn Cemeteries –
- (a) No monument, memorial, inscription, token plant, floral tributes, containers or such like are to be erected or placed on or within the lawn and garden section of the cemetery other than those allowed and supplied by Council. No ornaments or ceramics are to be placed on or around plaques, no glass vessels and no protruding objects above flower height in Council vases.
- 2.15 General Cemeteries –
- (a) No glass, ceramics, ornaments are permissible. All floral tributes must be placed on or within the Interment Site.
- 2.16 Bushland Gardens –
- (a) No artificial flowers permitted
 - (b) No glass, ceramics, ornaments, solar lighting permitted
 - (c) No flower vessels other than those provided by Cessnock City Council permitted
 - (d) No memorial plaques other than approved plaques purchased from Cessnock City Council and installed by Cessnock City Council permitted
 - (e) Fresh flowers are permitted when placed in vessel provided by Cessnock City Council
 - (f) Cessnock City Council reserves the right to remove and dispose of non-permitted without further notice
 - (g) Fresh flowers that have deteriorated will be removed without notice.

NICHE WALL AND MEMORIAL GARDEN SUITES

- 2.17 Council reserves the right to realign or alter the position of the garden and/or niches at its discretion.
- 2.18 Council will not be liable for the repair, maintenance, upkeep or preservation of any plaque/plinth or item placed in the niche wall or memorial garden suites.



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- 2.19 Glass or other items that Council deems to be a safety hazard are not permitted in Council's cemeteries, and if necessary, may be removed without notice to any person.

ASHES

- 2.20 Ashes are held free of charge at Council awaiting placement. All care will be undertaken, however no responsibility can be accepted for the Ashes.
- 2.21 Following placement, any residual remains being held for collection will be held for a period of six months from the date of placement after which those remains will be disposed of, without notice to the person who requested the remains to be held, by scattering in a garden at the cemetery of placement.
- 2.22 Scattered ashes are irretrievable.
- 2.23 Interment of ashes in memorial gardens, Columbarium walls and modern lawn cemeteries will be undertaken by Council. Interment Right Holder(s) will be notified by telephone within twenty-four (24) hours of the Interment of Ashes.
- 2.24 Applications to relocate ashes may will be considered on application to Council and payment of any associated fee. Ashes that have been scattered are unable to be relocated.
- 2.25 Applications to remove ashes and plaque will be considered on application to Council and payment of any associated fee.

GRAVES

- 2.26 Graves can usually be dug to a depth to accommodate two coffins or caskets. However, occasionally, due to rock or stability problems, not evident prior to commencement of digging the grave, ground conditions may not allow for Interment in an allocated plot. In these circumstances an alternate plot will be allocated and a revised Certificate of Perpetual Interment Right issued and updating of the Register if required.

3 Price and payment

- 3.1 If you are buying the Perpetual Interment Right at the time of need (at-need), you agree to pay the total price for the Perpetual Interment Right and any other goods and services selected at the start of our agreement, as listed in ITEM 12 of the contract.
- 3.2 Where an applicant enters into a payment plan in relation to an Interim Certificate of Perpetual Interment, and requires the Site prior to the payment plan being completed, any outstanding amount remaining will be required to complete full payment at the time of need of Interment.
- 3.3 We update our policies, guides, rules and process documents from time to time in line with our needs and any changes in the law. The updated details will apply to this agreement, except that the updated details will not affect the agreed price or agreed services listed in the contract.
- 3.4 You will pay for the items included in this agreement as set out in ANNEXURE B of the contract
- 3.5 Goods and services tax (GST) applies to certain (not all) goods and services that you buy from us. You must pay GST at the same time as you pay for your goods and services. If the contract does not state that GST applies to what you are buying, then you do not have to pay GST.

4 Changes and cancellations

- 4.1 If you are buying the Perpetual Interment Right at the time of need (at-need), you agree to pay the total price for the Perpetual Interment Right and any other goods and services selected at the start of our agreement, as listed in ITEM 12 of the contract.
- 4.2 You can ask us to transfer ownership of the Perpetual Interment Right to someone else. We must respond to a transfer request within a reasonable time. We charge a fee for transferring ownership. Transfer of the Perpetual Interment Right is only operative when Council issues a new Certificate of Perpetual Interment Right and updates the Register.
- 4.3 Perpetual Interment Rights can be held by one (1) person (solely) or two (2) or more people (jointly)



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- (a) When a sole interment right holder dies, we must transfer the Perpetual Interment Right to the person named in their will, or act as the law tells us if the interment right holder did not leave a will
 - (b) When a joint interment right holder dies, we must transfer the Perpetual Interment Right to the surviving interment right holder.
- 4.4 You must talk to us if you want to transfer your rights or duties under this agreement to someone else. Your changes must be legal, and we must agree to them in writing.
- 4.5 Applications to amend a Perpetual Interment Right will be considered on application to Council and payment of the associated Fee. Amendment of the Perpetual Interment Right is only operative when Council issues a new Certificate of Perpetual Interment Right and updates the Register.
- 4.6 A Perpetual Interment Right Holder may apply to Council to cancel an unused Perpetual Interment Right or Council may repurchase unused Interment Rights from the Interment Right Holder/s in accordance with the CC Act.
- 4.7 Either party (you or we) can waive their own rights under this agreement by telling the other party in writing.
- 4.8 We can cancel a Perpetual Interment Right when:
- (a) the interment site has not been used within 50 years of the time when it was granted (as per the CC Act). The 50-year time period may change if the law changes.
 - (b) we follow all other cancellation requirements under the CC Act.

5 End of agreement

- 5.1 You, or we, can end the At-Need agreement if the other party breaches the agreement and either:
- (a) the breach can be fixed, but the party does not fix it within 5 working days of being told in writing about the breach, or
 - (b) the breach cannot be fixed.
- 5.2 You can end this agreement by writing to us 5 working days before you want it to end, and in line with clause 5.3.
- 5.3 You can only end this agreement if the interment site has not been used for a burial or to place ashes.
- 5.4 The agreement automatically ends when you have paid us all the fees you owe and either:
- (a) the burial or placement of ashes in the interment site has been completed, or
 - (b) we have cancelled your Perpetual Interment Right, in line with section 52 of the CC Act.
- 5.5 Some rights and duties that you and we have under this agreement continue after the agreement has ended. These include the rights and duties set out in:
- (a) clauses 1.4, 2.2, 2.6, 2.7, 2.9, 2.10, 2.11, 4.5, 4.9, 5.6, 5.7, 7.
 - (b) clause 6 (for as long as legally required).
 - (c) any other terms (including Contract details and Definitions) which are intended to continue after the agreement has ended.
- 5.6 Where an exhumation has taken place in line with section 66 of the CC Act, the rights and duties set out in clauses 2.2, 2.6, 2.7, 2.9, 2.10, 2.11, 4.5, 4.9, 7 that you and we have under this agreement will no longer continue.
- 5.7 If any part of the agreement cannot be enforced in court, then that part will be treated separately but the rest of the contract stands.

6 Personal Information



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- 6.1 Council is committed to safeguarding the privacy of individuals and handling of personal information in accordance with the [Privacy and Personal Information Act 1998 \(NSW\)](#) and [Information Privacy Principles](#), the [Health Records and Information Privacy Act 2002 \(NSW\)](#) and [Health Privacy Principles](#), and any subordinate legislation.
- 6.2 You agree that we need to collect and store personal information in line with this agreement, the CC Act and privacy legislation. We will use this personal information to provide the rights, goods and services this agreement covers. The personal information is collected for the purpose of Council performing its functions with respect to interments and complying with its legislative and regulatory requirements pursuant to the [Cemeteries and Crematoria Act 2013 \(NSW\)](#) and Part 8 of the [Public Health Regulation 2012 \(NSW\)](#) (the cemeteries legislation).
- 6.3 We must manage personal information in line with our [Privacy Management Plan](#) and [Privacy Statement](#) which can be found on Council’s website, and privacy legislation. We may need to share it with other regulatory authorities, if the law requires us to do so. The information will also form part of a public record that must be made available for inspection pursuant to the cemeteries legislation.
- 6.4 You must not give us other people’s personal information unless they agree that we can have it and use it.
- 6.5 You must make sure that we have correct and up-to-date details (including contact details) for you and any next of kin or secondary contact which is necessary for us to provide the rights, goods and services this agreement covers. Please contact Council's Privacy Contact Officer on (02) 4993 4100 or by sending an email to council@cessnock.nsw.gov.au if you wish to check, update or correct any of the personal information that you give us.
- 6.6 We will write to you when we need to tell you something, and we will use the contact details set out in the contract, or the updated contact details you have given us.

7 Consumer protections, disputes and complaints

- 7.1 We will follow all relevant laws when we provide you with the rights, goods and services included in this agreement. This includes complying with Australian Consumer Law, privacy laws, work health and safety law, the CC Act, and public health laws.
- 7.2 Nothing in the contract changes or limits your legal rights as a consumer. Find out more about these rights at <https://www.accc.gov.au/consumers/buying-products-and-services>.
- 7.3 If there is a dispute or doubt about who holds an interment right, we can determine the holder of the right in accordance with the CC Act.
- 7.4 To give us your feedback or to complain, please contact [Complaints Handling Policy adopted Cessnock City Council \(nsw.gov.au\)](#).
- 7.5 If you are not satisfied with how we deal with your complaint, our dispute resolution process shows you who to contact next. In addition, you can also contact the government authority that regulates us: Cemeteries & Crematoria NSW. Visit <https://www.cemeteries.nsw.gov.au/complaints-and-enquiries/complaints>.
- 7.6 The laws of New South Wales govern this agreement. If you or we are unhappy with the dispute resolution outcome and the complaint is taken to court, you or we will use a New South Wales court.

ITEM 19 – DEFINITIONS

Some terms in this Contract have specific meanings, as shown below:

At-need	The circumstances when a person needs a burial site or a place for ashes immediately. This usually means that a person has recently died (or where death is imminently expected).
CC Act	means the <i>Cemeteries and Crematoria Act 2013</i> (NSW).
Certificate of Perpetual Interment Right	means a document that established a legal right with Council to allow Interment to take place in a specified location in a specified cemetery.



CEMETERIES

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Columbarium	means a room or building with niches for funeral urns to be stored.
Funeral Director	means an individual or business licensed to carry out funeral services.
Interim Certificate of Perpetual Interment Right	means a document that established a legal right with Council to allow Interment to take place in a specified location in a specified cemetery, subject to full payment of the application Fee and issue of a Certificate of Perpetual Interim Right.
Interment	means the placement of human remains in a mausoleum, vault, Columbarium or other structure designed for the placement of such remains, or the burial in the earth of human remains (directly in the earth or within a container).
Interment site	The specific location in the cemetery where a person will be buried or their ashes will be placed.
Memorial	A gravestone, plaque, cenotaph or other monument, or any other structure or permanent physical object used to memorialise a person.
Operator or we, our, us	means Cessnock City Council who is the Cemetery Authority.
Operator's Register	means a register kept by an operator, in line with section 63 of the CC Act.
Order for Interment	A written order that the operator creates to confirm the details of the Interment immediately prior to it occurring.
Person(s) to be interred	The person(s) whose bodily remains or ashes are to be buried or placed in the Interment Site.
Perpetual or Perpetuity	means lasting indefinitely with no fixed end date.
Perpetual Interment Right	means the contract with Council that allows Interment to take place in a specified location in a specified cemetery in line with this Contract and section 44 of the CC Act. <u>There is no entitlement to any real estate – the ownership of the land, wall, garden or memorial boulder remains with Council.</u> An Interment Right was previously known as a right of burial or burial licence.
Perpetual Interment Right Holder or you or your	means the person recorded in the cemetery operator's register as the person that currently has the perpetual interment right and has the sole authority to determine who can be interred in the Site and to allow Council approved memorials to be placed.
Pre-need	The circumstances when a person needs a burial site or a place for ashes at a future date. This usually means that no-one has recently died.
representative	An officer, employee or volunteer that the operator authorises to act as its representative for the purpose of making this agreement. To be clear, a representative is not the same as an authorised agent.
Site	means the plot location and lot and will be specified in the Certificate of Perpetual Interment Right.