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Waste Processing and Disposal Agreement – Northern Sydney Councils

The Principal
and

Veolia Environmental Services (Australia) Pty Ltd
ABN 20 051 316 584

Contents

1.	Interpretation	2
2.	Appointment of Contractor	2
3.	No fetter of Principal Council discretion	2
4.	Service Objectives	2
4.1	Service Objectives	2
4.2	Achievement of Service Objectives	3
5.	Primary obligations.....	3
5.1	Primary obligations	3
5.2	Preservation of contractual risk allocation	3
5.3	Provision of Bank Guarantee	4
6.	Transitioning Waste under the Agreement	4
6.1	Transition In Date	4
6.2	Willoughby City Council	4
6.3	Effect of Transition In	4
7.	Disclaimer and entire understanding.....	5
7.1	Entire understanding.....	5
7.2	No representations or warranties	5
7.3	Tender Documents have no effect	5
7.4	Disclosed Information	5
7.5	Release.....	7
8.	Compliance with Law.....	8
9.	Environmental obligations	10
9.1	Environmental obligations.....	10
9.2	Cartage	10
10.	Environmental Management System	11
10.1	Evidence of and adherence to Environmental Management System	11
10.2	Operating Plans	11
11.	Work Health and Safety	11
11.1	Principal Contractor	11
11.2	WHS generally	12
11.3	WHS System.....	13
11.4	Release and indemnity	13
11.5	Definitions	14
12.	Notification of incidents	14
13.	Contractor Facilities and Plant.....	14
13.1	Risk of Contractor Facilities	14
13.2	Nominated Facilities must be available	15
13.3	Use of Contractor Facilities and Nominated Facilities	16
13.4	Use of Contractor Plant	17
13.5	Business Continuity Plan	17
13.6	Failure to achieve Recovery Target due to unavailability of Camellia MRF	17
14.	Acceptance of Waste	19



- 14.1 Principal to deliver to Nominated Transfer Facility 19
- 14.2 Acceptance of waste at Waste Transfer Station..... 19
- 14.3 Ownership of Waste 19
- 14.4 Hours 19
- 14.5 Unloading area 19
- 14.6 Unloading and Waiting time..... 20
- 14.7 Unloading..... 21
- 14.8 Unlawful Materials Protocol 21
- 15. Weighing of Waste 22**
 - 15.1 Weighing of Waste..... 22
 - 15.2 Provision and maintenance of weighbridge..... 23
 - 15.3 Weighing Generally 23
- 16. Disposal and Processing of Waste 23**
 - 16.1 Disposal 23
 - 16.2 Processing to achieve Recovery Target or better 23
 - 16.3 Calculating Recovery Amount 24
 - 16.4 Recovery Targets 24
 - 16.5 Disputes as to calculation of Recovery Amount or specification of Recovery Target.....25
- 17. Record Keeping, reporting and verification 25**
 - 17.1 Record keeping..... 25
 - 17.2 Inspection, monitoring and audits 26
 - 17.3 Monthly reports 27
 - 17.4 Other reports..... 27
 - 17.5 Special Reporting and Record Keeping Requirements 27
- 18. Weight Estimates 27**
- 19. Fees and Payment..... 28**
 - 19.1 Payment of Fee 28
 - 19.2 Payment obligations 28
 - 19.3 Payment Claim 28
 - 19.4 Calculation of Claim for Base Fee 30
 - 19.5 Payment Certificates..... 30
 - 19.6 Provision of tax invoice 31
 - 19.7 Payment..... 31
 - 19.8 Payment is not an admission..... 31
 - 19.9 Payment of Employees and Subcontractors 32
 - 19.10 Correction of errors 32
 - 19.11 Quarterly Reconciliation..... 32
 - 19.12 Previous Service Period Reconciliation Amount and Catch-up Amount 32
 - 19.13 Set-off 33
 - 19.14 Periods of Non-Performance 33
- 20. Final reconciliation and payment 33**
 - 20.1 Application of this clause 33
 - 20.2 Final Payment Claim..... 33
 - 20.3 Release after Final Payment Claim at end of Term 34
 - 20.4 Final Payment Certificate at end of Term 34
 - 20.5 Final Payment at end of Term 34
- 21. Contractor's personnel, consultants and subcontractors..... 34**
 - 21.1 General 34
 - 21.2 Contractor's agents, subcontractors, employees 35
 - 21.3 Warranties regarding contractors 35
 - 21.4 Liability unaffected 35
 - 21.5 Personnel..... 35



22.	Variations	36
22.1	Permitted Variation	36
22.2	Qualifying Change	36
22.3	Principal required variation	38
22.4	Agreed variation.....	39
22.5	Assessment of Permitted Variation Amount	39
22.6	Variation Amount	40
22.7	Lump sum or rate adjustment	40
22.8	Contractor claim of a directed variation	41
22.9	Application of this clause	41
22.10	Fee exclusive of Carbon Price.....	41
22.11	Beneficial variations	42
23.	Force Majeure	42
23.1	Notice of Force Majeure Event	42
23.2	Suspension of rights and obligations	43
23.3	Duty to Mitigate	43
23.4	End of Period of Force Majeure.....	43
23.5	Termination After Extended Force Majeure.....	43
23.6	Principal may step in and perform	44
24.	Insurance	44
24.1	Public liability	44
24.2	Motor vehicle Insurance.....	45
24.3	Workers compensation	45
24.4	Provisions in policies	45
24.5	Evidence of policies	46
24.6	Notices	46
24.7	Premiums.....	46
24.8	Undertaking to inform	46
24.9	Subcontractors.....	46
24.10	Insurance for Contractor Facilities	46
25.	Indemnity and release	47
25.1	Contractor indemnity.....	47
25.2	Release	47
25.3	Direction to comply	48
25.4	Survives termination	48
25.5	Preservation of Contractor's obligations	48
25.6	Place, Manner and Time of Payment	48
26.	Limitations on Liability	48
27.	Suspension of Services and other directions	50
27.1	Principal's Rights not limited	50
27.2	Emergency.....	50
27.3	Stop work by Contractor	51
27.4	Principal may step in and perform	51
28.	Default and Termination	51
28.1	Contractor Default Event	51
28.2	Notice from the Principal.....	52
28.3	Enforcement Notice	52
28.4	Termination	54
28.5	Payments on Termination.....	54
28.6	Termination Amount	54
28.7	Consideration for Services performed and no Claim.....	54
28.8	No prejudice to accrued rights	55



28.9	Nature of Insolvency Event.....	55
28.10	Specific performance.....	55
28.11	Rights not limited.....	55
29.	Security Amount.....	55
29.1	Purpose.....	55
29.2	Recourse to a Bank Guarantee.....	55
29.3	Release of Bank Guarantees.....	56
29.4	Further rights and obligations.....	56
29.5	Trusts and interest.....	56
29.6	Replacement Bank Guarantee.....	56
30.	Disputes.....	57
30.1	Procedure for resolving Disputes.....	57
30.2	Designated officers.....	57
30.3	Notice of Dispute.....	57
30.4	Negotiation.....	58
30.5	Mediation.....	58
30.6	Expert determination.....	59
30.7	Give effect to certain documents.....	60
30.8	Litigation.....	60
30.9	No delay to the Works.....	60
31.	Option Period.....	61
32.	Transition.....	61
32.1	Transition.....	61
32.2	Obligation to Transfer.....	61
33.	Intellectual Property.....	62
33.1	Ownership of Intellectual Property.....	62
33.2	Moral rights warranty.....	62
34.	Representatives.....	62
34.1	Appointment and role of the Principal Representative.....	62
34.2	Principal Representative.....	63
34.3	Appointment and role of the Contractor Representative.....	63
35.	Service Coordination Group.....	64
36.	GST.....	65
36.1	Definitions.....	65
36.2	GST exclusive.....	65
36.3	Increase in consideration.....	66
36.4	Payment of GST.....	66
36.5	Tax invoice.....	66
36.6	Reimbursements.....	66
36.7	Adjustment events.....	66
37.	PPS Law.....	66
37.1	Further Assurances.....	66
37.2	Contracting out of PPS Act.....	67
37.3	Acknowledgements and undertakings.....	67
38.	Representations, warranties and disclaimers.....	67
38.1	Contractor's experience, skills, capabilities and equipment.....	67
38.2	Representations and warranties of the Contractor.....	67
38.3	The Principal's representations and warranties.....	68
38.4	Reliance on representations and warranties.....	69



39.	General	69
39.1	Amendment.....	69
39.2	Further assurance.....	69
39.3	Costs, expenses and stamp duty	69
39.4	Stamp duty.....	70
39.5	Disclosure, confidentiality and the media	70
39.6	Waiver and exercise of rights	71
39.7	Acknowledgement	71
39.8	Civil Liability Act.....	71
39.9	Change of Control.....	72
39.10	No assignment without consent.....	72
39.11	Principal Council logo and name	72
39.12	Warranty	72
39.13	Time of the essence	73
39.14	No relationship	73
39.15	Survival of indemnities	73
39.16	Enforcement of indemnities	73
39.17	No merger	73
39.18	Rule of construction	73
39.19	Amalgamation of a Principal Council	73
40.	Notices	73
40.1	Service of notice	73
40.2	Particulars for service	74
40.3	Time of service	74
Schedule 1	Party details	77
Schedule 2	Reference Schedule	78
Schedule 3	Definitions and interpretation	82
Schedule 4	Services Specification	96
Schedule 5	Waste definition	113
Schedule 6	Payment Schedule	114
Schedule 7	Forms	131
Schedule 8	Specified Risks	145
Schedule 9	Form of Bank Guarantee	146
Schedule 10	Quarterly Reconciliation Statement	147
Schedule 11	Weighing Protocol	152
Schedule 12	Facilities Delivery Program	157

Waste Processing and Disposal Agreement – Northern Sydney Councils

Dated 25 / 8 / 2015

Parties

The Parties set out in Schedule 1

Background

- A. Each of the Principal Councils is the local government authority for its local government area constituted under the *Local Government Act 1993*.
- B. The Principal Councils have agreed to together procure the provision of Waste Services for their respective local government areas.
- C. On 27 October 2014 the Minister for Local Government approved the Northern Sydney Councils Waste Services Alliance Participation Agreement.
- D. The objectives of the Principal Councils are the Service Objectives specified in clause 4 of this Agreement.
- E. By tender process managed by Local Government Procurement Partnership (ABN 34 578 553 267), the Contractor was selected to perform the Waste Services under this Agreement.
- F. Each Principal Council wishes to engage the Contractor to provide the Services.
- G. The Contractor has agreed to provide the Services to each Principal Council subject to and upon the terms and conditions of this Agreement.

The Parties Agree

1. Interpretation

In this Agreement unless expressed or implied to the contrary defined terms have the meaning as specified in Schedule 3 and this Agreement is to be interpreted in accordance with Schedule 3.

2. Appointment of Contractor

- 2.1.1 Each Principal Council appoints the Contractor as an independent and expert contractor with specialist skills and expertise not possessed by the Principal to carry out the Services during the Term subject to and in accordance with this Agreement and the Contractor accepts that appointment.
- 2.1.2 Each obligation, duty and liability under this Agreement applies to and for the benefit of each Principal Council severally in respect of its Covered LGA, its Committed Waste and in its Relevant Proportion. In no circumstance is a Principal Council liable for any act or omission of another Principal Council.
-

3. No fetter of Principal Council discretion

Nothing in this Agreement fetters or restricts the power or discretion of any Principal Council as a public authority.

4. Service Objectives

4.1 Service Objectives

The Service Objectives are:

- 4.1.1 to achieve better waste outcomes. This includes providing demand certainty to service providers so that they may invest in the supply of facilities that create marketable recovered materials and thereby create capacity to reduce the percentage of waste collected by councils that is disposed of in landfill;
- 4.1.2 to achieve improved value for money for communities in the cost of waste services. This includes creating volume security over a sustained time period, thereby reducing transaction costs associated with multiple tenders and addressing uncertainty as to feedstock volumes for service providers;
- 4.1.3 to ensure security of waste disposal and processing arrangements. This includes identifying and implementing contract arrangements that ensure that putrescible waste is disposed of or processed in facilities that can operate efficiently and with minimum risk of service failure over a sustained time period; and
- 4.1.4 to create public benefits by working together to:
- (a) stimulate market competition and economic efficiency; and
 - (b) support participating councils in working with the market to ensure the long-term provision of environmentally sustainable waste solutions; and

- (c) support community engagement in waste education as a contribution to better regional waste outcomes.

4.2 Achievement of Service Objectives

The Parties must cooperate and use their best endeavours to facilitate the achievement of the Service Objectives. This includes:

- 4.2.1 incorporating efficiencies in the administration and management of the Agreement, including in relation to Payment Claims; and
- 4.2.2 providing reasonable assistance (two hours per month of the Contract Representative's time) to the Principal in delivering waste education programmes;
- 4.2.3 the Contractor making available organised group tours of the Disposal Facility and Processing Facility, commencing at the facility, for waste education purposes following reasonable notice by the Principal Representative.

5. Primary obligations

5.1 Primary obligations

The Contractor must:

- 5.1.1 provide the Services to each Principal Council:
 - (a) in accordance with the requirements of this Agreement;
 - (b) exercising proper care, skill and judgment;
 - (c) in accordance with the reasonable directions given by the Principal Representative;
 - (d) in a safe, timely and efficient manner; and
 - (e) in accordance with Law;
- 5.1.2 ensure that there is no disruption to the Services during the Term except where expressly permitted by this Agreement; and
- 5.1.3 take all steps reasonably practicable to eliminate risks to people and property and prevent harm to the Environment in the performance of the Services.

5.2 Preservation of contractual risk allocation

- 5.2.1 Subject to this Agreement, the Contractor accepts all costs, expenses and risks of and associated with the Services and the performance of the Services, including, for the avoidance of doubt, any Specified Risk.
- 5.2.2 Subject to this Agreement, the Contractor is not entitled to and must not make any Claim under the Agreement (including a Claim for an adjustment of the Fee or any part of it) against the Principal (or any person acting on the Principal's behalf) arising out of or in connection with any such risk, cost or expense having eventuated or been incurred.

5.3 Provision of Bank Guarantee

The Contractor must, on or before 1 October 2015, provide and deliver to the Principal Representative a Bank Guarantee, for the amount set out in Item 6 of Schedule 2.

6. Transitioning Waste under the Agreement

6.1 Transition In Date

The Waste from each Principal Council specified in Column 1 of the following table will become subject to this Agreement on and from 12:01am on the date specified for that Principal Council in Column 2 of the following table.

Column 1 – Principal Council	Column 2 – Transition In Date
City of Ryde	On commencement of Agreement
Lane Cove Council	1 December 2015
Ku-ring-gai Council	On commencement of Agreement
Hunter's Hill Council	On commencement of Agreement
Willoughby City Council	The date on which the Council elects to transition its Waste into this Agreement in accordance with clause 6.2

6.2 Willoughby City Council

6.2.1 Willoughby City Council may within 3 months after the date of this Agreement serve a notice on the Contractor and the Principal Representative either nominating the Transition In Date for Willoughby City Council (being a date no later than 12 months following the date of the notice) or electing not to participate in this Agreement.

6.2.2 If Willoughby City Council:

- (a) serves a notice under 6.2.1 that nominates a Transition In Date then that date will be the Transition In Date for Willoughby City Council; or
- (b) serves a notice under 6.2.1 electing not to participate in this Agreement or fails to serve a notice under clause 6.2.1, then Willoughby City Council will not participate in the Agreement.

6.3 Effect of Transition In

From the Transition In Date, the Principal Council must make its Waste available under the Agreement.

7. Disclaimer and entire understanding

7.1 Entire understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

7.2 No representations or warranties

The Contractor acknowledges that except as expressly stated in this Agreement (including in column 2 of the table in Schedule 8) the Principal makes no warranty or representation as to whether any Waste has or does not have any or any particular Characteristic from time to time and the Contractor must make its own estimation for the purposes of this Agreement.

7.3 Tender Documents have no effect

Subject to clause 39.5.1, the Contractor acknowledges and agrees that:

- 7.3.1 no representation or warranty either express or implied is, has been or will be made by the Principal under or in respect of the Tender Documents;
- 7.3.2 statements by the Principal, the Contractor or any other person (whether contained within the Tender Documents or otherwise) prior to the date of this Agreement, or otherwise made in relation to the Services at any time:
 - (a) are not binding on the Principal;
 - (b) do not commit the Principal to any action or position in respect of any matter; and
 - (c) do not waive, fetter, limit or otherwise affect any right, discretion, power or privilege of the Principal;
- 7.3.3 any representation, communication and prior agreement in relation to the subject matter of the Tender Documents are merged in and superseded by the Agreement; and
- 7.3.4 the Tender Documents may not be used as an aid to the interpretation of any provision of this Agreement in a way which would limit, reduce or waive any right of the Principal.

7.4 Disclosed Information

- 7.4.1 This clause 7.4 only applies to Disclosed Information that was disclosed prior to the date of this Agreement.
- 7.4.2 The Contractor acknowledges and agrees that:
 - (a) prior to the date of this Agreement and for the purposes of entering into this Agreement it has:
 - (i) carefully examined the terms of this Agreement and all Disclosed Information; and
 - (ii) examined, and relied solely upon its own independent assessment, skill and expertise and made inquiries in respect of, all information

(including Disclosed Information) available to a competent Contractor upon the making of all reasonable inquiries relevant to the risks, contingencies and other circumstances having an effect on their obligations under this Agreement; and

- (b) no representation, guarantee or warranty (either express or implied) is, has been or will be made by the Principal in relation to the Disclosed Information, and in particular and without limitation, no representation, guarantee or warranty is, has been or will be made by the Principal that the Disclosed Information:
 - (i) is reliable, complete, current, accurate, suitable, comprehensive, adequate or correct;
 - (ii) represents the opinion of the Principal or any other person at any time;
 - (iii) contains all information held by or available to the Principal or any other person at any time; or
 - (iv) can be relied on by the Contractor or any other person;
- (c) the Disclosed Information:
 - (i) may be incomplete, inaccurate or incorrect; and
 - (ii) may not be relied upon by the Contractor or any other person,and no recourse may be had against the Principal in respect of any Disclosed Information;
- (d) the Principal has not and is not obliged to:
 - (i) verify the currency, reliability, adequacy, accuracy, correctness, suitability, comprehensiveness or completeness of the Disclosed Information;
 - (ii) disclose any information to the Contractor even if that information materially affects or contradicts any information that the Contractor already has;
 - (iii) update any information disclosed to the Contractor; or
 - (iv) give the Contractor notice if it becomes aware of any inaccuracy, incompleteness or change in the information disclosed to the Contractor;
- (e) Disclosed Information may not have been prepared for the purpose of the Agreement or with the Contractor or any other person in the position of the Contractor in mind or for the purpose of the Services;
- (f) any opinions expressed in any Disclosed Information are opinions given at the date that the opinion was formed and may have ceased, or may in the future cease, to be appropriate or correct in the light of subsequent facts, circumstances, knowledge or attitudes; and
- (g) the Disclosed Information may not be used as an aid to the interpretation of any provision of this Agreement.

7.4.3 The Contractor warrants and represents that:

- (a) it has understood the limitations of the Disclosed Information and in particular acknowledges its understanding that:
 - (i) the Disclosed Information may not, and has not, been expressly or impliedly represented to provide comprehensive information, including in relation to the current, historical or future Characteristics of Waste in each Covered LGA; and
 - (ii) any assessment of or statement about any Characteristic of any Waste may or may not be correct and is not a representation or warranty made by any or all of the Principal Councils.
- (b) it has obtained its own independent and professional advice and opinions on all matters relating to the Services and the Disclosed Information including financial, accounting, tax, engineering, environmental, legal, technical advice and opinions and the Characteristics of the Waste;
- (c) it has satisfied itself as to:
 - (i) the suitability of the Contractor Facilities for carrying out the Services;
 - (ii) the Characteristics of the Waste;
 - (iii) the nature, extent, cost and timeframes for carrying out any part of the Services by it and or any other person; and
 - (iv) its ability to reuse or dispose of, and the costs and timeframes for the reuse or disposal of, any Residue or Diverted Material arising in connection with the Services; and
- (d) it has carried out independently all relevant tests, enquiries, investigations and analysis it regards as necessary to acquaint itself with and verify to its satisfaction:
 - (i) all aspects of the Services;
 - (ii) any Characteristics of the Waste;
 - (iii) the contents, correctness and sufficiency of the Disclosed Information; and
 - (iv) all information which is relevant to the risks, contingencies and other circumstances related to the Services.

7.5 Release

The Contractor releases the Principal from, and indemnifies the Principal against:

- 7.5.1 any Claim (whether at law or in equity) by the Contractor; or
- 7.5.2 any obligation, duty or liability to the Contractor in respect of any Loss or Liability whatsoever suffered or incurred by the Contractor,

arising out of or in any way in connection with the Disclosed Information, including in respect of:

- 7.5.3 the provision of, or the purported reliance upon, or use of the Disclosed Information, to or by the Contractor or any other person to whom the Disclosed Information is disclosed or a failure by the Principal to provide any information, data or documents to the Contractor;
- 7.5.4 any negligence by or on behalf of the Principal (the Contractor specifically acknowledges and agrees that any duty of care that the Principal may otherwise have owed to the Contractor is specifically excluded and released);
- 7.5.5 any misrepresentation, misleading conduct, omission, inaccuracy, incompleteness or other defect in any Disclosed Information; or
- 7.5.6 the Disclosed Information being relied upon or otherwise used in the preparation of any information or document, including (to the extent permitted by law) any information or document which is "misleading or deceptive" or "false or misleading" within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation.

8. Compliance with Law

- 8.1.1 Subject to this Agreement, the Contractor must at its cost:
 - (a) comply with all applicable Laws (including any Change in Law); *[Note: that clause 22 allows for a rate adjustment for a Qualifying Change]*
 - (b) in sufficient time to comply with its respective obligations under this Agreement and, if appropriate, progressively make Applications for and obtain, maintain and renew all Authorisations necessary:
 - (i) for it to comply with its obligations under this Agreement; and
 - (ii) for any of its other activities in connection with the Services;
 - (c) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its obligations under this Agreement;
 - (d) in sufficient time to comply with its obligations under this Agreement, provide to any relevant Authority and other relevant person all information, assurances, bonds, payments and securities necessary or required by the Authority or that person to evaluate, process, determine, grant, obtain or comply with any necessary Authorisation in respect of the Services;
 - (e) upon written request by the Principal Representative, give the Principal Representative copies of all documents (including Authorisations and other notices):
 - (i) an Authority issues to it; or
 - (ii) it issues to an Authority,in respect of the Services; and
 - (f) if contractors (or sub-contractors of any tier) are used to perform any part of the Services, ensure that the contractors (or sub-contractors of any tier) have obtained all necessary Authorisations to perform that part of the Services.

8.1.2 Without limiting the generality of clause 8.1.1, the Contractor must at its cost:

- (a) in performing the Services:
 - (i) ensure that all necessary Authorisations have been obtained for the storage, Disposal, Processing and transporting of all Waste under this Agreement; and
 - (ii) transport Waste in suitably licensed vehicles and using appropriate Waste tracking methodology; and
- (b) comply with:
 - (i) the lawful requirements of each Authority to enable proper consideration by the Authority of any Applications for Authorisations made in respect of the Services;
 - (ii) the proper requirements of any relevant person (other than an Authority) to enable proper consideration by that person of Applications made in respect of the Services;
 - (iii) all lawful terms and conditions of the Authorisations issued in respect of the Services (whether or not obtained by and issued to the Contractor) and with all lawful directions given by an Authority in connection with the Services; and
 - (iv) all applicable orders, decisions, findings or rulings made by a court, commission or tribunal.

8.1.3 In using any Contractor Facility the Contractor must at its cost ensure that:

- (a) for a Processing Facility:
 - (i) it is a place that can lawfully be used to Process Waste;
 - (ii) it is operated in accordance with all necessary Authorisations to store and Process Waste;
 - (iii) appropriate, proper and efficient environmental controls are properly installed and properly maintained for the duration of Processing so as to comply with all Laws and this Agreement;
 - (iv) it is demonstrated to be lawful, suitable and safe for the proposed use; and
 - (v) any Allocated Waste is safely and lawfully handled, stored and Processed;
- (b) for a Disposal Facility:
 - (i) it is a place that can lawfully be used to Dispose of any Waste;
 - (ii) it is operated in accordance with all necessary Authorisations to Dispose of any Waste;
 - (iii) appropriate, proper and efficient environmental controls are properly installed and properly maintained for the duration of Disposal so as to comply with all Laws and this Agreement;

- (iv) it is demonstrated to be lawful, suitable and safe for the proposed use; and
 - (v) any Allocated Waste is safely and lawfully handled, stored and Disposed; and
- (c) for a WTS, or other Nominated Facility:
- (i) it is demonstrated to be lawful, suitable and safe for the proposed use;
 - (ii) it is operated in accordance with all necessary Authorisations to accept and handle Waste; and
 - (iii) appropriate, proper and efficient environmental controls are properly installed and properly maintained so as to comply with all Laws and this Agreement.

9. Environmental obligations

9.1 Environmental obligations

Without limiting clause 8, the Contractor must:

- 9.1.1 hold and comply with all Authorisations required to perform the Services;
- 9.1.2 perform the Services in accordance with Good Environmental Practice;
- 9.1.3 ensure that there is no unlawful leakage, spillage or other escape of any Waste, Pollution or Contaminant to the Environment;
- 9.1.4 keep secure all Waste during transport and storage;
- 9.1.5 ensure that all Contractor Facilities are properly constructed, operated and maintained to prevent harm to the Environment;
- 9.1.6 not cause or permit any nuisance or hazard to any member of the public in accordance with all relevant Authorisations;
- 9.1.7 suppress odours to minimise impacts on people in accordance with all relevant Authorisations; and
- 9.1.8 contain and lawfully dispose of leachates and other products and by-products of the Services.

9.2 Cartage

Without limiting clauses 8 or 9.1:

- 9.2.1 all cartage of any kind or actions of the Contractor's employees, agents or contractors in connection with the execution of this Agreement must be carried out in compliance with the requirements of any Law controlling the use of vehicles on roads;
- 9.2.2 when any vehicle carrying Waste, Diverted Material, Residue or other material is passing along roads or left standing in any public place, it must be secured so as to prevent the escape of any matter from the vehicle; and

- 9.2.3 no vehicle may, in the conduct of the Services, be left standing in such a manner as to cause offence or present a hazard to a member of the public.

10. Environmental Management System

10.1 Evidence of and adherence to Environmental Management System

- 10.1.1 The Contractor must submit to the Principal Representative on or before the Commencement Date (and at other times upon request by the Principal Representative during the Term), evidence to the reasonable satisfaction of the Principal Representative that the Contractor has an Environmental Management System in place that:
- (a) is consistent with this Agreement;
 - (b) is consistent with external accreditation such as ISO 14001; and
 - (c) has as an objective: compliance with applicable Environmental Laws, such as the *Protection of the Environment Operations Act 1997* (NSW).
- 10.1.2 The Contractor must while performing the Services adhere to the Environmental Management System.

10.2 Operating Plans

Each Contracting Facility must have in place an operating plan and a closure plan approved by any relevant Authority. These plans must be complied with.

11. Work Health and Safety

11.1 Principal Contractor

In respect of any works commissioned by, or carried out by or on behalf of, the Contractor in respect of the Services (including in connection with a Contractor Facility), the Principal and Contractor agree that, if the works are a construction project to which Chapter 6 of the WHS Regulation applies:

- 11.1.1 the Contractor must carry out such works in accordance with the requirements of the WHS Law; and
- 11.1.2 the Principal Representative may by written notice elect that the Principal engages the Contractor as Principal Contractor in respect of such works and if the Principal so elects:
- (a) the Principal authorises the Contractor to have management and control of such works and exercise whatever authority is necessary for the Contractor to discharge the responsibilities of the appointment;
 - (b) the Contractor accepts the engagement as Principal Contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a Principal Contractor by the WHS Law; and
 - (c) to the extent that the Contractor is for any reason, taken or otherwise found not to be the Principal Contractor for such works, the Contractor nonetheless must discharge, exercise and fulfil the functions, duties and obligations of a

Principal Contractor in respect of such works as if the Contractor was the Principal Contractor for those works.

11.2 WHS generally

The Contractor must:

- 11.2.1 comply with, and ensure that its workers, including its employees, contractors, subcontractors and agents, comply with all WHS Law in connection with the Services;
- 11.2.2 in performing the Services take all possible and reasonably practicable steps and measures to eliminate risk to health and safety and to avoid and minimise the consequences of work health and safety issues;
- 11.2.3 ensure that it carries out the Services in a manner which is consistent with the Principal's duties and obligations under the WHS Law in connection with the Services and does not prevent the Principal from complying with those duties and obligations;
- 11.2.4 ensure that there is no unreasonable risk to health, safety and welfare of any persons employed in connection with the Services (whether by the Contractor, contractors, subcontractors or otherwise);
- 11.2.5 comply with any Directions, manuals, policies or rules formulated from time to time by the Principal in relation to safety insofar as they relate to the Services and are notified to the Contractor;
- 11.2.6 manage risks associated with the carrying out of the Services in accordance with Part 3.1 of the WHS Regulation;
- 11.2.7 ensure that if any Law requires that:
 - (a) a person:
 - (i) be authorised or licenced (in accordance with the WHS Act and WHS Regulation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - (ii) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Act or WHS Regulation), that person has the required qualifications or experience or is so supervised; or
 - (b) a workplace, plant, substance, design, or work (or class of work) be authorised, registered or licensed, that workplace, plant, substance, design, or work is so authorised, registered or licensed;
- 11.2.8 not direct or allow a person to carry out or use plant or substances at a workplace unless the requirements of clause 11.2.7 are met (including any requirement to be authorised, licensed, qualified or supervised); and
- 11.2.9 if requested by the Principal Representative or required by the WHS Law, produce evidence of any Authorisations, registration, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal Representative.

11.3 WHS System

- 11.3.1 The Contractor must submit to the Principal Representative on or before the Commencement Date (and at other times upon request by the Principal Representative during the Term), evidence to the reasonable satisfaction of the Principal Representative that the Contractor has a WHS System in place that:
- (a) is consistent with this Agreement;
 - (b) is consistent with applicable standards;
 - (c) where relevant to the performance of the Services, has been accredited by a NSW Government agency or an authorised third party;
 - (d) has as an objective, compliance with applicable health, safety and discrimination laws, including WHS Law; and
 - (e) addresses each of the matters specified in clause 11.3.3.
- 11.3.2 The Contractor must while performing the Services adhere to the WHS System.
- 11.3.3 The WHS System must address each of the following matters in respect of the Services:
- (a) the Contractor's work health and safety policy and objectives;
 - (b) the Contractor's organisational structure and responsibilities;
 - (c) details of safe work practices and procedures to be implemented by the Contractor;
 - (d) the Contractor's work health and safety training and induction;
 - (e) the Contractor's work health and safety auditing and inspection procedures;
 - (f) the Contractor's work health and safety consultation procedures;
 - (g) the Contractor's work health and safety performance monitoring;
 - (h) the Contractor's assessment of all risks and hazards arising from its performance of its obligations under this Agreement; and
 - (i) the Contractor's procedures for eliminating, controlling or minimising the identified risks and hazards.

11.4 Release and indemnity

- 11.4.1 Subject to clause 11.4.2, the Contractor releases and indemnifies the Principal from and against any Claim, Liability or Loss brought against, suffered or incurred by the Principal arising out of, or in any way in connection with, any failure by the Contractor to comply with its obligations under clauses 9, 10, 11 or clause 12.
- 11.4.2 Clause 11.4.1 does not require the Contractor to release or indemnify the Principal to the extent that the relevant Claim, Liability or Loss arises from an act of the Principal that:
- (a) is negligent; or

- (b) is an act that is taken deliberately to contravene clauses 9, 10, 11 or clause 12.

11.5 Definitions

Except as otherwise provided in clause 1, all terms used in this clause 11 have the meanings given to them in the WHS Act and the WHS Regulation.

12. Notification of incidents

12.1.1 The Contractor must immediately notify the Principal Representative in writing of any act, fact or circumstances associated with the Services relevant to the ability of the Contractor to comply with the requirements of clauses 9, 10 or 11.

12.1.2 Without limiting clause 12.1.1, the Contractor must:

- (a) immediately notify the Principal Representative:
 - (i) of any Contamination or Pollution which is caused; or
 - (ii) of any accident, notifiable incident (being an incident which is notifiable under any WHS Law), injury or property damage which occurs,

in connection with the Services;
- (b) do everything necessary to minimise harm to humans and the Environment;
and
- (c) within 24 hours of any such matter notified under paragraph (a), provide a written report to the Principal Representative giving complete details of the matter, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

13. Contractor Facilities and Plant

13.1 Risk of Contractor Facilities

Subject to this Agreement, the Contractor:

13.1.1 assumes the risk of all delay, increased costs and any Loss it suffers or incurs in relation to the conditions and characteristics of each Contractor Facility;

13.1.2 acknowledges and agrees that:

- (a) access to any land or facility including any Contractor Facility which is required for the purposes of carrying out the Services and other obligations under this Agreement is at the sole risk, cost and responsibility of the Contractor;

- (b) the Contractor may not Claim, and the Principal has no liability in respect of, any delay, additional costs or other effects on the Services related to:
 - (i) the ability of the Contractor or its contractors or any other person to obtain access to any land or facility including any Contractor Facility; or
 - (ii) the condition or suitability of any land or facility including any Contractor Facility; and
- (c) the Principal is not required to obtain, construct or provide to any person formal or informal access to any land or facility (including any Contractor Facility);

13.1.3 acknowledges and agrees that:

- (a) the Contractor must at the Contractor's cost make arrangements for access to and use of all Contractor Facilities and obtain and comply with all necessary Authorisations to use all necessary Contractor Facilities; and
- (b) the Contractor must at its cost ensure that there is insurance in place covering the operation of the Contractor Facility at least at the same level as required by clause 24.10; and
- (c) if following the Commencement Date a Nominated Facility is not available and operational to perform the Services to the standard required by this Agreement, then:
 - (i) the Contractor must nominate an Alternative Facility and obtain the Principal's consent to use that Alternative Facility under clause 13.3;
 - (ii) indemnify the Principal in relation to all costs, claims, charges or expenses in relation to the use of an Alternative Facility (including any increased transportation costs); and
 - (iii) the Principal is not required to pay the Contractor until the Services are performed in accordance with this Agreement, provided always that the performance of the Services at an Alternative Facility will be taken to be the performance of the Services at a Nominated Facility under clause 13.3.

13.2 Nominated Facilities must be available

13.2.1 The Contractor must construct the Processing Facilities in accordance with the Facilities Delivery Program (in Schedule 12).

13.2.2 The Facilities Delivery Program must not be varied unless the Contractor has:

- (a) provided the Principal Representative with a written notice specifying the proposed variation and the reason for the variation; and
- (b) obtained the prior written approval of the Principal Representative, which shall not be unreasonably withheld if the variation is a result of:
 - (i) the requirement of an Authority; or
 - (ii) a delay by an Authority in granting an Authorisation,

unless the requirement or delay arose due to the default of the Contractor.

13.2.3 For each Nominated Facility, the Contractor must, on or before the date nominated in clause 5.1 of Schedule 4 in respect of that Nominated Facility, ensure that the Nominated Facility is constructed and capable of operation to provide the relevant Services and provide the necessary documentation that demonstrates to the satisfaction of the Principal Representative that:

- (a) it owns or otherwise has access to and can use:
 - (i) the Contractor Facility;
 - (ii) any proprietary technology proposed to be utilised in undertaking the Services; and
 - (iii) any land necessary to undertake the Services at that Contractor Facility,for the duration of the Agreement; and
- (b) it holds all necessary Authorisations for the construction and operation of the Contractor Facility.

13.2.4 The Principal Representative may serve on the Contractor a notice if the Principal Representative is not satisfied, acting reasonably, that:

- (a) the Contractor is undertaking the appropriate actions and other activities in order to construct the Processing Facilities in accordance with the Facilities Delivery Program; or
- (b) any date or timeframe specified in the Facilities Delivery Program will be met.

13.2.5 A notice issued under clause 13.2.4 must:

- (a) specify the concerns of the Principal that have led to the service of the notice; and
- (b) require the Contractor to provide the Principal with a written response within a reasonable timeframe set out in the notice (being no less than 10 Business Days), explaining to the reasonable satisfaction of the Principal, the actions that the Contractor will take to achieve the relevant requirements in the specified timeframe and manner.

13.2.6 If a valid notice is served under clause 13.2.4 on the Contractor, the Contractor must comply with that notice and, promptly undertake all actions specified in the written response provided under clause 13.2.5(b) (to the reasonable satisfaction of the Principal) in accordance with that response.

13.3 Use of Contractor Facilities and Nominated Facilities

13.3.1 In performing the Services the Contractor must not without the prior written consent of the Principal use any facilities or work areas other than the Contractor Facilities.

13.3.2 The Contractor may only use a different Nominated Facility to the Contractor Facilities listed in Item 5 of Schedule 2 with the prior written consent of the Principal.

13.3.3 The Principal will not unreasonably withhold its consent under clause 13.3.1 or 13.3.2 provided that the proposed facility or work area:

- (a) is demonstrated to be lawful, suitable and safe for the proposed use;
- (b) is conveniently located so as not to cause additional costs;
- (c) is the subject of insurances as required by clause 24.10;
- (d) will not have any adverse impact on any of:
 - (i) the Fees;
 - (ii) the ability of the Contractor to perform the Services; or
 - (iii) the achievement of the Recovery Targets; and
- (e) meets the requirements of Schedule 4.

13.4 Use of Contractor Plant

13.4.1 The Contractor must ensure that all of the Contractor Plant:

- (a) is in safe working condition at the Commencement Date and throughout the Term;
- (b) complies with all applicable Law;
- (c) is suitable for the purpose for which it is to be used; and
- (d) is maintained in safe working condition.

13.4.2 The Contractor must prepare, sign and deliver to the Principal Representative at its request an inventory of the Contractor Plant and a certification as to the matters set out in clause 13.4.1:

- (a) on or before the Commencement Date; and
- (b) within 5 Business Days after each anniversary of the Commencement Date during the Term.

13.5 Business Continuity Plan

The Contractor warrants that it has, will maintain and will test at least once annually, at its cost, a business continuity and disaster recovery plan, which encompasses the performance of the Services and which enables it, so far as is reasonably practicable:

- 13.5.1 to fulfil all of its functions, responsibilities and obligations under this Agreement; and
- 13.5.2 in the event of disruption to the performance of the Services, to ensure that, within 3 Business Days of disruption, the Services are once again performed in accordance with this Agreement.

13.6 Failure to achieve Recovery Target due to unavailability of Camellia MRF

13.6.1 The Contractor must, at its cost, take all reasonable action that is able to be taken by it to obtain development consent (**Development Consent**) under Part 4 of the

Environmental Planning and Assessment Act 1979 for the development and use of the Camellia MRF. To avoid doubt, all reasonable action that is able to be taken by the Contractor to obtain the Development Consent includes, if the relevant Authority determines (or is deemed to determine) not to grant the Development Consent, to fully and diligently at its cost make a request to the relevant Authority to review or amend its determination.

13.6.2 Provided that the Contractor has complied with clause 13.6.1 then:

- (a) each of the dates nominated in clause 5.1 of Schedule 4 in respect of the Camellia MRF shall be extended by the greater of:
 - (i) the number of days that the Development Consent has not been obtained after 28 February 2016; and
 - (ii) 12 months; and
- (b) if the Development Consent has not been obtained by 28 February 2017:
 - (i) the Principal shall not be permitted to terminate the Agreement under clause 28 due to the failure of the Contractor to achieve a Recovery Target in respect of Clean up Waste or comply with clause 13.2.3; and
 - (ii) if the Contractor fails to achieve the Recovery Target in respect of Clean up Waste for Service Period 5 or any subsequent Service Period, the Principal Representative may serve a written notice on the Contractor:
 - (A) electing to remove Clean up Waste from this Agreement, such that the Principal will no longer be required to deliver Clean up Waste to a Nominated Facility and the Contractor will no longer be required to perform the Services in respect of Clean up Waste;
 - (B) specifying the date on which the removal of Clean up Waste from this Agreement will take effect, being a date no less than 20 Business Days after the date of the notice; and
 - (C) specifying such consequential amendments to the Agreement as are necessary to remove Clean up Waste from this Agreement.

13.6.3 If the Principal serves a notice on the Contractor under clause 13.6.2(b)(ii), then:

- (a) Clean up Waste shall be removed from this Agreement on and from the date specified in the notice;
- (b) the Agreement is deemed to be amended in the manner specified in the notice; and
- (c) the Contractor must pay the Principal in the aggregate, \$150,000, within 10 Business Days of the notice. The amount of \$150,000 is stated as at 30 June 2015 and shall be escalated in accordance with the consumer price index (Sydney all groups).

14. Acceptance of Waste

14.1 Principal to deliver to Nominated Transfer Facility

All Waste the object of the Services under this Agreement shall be delivered to one or more Nominated Transfer Facilities. The Principal Representative will procure that for each Nominated Transfer Facility, the Agreed Proportion is delivered to that Nominated Transfer Facility, unless the Contractor is unable to or refuses to accept Waste that would comprise part or all of the Agreed Proportion.

14.2 Acceptance of waste at Waste Transfer Station

The Contractor must accept all Allocated Waste delivered to a Nominated Transfer Facility by a Collection Vehicle, other than Allocated Waste that is identified as Unlawful Materials under the Unlawful Material Protocol.

14.3 Ownership of Waste

Ownership of all Allocated Waste (excluding Allocated Waste that is identified as Unlawful Materials under the Unlawful Material Protocol) shall vest with the Contractor once the Allocated Waste is unloaded from the Collection Vehicle at a Nominated Transfer Facility.

14.4 Hours

14.4.1 The Contractor warrants that at the date of this Agreement each Nominated Transfer Facility is open to accept Waste at least between the hours of 5am and 5pm on every Working Day. The Contractor must:

- (a) not change those hours without the prior written agreement of the Principal Representative; and
- (b) without limiting paragraph (a), immediately notify the Principal Representative if it is aware of any proposal by an Authority to change the conditions of any relevant Authorisation to change those opening times and days.

14.4.2 The Contractor must ensure that sufficient numbers of appropriately qualified and trained personnel are present on site at the Nominated Transfer Facility during its opening hours set out in clause 14.4.1, as required to provide the Services in accordance with this Agreement.

14.5 Unloading area

14.5.1 The Contractor must set aside an area for unloading Allocated Waste at each Nominated Transfer Facility.

14.5.2 The Contractor must ensure that, in relation to the area referred to in clause 14.5.1:

- (a) access to the area is kept clear of any obstructions, including Waste;
- (b) the width of the access path complies with all Authorisations;
- (c) no other vehicles, including forklifts, enter or cross the path while Collection Vehicles are approaching or leaving the unloading area;
- (d) there is clear signage which alerts people in the area to dangers;

- (e) in the case of a permanently allocated unloading area, the access is marked on the ground or floor;
- (f) if the access path and unloading area are indoors:
 - (i) they are well lit at all times of unloading;
 - (ii) the unloading area is free of obstructions, such as beams; and
 - (iii) the ceiling or roof is at least one metre above the maximum height of any unloading Collection Vehicle;
- (g) the unloading area allows for a turning circle for Collection Vehicles such that the Collection Vehicles are clear of the closest obstacles by at least two metres at all times; and
- (h) the unloading area is kept tidy, with Waste swept away from the turning circle and path on a regular basis.

14.6 Unloading and Waiting time

- 14.6.1 The Contractor must use its best endeavours to ensure that total time from the arrival by a Collection Vehicle at the entry gate of the Nominated Transfer Facility until the exit by the Collection Vehicle from the Nominated Transfer Facility is no more than 30 minutes (**Residency Time**). For the purpose of this clause 14.6.1 a Collection Vehicle is taken to arrive at the entry gate of the Nominated Transfer Facility if it is queued to get to the entry gate, and the Residency Time includes the time that the Collection Vehicle is in that queue.
- 14.6.2 The Contractor must use its best endeavours to ensure that Collection Vehicles can commence unloading within 10 minutes of being weighed at the weighbridge at the Nominated Transfer Facility.
- 14.6.3 If a Collection Vehicle cannot commence unloading immediately upon arrival, the Contractor must direct the driver of the Collection Vehicle to a waiting zone within the Nominated Transfer Facility. Under no circumstances must a Collection Vehicle be made to stand on a public street.
- 14.6.4 The Contractor must ensure that a representative of the Contractor counter-signs any record of the time at which a Collection Vehicle is permitted to begin unloading Waste presented by a driver of a Collection Vehicle.
- 14.6.5 If on any Working Day any Collection Vehicle is delayed such that its Residency Time in the Nominated Transfer Facility is more than 30 minutes (excluding delay caused by the act of the driver of the Collection Vehicle or Principal), then:
 - (a) the Contractor shall be liable to pay to the relevant Principal Council (to whom the Collection Vehicle is contracted) on demand liquidated damages in the amount specified in Item 15 of Schedule 2 for the total Residency Time in excess of 30 minutes for each Collection Vehicle so delayed;
 - (b) the amount that the Contractor is obliged to pay to the relevant Principal Council under this clause may be set-off and deducted from payments to the Contractor or must be paid by the Contractor to the Principal Representative within seven days of the demand, at the option of the Principal Representative;
 - (c) a calculation of an amount by the Principal Representative for this purpose will be final and conclusive except in the case of manifest error; and

- (d) the parties acknowledge and agree that the amount of liquidated damages payable hereunder is an agreed, genuine pre-estimate of the damages of a Principal Council if a Collection Vehicle is delayed such that its Residency Time in the Contractor Facility is more than 30 minutes, and is not a penalty.

14.6.6 If clause 14.6.5 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle a Principal Council to claim or receive liquidated damages under that clause, the Principal Council shall be entitled to recover damages from the Contractor in respect of such failure.

14.6.7 The liability of the Contractor to pay liquidated damages under clause 14.6.5(a) for a Collection Vehicle being delayed in excess of the Residency Time, shall be capped in respect of the delay of that Collection Vehicle at an amount that is equal to three times the amount specified in Item 15 of Schedule 2 and shall be the sole and exclusive remedy of the Principal in respect of the particular incident of delay of that Collection Vehicle.

14.7 Unloading

The Contractor must ensure that all drivers of Collection Vehicles are properly inducted as to work health and safety risks when accessing a Nominated Transfer Facility, including as to:

- 14.7.1 the correct route to the unloading area; and
- 14.7.2 any dangers, including tight corners.

14.8 Unlawful Materials Protocol

14.8.1 On or prior to the Commencement Date and on every second anniversary of the Commencement Date the Contractor must prepare and submit to the Principal Representative an Unlawful Materials Protocol that is acceptable to the Principal Representative acting reasonably. The Unlawful Materials Protocol must:

- (a) specify the Nominated Facility to which it applies;
- (b) specify what materials are Unlawful Materials at that facility and why;
- (c) specify how Unlawful Materials will be identified and dealt with;
- (d) specify how a decision as to which option for disposing of, and where necessary treating, the Unlawful Material shall be made;
- (e) include a schedule of rates for treating and disposing of Unlawful Materials that are typically identified in the Waste stream.

14.8.2 If the Contractor submits an Unlawful Materials Protocol that is not acceptable to the Principal Representative acting reasonably the Contractor must amend the protocol to address any comments of the Principal and resubmit the protocol under clause 14.8.1.

14.8.3 The costs of identifying, assessing, extracting, storing and handling Unlawful Material identified under the Unlawful Materials Protocol shall be borne by the Contractor and will not attract any additional payment under this Agreement.

14.8.4 The Principal may, following consultation with the Contractor (except in circumstances where the Unlawful Materials Protocol provides that consultation is not required due to an immediate threat to health or safety or in order to avoid

contravening a condition of an Authorisation), elect that Unlawful Material notified to the Principal from time to time:

- (a) is treated and disposed of by the Contractor – in which case the cost of treating or disposing of Unlawful Material identified under the Unlawful Materials Protocol shall be calculated in accordance with the Unlawful Materials Protocol; or
- (b) is treated and disposed of by another person – in which case the Principal shall make arrangements for the prompt collection of that Unlawful Material; or
- (c) is returned to the collection contractor – in which case the Principal shall make arrangements for the prompt collection of that Unlawful Material.

15. Weighing of Waste

15.1 Weighing of Waste

- 15.1.1 The Contractor must ensure that all Allocated Waste delivered to a Nominated Transfer Facility, is weighed at a weighbridge at that facility in accordance with the Services Specification and the Weighing Protocol.
- 15.1.2 The weight of the Allocated Waste must be calculated by the Contractor based on actual weight of Waste received at the Nominated Transfer Facility and not based on average tare weight of the truck.
- 15.1.3 The Contractor must provide to the driver of each Collection Vehicle:
 - (a) a weighbridge docket for each load of Allocated Waste brought to the Nominated Transfer Facility immediately after the Waste is weighed; and
 - (b) a weighbridge docket for the Collection Vehicle, immediately after the Collection Vehicle is weighed on departure from the Nominated Transfer Facility.
- 15.1.4 If Allocated Waste is delivered to the Nominated Transfer Facility in separate streams in the same Collection Vehicle, the Contractor must provide the driver of the Collection Vehicle with a separate weighbridge docket for each stream of Waste immediately after each stream of Waste is weighed.
- 15.1.5 Each weighbridge docket issued by the Contractor must record the time and date at which it was issued.
- 15.1.6 The Contractor must maintain records of the origin of the Allocated Waste, the Collection Vehicle registration number, the net weight, the type of Waste and time of entry and exit at the weighbridge. If more than one stream of Waste is unloaded from one Collection Vehicle, the Contractor must record these details for each stream of Waste.
- 15.1.7 In addition to the provision of weighbridge dockets to the driver of each Collection Vehicle under clause 15.1.3, the Contractor must deliver either, at the discretion of the Principal Representative:
 - (a) the weighbridge dockets or copies thereof; or
 - (b) weekly electronic transaction reports of the weighbridge data,

for all of the loads of Allocated Waste received at each Nominated Transfer Facility, each month to the Principal Representative with the report that the Contractor is required to provide to the Principal Representative under clause 17 and at such other times as are agreed between the Parties.

- 15.1.8 The Contractor must make available all pertinent records for the purpose of carrying out a waste audit by the Principal at the Principal's request.

15.2 Provision and maintenance of weighbridge

The Contractor must:

- 15.2.1 provide, or ensure that there is, a weighbridge at each Contractor Facility;
- 15.2.2 ensure that the weighbridge is in good order and accurately calibrated at all times;
- 15.2.3 arrange for the accuracy of the weighbridge to be independently tested and certified:
- (a) every twelve months (at the Contractor's cost); and
 - (b) when directed by the Principal Representative (at the Principal's cost),
- and provide a copy of the certification to the Principal Representative within 5 Business Days of receiving the certification;
- 15.2.4 maintain records of the tests undertaken and the certifications issued and provide copies of them to the Principal Representative upon request; and
- 15.2.5 in relation to the weighbridge, comply in all respects with and be properly licensed under the *National Measurement Act 1960 (Cth)* and the *National Trade Measurement Regulations 2009 (Cth)*.

15.3 Weighing Generally

The Contractor must ensure that at each Contractor Facility, the Weighing Protocol is complied with at all times.

16. Disposal and Processing of Waste

16.1 Disposal

The Contractor must Dispose of the Disposal Amount at the Disposal Facility.

16.2 Processing to achieve Recovery Target or better

- 16.2.1 The Contractor must in each Service Period, Process sufficient Waste (excluding Clean up Waste) at the relevant Processing Facility in order to ensure that the Recovery Amount applicable to that Waste Processed at that Processing Facility during that Service Period in accordance with this Agreement is greater than or equal to the Recovery Target for that Waste for that Service Period.
- 16.2.2 The Contractor must in each Service Period, Process sufficient Clean up Waste at the relevant Processing Facility in order to ensure that the Recovery Amount applicable to the Clean up Waste Processed at that Processing Facility during that Service Period in accordance with this Agreement is greater than or equal to the Recovery Target for Clean up Waste for that Service Period.

16.2.3 Without limiting clause 16.2.1 or any amount payable in accordance with the Payment Schedule, if in a Service Period the Recovery Amount (for all categories of Waste excluding Clean up Waste):

- (a) achieves or exceeds the MBT Recovery Target; and
- (b) is less than the Recovery Target,

for that Service Period, the parties must negotiate in good faith on an open book basis to identify alternative solutions to ensure that sufficient Waste is Recovered in subsequent Service Periods so that any shortfall in the Recovery Target in that Service Period is redressed in subsequent Service Periods and future Recovery Targets are achieved. In the event that there is additional processing capacity at the Processing Facility, the Contractor shall make that additional capacity available to the Principal at the same Processing Rate as is applicable to that Waste under Part 1 of Schedule 6.

16.3 Calculating Recovery Amount

16.3.1 For each Service Period, the Recovery Amount must be calculated by the Principal Representative (and the Contractor notified in writing):

- (a) in accordance with the formula in:
 - (i) for Waste (excluding Clean up Waste), clause 2 of Part 1 of Schedule 6; and
 - (ii) for Clean up Waste, clause 2 of Part 2 of Schedule 6; and
- (b) within the first Payment Period of the subsequent Service Period.

16.3.2 For the purposes of the calculation in clause 2 of Part 1 or Part 2 of Schedule 6 (as applicable), the weights must be determined from weighbridge docketts from the Contractor Facilities delivered to the Principal Representative by the Contractor under clause 17.3.

16.3.3 If there is any discrepancy between information provided to the Principal Representative by the Contractor and the driver of a Collection Vehicle, the Principal Representative must determine the weight of Waste delivered to the Contractor Facility each month. The Principal Representative's determination will be final and conclusive.

16.4 Recovery Targets

For each Service Period, the Recovery Target is as specified in the table in:

16.4.1 for Waste (excluding Clean up Waste), clause 3 of Part 1 of Schedule 6; and

16.4.2 for Clean up Waste, clause 3 of Part 2 of Schedule 6.

16.5 Disputes as to calculation of Recovery Amount or specification of Recovery Target

The Recovery Amount and the Recovery Target determined by the Principal Representative under clauses 16.3 and specified under clause 16.4 respectively shall be final and binding except to the extent that in respect of the Recovery Amount only:

- 16.5.1 the Contractor or a Principal Council disputes the calculation by written notice of dispute within 20 Business Days of the date on which the calculation is notified in writing to the Contractor; or
- 16.5.2 the calculation contained a manifest error.

17. Record Keeping, reporting and verification

17.1 Record keeping

17.1.1 The Contractor must maintain written records of all Waste Processing and Disposal during the Term, for a period of not less than 7 years in respect of each record from the date of creation of that record, including:

- (a) detailed information on all Waste received at each Nominated Transfer Facility including:
 - (i) the weight of all loads received each day,
 - (ii) the total weight of all loads of Allocated Waste received at each Nominated Transfer Facility in each month for each Covered LGA;
 - (iii) registration number for the Collection Vehicle which delivered each load to each Nominated Transfer Facility and the time of entry and departure of that vehicle;
 - (iv) copies of weighbridge dockets required under clause 15.1.7; and
 - (v) all other records required by the Weighing Protocol;
- (b) summary information on all waste Disposed and Processed in combination with Waste received from each Covered LGA, including:
 - (i) the total weight of Allocated Waste accepted at the Disposal Facility;
 - (ii) the total weight of Allocated Waste accepted at the Processing Facility;
 - (iii) summary information on all Diverted Material recovered from the Processing Facilities each month, including for each month:
 - (D) the total weight of waste accepted at the Processing Facility;
 - (E) the total weight of waste Processed at the Processing Facility;
 - (F) the total weight of Residue produced through Processing at the Processing Facility;
 - (G) the total weight of material that is produced through Processing at the Processing Facility that is then used for operational cover; and

- (H) the total weight of Diverted Material produced through Processing at the Processing Facility;
 - (iv) summary information on all Waste Disposed at the Disposal Facility each month, including for each month:
 - (A) the total weight of waste accepted at the Disposal Facility;
 - (B) details of any Waste Levy or other Taxes paid by the Contractor in respect of Allocated Waste that is accepted at the Disposal Facility;
 - (v) any other information required under the Weighing Protocol;
 - (c) any Waste disposal or transport documents required by Law;
 - (d) insofar as is relevant to Waste accepted from the Principal:
 - (i) all complaints concerning the Contractor Facilities by Authorities, the Principal and adjoining neighbours and the actions taken to rectify them;
 - (ii) the results of any investigations made into complaints;
 - (iii) any accidents or other incidents where a possibility of injury to persons or property damage arose;
 - (e) any breach of this Agreement by the Contractor;
 - (f) implementation of the Environmental Management System and WHS System; and
 - (g) any other information reasonably requested by the Principal Representative.
- 17.1.2 At any time during the Term the Principal Representative may request that the Contractor provide it with any or all of:
- (a) any information described in clause 17.1.1; and
 - (b) other information in respect of the conduct of the Services, which the Principal reasonably requires,
- and the Contractor must promptly comply with that request.

17.2 Inspection, monitoring and audits

- 17.2.1 The Contractor acknowledges that the Principal and the Principal Representative may arrange or carry out inspections, monitoring and audits as necessary (and without notice) to ensure the Contractor is complying with its obligations under this Agreement in relation to the Services. The Contractor must provide any reasonable assistance requested by a member of the Principal Representative's staff, or a third party engaged for this purpose by the Principal Representative, in checking the Contractor's compliance with any of its obligations under this Agreement.
- 17.2.2 If the Principal Representative requires access to any documentation and records of the Contractor required for the carrying out of any monitoring or audit referred to in clause 17.2.1, then the Principal Representative may request that the Contractor

provide sufficient access to such documentation and records. The Contractor must act reasonably in considering any such request for access.

- 17.2.3 The Contractor must ensure it is available to discuss details of the Services, quality and other relevant matters with the Principal Representative during the inspections, monitoring and audits.

17.3 Monthly reports

The Contractor must at its cost:

- 17.3.1 deliver a report, in a format approved by the Principal Representative, on the records it is required to keep under clause 17.1 to the Principal Representative monthly;
- 17.3.2 if directed by the Principal Representative provide some or all of the data contained in the report to the Principal Representative on a computer disc in a spread sheet or database package nominated by the Principal Representative; and
- 17.3.3 make the records available on demand for inspection by the Principal Representative or a person nominated by the Principal Representative. If directed by the Principal Representative, the Contractor must prepare a report on any issue arising from the records within any period specified by the Principal Representative.

17.4 Other reports

- 17.4.1 Subject to clause 17.4.2, in addition to the reports required under clause 17.3, the Contractor must at its cost deliver to the Principal Representative a written report on any aspect of this Agreement when requested.
- 17.4.2 If more than two reports are requested from the Contractor under clause 17.4.1 in any 3 month period then the Principal will pay the Contractor its reasonable costs to prepare any additional report, such costs to be agreed between the parties in writing prior to the Contractor preparing the report.

17.5 Special Reporting and Record Keeping Requirements

If reporting, record keeping, auditing or similar information provisions are set out in the Services Specification or Weighing Protocol, the Contractor must comply with them.

18. Weight Estimates

- 18.1.1 For each Service Period (other than Service Period 1), the Contractor must within 20 Business Days before the end of the previous Service Period provide a written notice to the Principal Representative setting out:
- (a) the Weight Estimate for each Covered LGA for that Service Period; and
 - (b) information that explains and substantiates the calculation of those Weight Estimates to the reasonable satisfaction of the Principal.
- 18.1.2 Once the Principal Representative is satisfied that the Weight Estimates provided by the Contractor are reasonable and have been properly substantiated, the Principal Representative must issue a written notice to the Contractor confirming the Weight Estimates.

18.1.3 Without limiting the obligation of the Contractor under clause 18.1.1, if for a Service Period the Contractor fails to provide the Weight Estimates as required by clause 18.1.1 or the Principal Representative has not issued a notice under clause 18.1.2, then until:

- (a) those Weight Estimates are provided in accordance with clause 18.1.1; and
- (b) the Principal Representative has issued a notice under clause 18.1.2,

the Weight Estimates for that Service Period will be deemed to be the actual weight of Available Waste received from each Covered LGA under the Agreement in the previous Service Period.

19. Fees and Payment

19.1 Payment of Fee

19.1.1 Subject to clause 5.1, the Principal Representative must on behalf of each Principal Council pay the Proportional Fee of each Principal Council to the Contractor in accordance with the terms of this Agreement.

19.1.2 The parties agree that the Payment Schedule has effect and the parties must comply with that Schedule.

19.2 Payment obligations

19.2.1 Subject to this Agreement, each Principal Council has no liability to make payment to the Contractor unless:

- (a) the Transition In Date for the Principal Council has passed;
- (b) the preconditions for payment under this clause 19 have been satisfied in respect of that Principal Council;
- (c) a valid Payment Claim has been issued together with all supporting documentation required by this Agreement in respect of that Principal Council;
- (d) the Payment Claim has not been disputed, provided that payment of the Payment Claim will be made by or on behalf of a Principal Council to the extent it is not disputed; and
- (e) the amount claimed has been properly calculated in accordance with the this Agreement.

19.2.2 Subject to the conditions contained in this clause 19.2 being met, each Principal Council must through the Principal Representative pay the Contractor (or the Contractor will pay the Principal Council as the case may be) the amounts stated in a Payment Certificate applicable to the proportion of Available Waste attributed to that Principal Council in accordance with clause 19.7.

19.3 Payment Claim

19.3.1 The Contractor may only issue a Payment Claim to the Principal Representative:

- (a) in respect of the Base Fee, or a portion of the Base Fee;

- (b) for work that the Contractor has properly performed in accordance with this Agreement;
 - (c) for variations made in accordance with clause 22, which must be incorporated into the Payment Claim for the Base Fee for the relevant Payment Period unless otherwise agreed with the Principal;
 - (d) in respect of the Catch-up Amount;
 - (e) in respect of a payment in accordance with the Unlawful Material Protocol; and
 - (f) in accordance with this clause 19 and the Payment Schedule.
- 19.3.2 The Contractor may not issue more than one Payment Claim to the Principal Representative in any Payment Period. A Payment Claim may not be issued to any Principal Council.
- 19.3.3 Each Payment Claim must be supported by evidence of the amount due to the Contractor and such other information as the Principal Representative may reasonably require to verify the amount due including the Services performed and the Fee applicable to those Services.
- 19.3.4 On submitting a Payment Claim for any payment under this Agreement, the Contractor must certify in writing to the Principal Representative that:
- (a) it has paid all wages and allowances owing to any of its employees in respect of the work claimed for;
 - (b) it has paid all amounts due to any person, including any relevant government taxes, levies or charges, in respect of the work claimed for to which it has subcontracted any of its rights and obligations under this Agreement;
 - (c) it has made any payments that it is required to make in respect of the Contractor Vehicles, Contractor Plant and the Contractor Facilities up to the end of the period to which the claim applies;
 - (d) it has paid all superannuation components payable; and
 - (e) it has made all other payments for costs which were expended in delivering services under this Agreement.
- 19.3.5 The Principal Representative may require that any such certification by the Contractor is confirmed by a statutory declaration to the same effect by a person authorised to make such a declaration on the Contractor's behalf prior to the making of any payment to the Contractor under this Agreement.
- 19.3.6 If the Contractor does not serve a claim for payment in the form of a Payment Claim (including in accordance with this clause 19.3) then:
- (a) the Principal Representative will not be obliged to undertake any assessment of that claim for payment or purported payment claim; and
 - (b) the Principal will not be obliged to make any payment in respect of the claim for payment or purported payment claim,

until a Payment Claim has been served in accordance with the requirements of this Agreement (including this clause 19.3).

19.4 Calculation of Claim for Base Fee

19.4.1 The claim amount for the Base Fee must be calculated in accordance with the Payment Schedule.

19.4.2 Where a Payment Claim is in whole or part in respect of the Base Fee, the Contractor must give the Principal Representative its Payment Claim and provide the Principal Representative with all necessary information to demonstrate the claimed amount, including a certification from:

- (a) the Disposal Facility, that:
 - (i) any Disposed Waste to which the Payment Claim relates has in fact been properly (in accordance with the requirements of the Agreement) and lawfully Disposed of;
 - (ii) confirms the weight and kind of Waste that has been properly and lawfully Disposed of at the Disposal Facility;
 - (iii) confirms the Covered LGA from which the Waste that has been properly and lawfully Disposed of at the Disposal Facility has been sourced; and
- (b) the Processing Facility, that:
 - (i) any Processed Waste to which the Payment Claim relates has in fact been properly (in accordance with the requirements of the Agreement) and lawfully Processed;
 - (ii) confirms the weight and kind of Waste that has been properly and lawfully Processed at the Processing Facility;
 - (iii) confirms the Covered LGA from which the Waste that has been properly and lawfully Processed at the Processing Facility has been sourced.

19.5 Payment Certificates

19.5.1 The Principal Representative must issue a Payment Certificate to the Contractor and the Principal within 5 Business Days of receipt of a Payment Claim. The Payment Certificate must identify the Payment Claim to which it relates and state:

- (a) the amount assessed by the Principal Representative as payable corresponding to the Payment Claim;
- (b) the Proportional Fee payable by each Principal Council liable to pay;
- (c) if the amount or any Proportional Fee assessed differs from the amount or any Proportional Fee claimed, the reasons for the difference;
- (d) amounts otherwise due from:
 - (i) the Principal to the Contractor; and

(ii) the Contractor to the Principal or for which the Principal is entitled to set-off under clause 19.13; and

(e) the total amounts previously paid to the Contractor under this Agreement.

19.5.2 The Principal Representative may issue a Payment Certificate at any time even if the Contractor has not lodged a Payment Claim. The Principal Representative is not obliged to exercise its discretion under this clause for the benefit of the Contractor.

19.6 Provision of tax invoice

The Contractor must, within 2 Business Days after receipt of the Payment Certificate issued by the Principal Representative give the Principal Representative a tax invoice showing for each Principal Council their Proportional Fee and totalling the amount of the Payment Certificate.

19.7 Payment

The Principal Representative will on behalf of each Principal Council severally in respect of their Proportional Fee pay the Contractor the amount specified in the Payment Certificate no later than:

19.7.1 if the amount specified in the Payment Certificate is within 3% of the amount that would have been payable for that Payment Period if the payment amount had been calculated on the basis of the Reference Weights (for Service Period 1) or the applicable Weight Estimates (for each other Service Period), 5 Business Days; and

19.7.2 otherwise, 10 Business Days,

after the date of issue of the tax invoice issued under clause 19.6 or satisfaction of the conditions set out in clause 19.2.1 (whichever is the later). If the Payment Certificate is for a negative balance, the Contractor shall pay that amount to the Principal Representative (on behalf of each Principal Council severally in respect of their Proportional Fee) no later than 10 Business Days after the date of issue of the Payment Certificate or, if required under clause 36.5 to provide a tax invoice, 10 Business Days after the supply by the Principal Representative to the Contractor of the tax invoice(s) relating to that Payment Certificate on behalf of each Principal Council severally in respect of their Proportional Fee.

19.8 Payment is not an admission

19.8.1 The issue of a Payment Certificate is not evidence or proof of compliance or performance and does not operate to release the Contractor from any of its obligations under this Agreement.

19.8.2 Failure to set out in a Payment Certificate an amount, or the correct amount, which is entitled to be retained, deducted, withheld or set-off from the amount which would otherwise be payable to the Contractor will not prejudice any right of any Principal Council or the Principal to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Agreement.

19.8.3 Payment is on account only and neither a Payment Certificate nor the payment of moneys will be evidence or an admission:

(a) of liability to make the payment or any other payment;

(b) that the subject Services have been carried out satisfactorily; or

- (c) of approval of the Contractor's performance or compliance with this Agreement.

19.9 Payment of Employees and Subcontractors

- 19.9.1 If any moneys are shown as unpaid in the certification or statutory declaration accompanying a Payment Claim, the moneys so shown may be withheld from payment until the Contractor provides evidence to the reasonable satisfaction of the Principal Representative that the moneys have either been paid to the relevant persons or that such monies are not owed to the relevant persons.
- 19.9.2 If an employee or a subcontractor obtains a court order in respect of moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Services, and produces to the Principal Representative the court order and a statutory declaration that it remains unpaid, the Principal Representative may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or sub-contractor representative on behalf of each Principal Council severally in their Relevant Proportion, and the amount paid will be a debt due from the Contractor to the Principal Representative.

19.10 Correction of errors

At any time, the Principal Representative may by a further Payment Certificate correct any error which has been discovered in any previous Payment Certificate issued by the Principal Representative in respect of this Agreement.

19.11 Quarterly Reconciliation

- 19.11.1 Within 20 Business Days of the end of every third Payment Period, the Contractor must provide to the Principal Representative a Quarterly Reconciliation Statement together with such additional information as the Principal Representative may require to validate and reconcile the actual and estimated volumes and weights of Allocated Waste the subject of the Services and any part of the Services during the previous three Payment Periods.
- 19.11.2 The Contractor must provide all additional information as may be reasonably required by the Principal Representative in order to carry out each Quarterly Reconciliation.

19.12 Previous Service Period Reconciliation Amount and Catch-up Amount

- 19.12.1 At any time between 20 and 40 Business Days after the end of each Service Period, the Principal Representative will carry out a reconciliation and determine in accordance with the Payment Schedule whether:
 - (a) any Reconciliation Amount is payable to the Principal from the Contractor; or
 - (b) any Catch-up Amount is payable to the Contractor from the Principal.
- 19.12.2 If the Principal Representative determines under clause 19.12.1 that the Reconciliation Amount is greater than zero for the previous Service Period then the Principal Representative may issue a written notice to the Contractor specifying the Reconciliation Amount and including a tax invoice.
- 19.12.3 The Contractor must pay the Principal Representative on behalf of each Principal Council for their Relevant Proportion, the Reconciliation Amount within 20 Business Days of its receipt of the written notice referred to in clause 19.12.2.

19.12.4 The Principal Representative must notify the Contractor Representative if the Principal Representative determines under clause 19.12.1 that the Catch-up Amount is greater than zero for the previous Service Period. Upon receipt of that notification the Contractor may issue a Payment Claim for that amount under clause 19.3.

19.12.5 The Contractor must provide all additional information as may be reasonably required by the Principal Representative in order to carry out each reconciliation under this clause 19.12.

19.13 Set-off

Without prejudice to the Principal's right of recourse to the Security Amount provided under the Agreement and despite any other provisions of the Agreement, the Principal may set off or deduct at any time from any money payable to the Contractor under the Agreement any debt or other moneys which the Principal reasonably believes is due and payable from the Contractor to the Principal under the Agreement.

19.14 Periods of Non-Performance

Except as otherwise provided in this Agreement, the Principal will not be required to make any payment to the Contractor in respect of any of the Services that are not performed, or are not performed in accordance with this Agreement.

20. Final reconciliation and payment

20.1 Application of this clause

This clause shall apply to all Claims by the Contractor under or in connection with this Agreement.

20.2 Final Payment Claim

20.2.1 Within 10 Business Days after the end of each Service Period the Contractor must give the Principal Representative notice of all Claims by the Contractor against the Principal in respect of any payment for Services performed in connection with the Agreement or the provision of the Services which occurred up to the end of the Service Period.

20.2.2 A Payment Claim under clause 19.3 for the last Payment Period of a Service Period must be issued within 30 Business Days after the end of each Service Period and endorsed 'Final Payment Claim' for Service Period.

20.2.3 The Final Payment Claim for a Service Period must comply with clauses 19.2 and 19.3 and must:

- (a) fully identify and justify all claims against all prior Payment Claims and Payment Certificates; and
- (b) if it is in respect of the last Service Period of the Term, identify the Security Amount held and all other amounts retained by the Principal and which must include notice of all liability, cost or expense which the Contractor claims from the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with the Agreement which occurred during the Term.

20.2.4 The Final Payment Claim required under this clause 20.2 is in addition to the other notices which the Contractor must give to the Principal under the Agreement in order to preserve its entitlements to make any such claims.

20.2.5 On the date that is 35 Business Days following the end of a Service Period the Principal is released from any liability, duty, obligation or Claim in respect of a Payment Claim whatsoever in connection with the Service Period except for a liability, duty, obligation or Claim that is specified in a Final Payment Claim for that Service Period and the Contractor releases the Principal accordingly.

20.3 Release after Final Payment Claim at end of Term

20.3.1 Subject to this Agreement, all Claims by the Contractor under or in connection with this Agreement, which have not already been barred, shall be barred upon the date that is 6 months after the expiry of the period for lodging the Final Payment Claim for the last Service Period of the Term.

20.3.2 On and following the date that is 6 months after the expiry of the period for lodging the Final Payment Claim for the last Service Period of the Term, the Contractor:

- (a) releases the Principal from all Claims under or in connection with this Agreement; and
- (b) acknowledges and agrees that the Principal's obligations in connection with the subject matter of the Agreement are discharged,

other than in respect of any unsatisfied Claim that was made prior to that date.

20.4 Final Payment Certificate at end of Term

Within 21 Business Days of receipt of the Final Payment Claim for the last Service Period of the Term or, where the Contractor fails to provide such claim, the expiration of the period specified in clause 20.2 for the lodgement by the Contractor of the Final Payment Claim, the Principal Representative shall issue to the Contractor and the Principal a Final Payment Certificate. In the Final Payment Certificate the Principal Representative shall certify the amount which, in the Principal Representative's reasonable opinion, is finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of this Agreement.

20.5 Final Payment at end of Term

Subject to the conditions contained in clause 19.2.1 being met, the Principal will pay the Contractor (or the Contractor will pay the Principal as the case may be) the amounts stated in the Final Payment Certificate in accordance with clause 19.7.

21. Contractor's personnel, consultants and subcontractors

21.1 General

The Contractor must not contract for the performance of any service, work or other activity or obligation under this Agreement by a subcontractor without the prior written consent of the Principal, which consent (if provided) may be given subject to such conditions as the Principal considers appropriate in its discretion. The conditions of approval may include the provision of collateral warranties and acknowledgments of the Principal's rights under the Agreement sufficient to ensure that the Principal's rights are in no way affected or limited by the proposed contracting arrangement.

21.2 Contractor's agents, subcontractors, employees

- 21.2.1 The obligations, duties and liabilities of the Contractor under this Agreement are unaffected by the fact that the Contractor contracts for the performance of any service, work or other activity by a subcontractor and the Contractor is at all times responsible to the Principal for the performance of all Services, regardless of whether those services are carried out by the Contractor's subcontractors.
- 21.2.2 The Contractor must ensure that its employees, agents or subcontractors (of any tier) comply with the requirements of this Agreement and do not (by act or omission) cause the Contractor to be in breach of this Agreement.
- 21.2.3 Except where this Agreement otherwise provides, the Contractor shall be liable to the Principal for the acts, defaults and omissions of any employees and agents of subcontractors as if they were those of the Contractor.
- 21.2.4 Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Agreement.

21.3 Warranties regarding contractors

The Contractor warrants and represents to the Principal that:

- 21.3.1 each subcontractor (of any tier) engaged to perform any portion of the Services will:
- (a) be appropriately licensed and registered in accordance with Law;
 - (b) be suitably qualified and experienced in the performance of services the same as, or substantially similar to, the relevant part of the Services they are engaged to perform; and
 - (c) exercise the degree of skill, professionalism, care, prudence, diligence and operating practice which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the performance of services of a nature the same as, or substantially similar to, the relevant part of the Services they are engaged to perform; and

21.4 Liability unaffected

- 21.4.1 The Contractor's obligations and liabilities under this Agreement remain unaffected notwithstanding the engagement of a subcontractor or the Principal Representative's consent to the identity of a subcontractor or the terms of any contract with a subcontractor.
- 21.4.2 The Contractor is liable for any act, omission, default or negligence of any subcontractor as if it was the act, omission, default or negligence of the Contractor.

21.5 Personnel

- 21.5.1 The Contractor must engage sufficient personnel to perform the Services in accordance with this Agreement.
- 21.5.2 The Contractor must use experienced and skilled personnel to perform its obligations in relation to the Services.

22. Variations

22.1 Permitted Variation

In this clause 22:

22.1.1 **'Permitted Variation'** means any of the following kinds of variations to this Agreement:

- (a) a Qualifying Change variation as described in clause 22.2;
- (b) a Principal required variation as described in clause 22.3; or
- (c) an agreed variation as described in clause 22.4,

but does not include a change to the Services that is so substantial as to constitute a change to the scope of the Services, and

22.1.2 **'Variation Amount'** means an amount of money assessed as payable for a Permitted Variation in accordance with this clause 22.

22.2 Qualifying Change

22.2.1 The Contractor may, subject to and in accordance with this clause 22.2, claim a variation to the Fees to account for a Qualifying Increase in Costs arising as a direct result of a Qualifying Change.

22.2.2 In this clause 22.2:

- (a) a **'Qualifying Change'** means:
 - (i) a change in an Act of Parliament or regulation made under an Act of Parliament that directly regulates the manner of conducting the Services, which change:
 - (A) directly and naturally results in an increase in the costs of the Contractor's delivery of the Services over and above the Contractor's operating costs immediately prior to the Qualifying Change;
 - (B) was not reasonably able to be foreseen by a competent contractor in the position of the Contractor at the Commencement Date; and
 - (C) was not in fact foreseen by the Contractor on or before the Commencement Date; or
 - (ii) the introduction in legislation of a Carbon Price, which change directly and naturally results in an increase in the Contractor's operating costs in performing the Services under this Agreement over and above the Contractor's operating costs immediately prior to the Qualifying Change; or
 - (iii) the introduction by a Principal Council of a food and garden organics kerbside waste collection service that has the effect of reducing the proportion of organic material in the Committed Waste from that Principal Council so that the Contractor is unable to achieve a Recovery Target; or

- (iv) in the previous Service Period the actual weight of Available Waste received in aggregate from all Covered LGAs is at least 20% less than the aggregate of all Reference Weights for the Covered LGAs; and
- (b) a '**Qualifying Increase in Costs**' means an actual increase in actual cost that is the direct and natural consequence of a Qualifying Change and which increase in costs:
 - (i) was not reasonably able to be foreseen by a competent contractor in the position of the Contractor at the Commencement Date; and
 - (ii) was not in fact foreseen or allowed for by the Contractor on or before the Commencement Date; and
 - (iii) is no more than the increase that would be incurred by a competent and efficient contractor having taken all reasonable and feasible steps to mitigate the impact of the Qualifying Change,

and deducting any savings, reductions in costs or increases in efficiency or income as a consequence of or relating to the Qualifying Change.

22.2.3 Within 30 Business Days after the Contractor receives notice of the Qualifying Change, the Contractor must give to the Principal Representative a written notice setting out:

- (a) sufficient evidence to demonstrate to the reasonable satisfaction of the Principal Representative that a Qualifying Change occurred;
- (b) sufficient evidence to substantiate to the reasonable satisfaction of the Principal Representative the claimed increase in costs and why these are in each case a Qualifying Increase in Costs;
- (c) a written statement setting out the proposed changes to the Fees and the dates on which each such change is to take effect together with the Contractor's estimation of the total cost increase and increase in fees for the remainder of the Term and for each month over the remainder of the Term;
- (d) a written statement setting out any proposals the Contractor may have for reducing the impact of the increase in costs;
- (e) a certification that any cost savings, reductions in costs or increases in efficiency to the benefit of the Contractor by reason of the Qualifying Change have been taken into account by the Contractor to reduce the claimed amount; and
- (f) a certification that the Contractor has taken all reasonable and feasible steps to mitigate the impact of the Qualifying Change.

22.2.4 The Contractor must provide such additional or supplementary information as the Principal may require to enable the Principal Representative to assess the validity of the claim made.

22.2.5 Within 60 Business Days of receipt of all of the information required under clauses 22.2.3 and 22.2.4, the Principal Representative may by written notice to the Contractor notify the Contractor that the Principal Council acting jointly:

- (a) accept that there has been a Qualifying Change and Qualifying Increase in Costs and elect not to terminate this Agreement under clause 22.2.6 – In which case the Principal shall enclose with that notice the proposed

amendments to this Agreement to give effect to the variation that the Principal considers appropriate for agreement by the Contractor; or

- (b) accept that in part that there has been a Qualifying Change and Qualifying Increase in Costs and elect not to terminate this Agreement under clause 22.2.6 – in which case:
 - (i) the Principal shall enclose with that notice the proposed amendments to this Agreement to give effect to the variation that the Principal considers appropriate for agreement by the Contractor; and
 - (ii) the Principal is taken to reject any other aspect of the claim that there has been a Qualifying Change and Qualifying Increase in Costs – in which case clause 30 will apply and the matter shall be dealt with as a Dispute; or
 - (c) reject that there has been a Qualifying Change and Qualifying Increase in Costs and elect not to terminate this Agreement under clause 22.2.6 – in which case clause 30 will apply and the matter shall be dealt with as a Dispute.
- 22.2.6 If the Contractor gives the Principal Representative a notice under clause 22.2.3, the Principal Representative may within 60 Business Days of receipt of all information required under clauses 22.2.3 and 22.2.4 elect to terminate this Agreement, if:
- (a) that notice claims or purports to claim an increase in Fees and the increase is in the opinion of an independent expert (at the Principal's discretion, either agreed between and jointly appointed by the Principal and the Contractor or appointed by the President of the Institute of Arbitrators and Mediators Australia) having regard to the current market information available to the Principal Representative and any information provided by the Contractor under clauses 22.2.3 and 22.2.4, excessive; and
 - (b) that notice is not withdrawn by the Contractor within 5 Business Days of receiving notice from the Principal Representative of its intention to terminate this Agreement under this clause 22.2.6.
- 22.2.7 If the Principal Representative elects to terminate this Agreement under clause 22.2.6 then clause 28 shall apply and the Principal Representative must serve an Enforcement Notice under clause 28.3.2.

22.3 Principal required variation

- 22.3.1 The Principal Representative may, from time to time and after consulting with the Contractor, issue a written notice to the Contractor directing a variation to the Services, including that the Contractor do any one or more of the following:
- (a) increase, decrease or omit any part of the Services;
 - (b) change the character, specification, mode of performance or quality of any part of the Services; and
 - (c) undertake additional activities incidental to the Services.
- 22.3.2 The consultation referred to in clause 22.3.1 must include consultation in relation to:
- (a) the scope of a proposed variation;

- (b) any increased costs that the Contractor will incur as a result of the proposed variation; and
- (c) the effect (if any) of that proposed variation on any of the Contractor's obligations under this Agreement.

22.4 Agreed variation

22.4.1 The parties may by exchange of letters signed by the Principal Representative and the Contractor Representative, agree:

- (a) a Permitted Variation;
- (b) the Variation Amount for that change; and
- (c) a period of time for implementation and operation of the Permitted Variation.

22.4.2 At any time during the Term the Principal may issue a notice to the Contractor regarding the:

- (a) implementation of an improvement or innovation in relation to the performance of the Services that would reduce the cost of the Services or otherwise enhance the ability of the parties to achieve the Service Objectives; or
- (b) ability of the Contractor to Process a greater amount of Waste under this Agreement,

and upon receipt of such notice the Contractor and the Principal agree to negotiate in good faith regarding agreed variations to the Agreement to implement the improvements or innovations.

22.5 Assessment of Permitted Variation Amount

22.5.1 Within 20 Business Days after:

- (a) receipt by the Principal Representative of a written notice under clause 22.2.1; or
- (b) receipt by the Contractor Representative of a written notice under clause 22.3.1,

the parties must use their best endeavours to agree on the Variation Amount.

22.5.2 If the Principal and the Contractor have not agreed on the Variation Amount within the period specified in clause 22.5.1, the Principal may request the Principal Representative to determine the Variation Amount.

22.5.3 A party may only dispute a determination of the Principal Representative under clause 22.5.2 by written notice of Dispute served on the other party within 10 Business Days of the date of that determination. If:

- (a) a Dispute notice is not served in that 10 Business Day period, the determination of the Principal Representative shall apply; or

- (b) a Dispute notice is served in that 10 Business Day period, the Principal may by written notice to the Contractor elect:
 - (i) to not proceed with the variation; or
 - (ii) to refer the valuation for resolution in accordance with clause 30.

22.6 Variation Amount

22.6.1 If there is a Permitted Variation to this Agreement, then the Variation Amount, will be paid as:

- (a) a lump sum payment in accordance with clause 22.7.1; or
- (b) an adjustment to the Disposal Rate or the Processing Rate in accordance with clause 22.7.2,

as agreed between the parties or, failing agreement, as determined by the Principal Representative.

22.6.2 A variation under this clause 22 will only be valid and a variation to the Agreement will only take effect if the variation is a Permitted Variation and a notice directing the Permitted Variation is provided to the Contractor in writing and signed by or on behalf of the Principal Representative, following:

- (a) exchange of letters under clause 22.4; or
- (b) determination or agreement of the Variation Amount under clause 22.5.

22.6.3 The notice referred to in clause 22.6.2 must include:

- (a) a description of the Permitted Variation;
- (b) a certification of the Variation Amount (if any) assessed by the Principal Representative as payable, comprising either or both of:
 - (i) any adjustment to the Processing Rate or Disposal Rate; and
 - (ii) any payment that is additional to the Processing Rate and Disposal Rate payable under this Agreement.

22.6.4 If the Variation Amount represents an increase of more than 10% of the Total Base Fee for the previous Service Period, then the Principal Representative may, in determining to proceed with the variation, by written notice to the Contractor without penalty to a Principal Council, reduce the Recovery Targets for any Service Period.

22.7 Lump sum or rate adjustment

22.7.1 If the notice referred to in clause 22.6.2 states that the Variation Amount comprises a lump sum payment amount, then the Contractor may issue the Principal Representative with a Payment Claim for that amount in accordance with clause 19.3.1(c).

22.7.2 If the notice referred to in clause 22.6.2 states that all or part of the Variation Amount is to be paid by way of an adjustment to the Processing Rate or Disposal Rate then the adjustment amount is to be included in either or both of the

Processing Rate or Disposal Rate on the next Adjustment Date under clause 10.3 or 11.3 of Schedule 6.

22.8 Contractor claim of a directed variation

If the Contractor considers that a direction has been made by a Principal Council or the Principal Representative that constitutes a variation under this clause 22 (where not expressly so stated):

22.8.1 the Contractor must give written notice to the Principal Representative to that effect prior to the start of the work or activity which is the subject of the direction; and

22.8.2 despite any other provision in the Agreement, the giving of the notice under clause 22.8.1 by the Contractor prior to the start of the work which is the subject of the direction will be a condition precedent to the Contractor's entitlement to claim in relation to the direction or to maintain in any manner that the direction was or ought to involve a variation under this clause 22.

For the avoidance of doubt, this clause 22.8 does not permit a variation independently of the procedures in clause 22.

22.9 Application of this clause

22.9.1 For the avoidance of doubt, an entitlement to additional payment under this clause 22 only applies to:

- (a) variations directed by the Principal Representative or agreed between the parties which require additional work, activities or services over and above that required by this Agreement; or
- (b) variations under clause 22.2,

and which are a Permitted Variation.

22.9.2 For the avoidance of doubt:

- (a) a requirement of a Principal Council or Principal Representative or a comment or a direction of a Principal Council or Principal Representative:

- (i) to require compliance with this Agreement, the requirements of OEH or of any Law applicable from time to time;
- (ii) which the Principal Council or Principal Representative is otherwise entitled to make under this Agreement or any other document; or

- (b) any error, omission, defect or incompleteness in any Disclosed Information,

will not be or permit a variation under this clause 22 or otherwise entitle the Contractor to any costs, payment, extension of time or other claim, compensation or relief, these matters being matters that the Contractor has accepted the risk of or is required to comply with under this Agreement.

22.10 Fee exclusive of Carbon Price

22.10.1 The Contractor warrants that all rates and prices specified in this Agreement are exclusive of any Carbon Price applicable directly or indirectly to the Services or any input costs of the Services such that in paying the Fee, the Principal is not making any payment whatsoever that is attributable to any Carbon Price.

22.10.2 The Principal Representative may at any time during the Term request that the Contractor repeat the warranty provided at clause 22.10.1 remains true, and the Contractor must comply with that request.

22.11 Beneficial variations

22.11.1 Where:

- (a) there is a Qualifying Change that would directly reduce the actual cost of performing the Services or provide an additional benefit (including a credit or income) to the Contractor, which has the effect of offsetting the cost of performing the Services;
- (b) in accordance with clause 4.1.3 of the Services Specification the Contractor identifies an option for improvement or innovation in relation to the performance of the Services that would reduce the cost of the Services; or
- (c) in performing the Services the Contractor obtains an additional benefit (including a credit or income) under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) or a change to that Act (which benefit did not exist at the Commencement Date),

the Principal Representative may by written notice to the Contractor, request that the parties negotiate in good faith to determine a reduction in the Fee to equitably and reasonably share between the Parties that offset, reduction or benefit that is enjoyed in connection with the Services, and the parties must comply with that notice.

22.11.2 If agreement cannot be reached within 30 Business Days after a notice is served on the Contractor under clause 22.11.1, clause 30 will apply and the matter shall be dealt with as a Dispute.

23. Force Majeure

23.1 Notice of Force Majeure Event

23.1.1 If a Force Majeure Event prevents a party from partially or wholly complying with its obligations under this Agreement (other than any obligations to pay money) that party must provide the other party with written notice of the Force Majeure Event, together with full particulars of all relevant facts and matters including:

- (a) details of the Force Majeure Event;
- (b) details of the obligations affected;
- (c) details of the action that the party has taken to remedy the situation and details of the action that the party proposes to take to remedy the situation; and
- (d) an estimate of the time during which the party will be unable to carry out its obligations due to the Force Majeure Event.

23.1.2 A notice under clause 23.1.1 must be given:

- (a) if the Force Majeure Event will affect the ability of the Contractor to perform the Services or any part of the Services – immediately; and

- (b) in any other case within 5 Business Days of becoming aware of the Force Majeure Event.

23.2 Suspension of rights and obligations

If a Force Majeure Event occurs and is notified in accordance with clause 23.1 then:

- 23.2.1 the parties must promptly meet to determine what action is necessary to ensure the continuation of the Services; and
- 23.2.2 take all actions necessary to ensure that as far as practicable the Services continue to be provided.

Otherwise, and to the extent only that obligations are rendered impossible to be performed by the Force Majeure Event, the obligations rendered impossible to be performed by the Force Majeure Event are suspended until the suspension ends in accordance with clause 23.4.

23.3 Duty to Mitigate

If any obligations are rendered impossible to be performed by the Force Majeure Event notified in accordance with clause 23.1:

- 23.3.1 the parties must promptly identify alternative viable means of performing the obligations affected and to mitigate the effect of the Force Majeure Event; and
- 23.3.2 take all available actions, works and opportunities to mitigate the Force Majeure Event promptly, and to the satisfaction of the Principal; and
- 23.3.3 do everything necessary to ensure that as far as possible the Services are not interrupted.

23.4 End of Period of Force Majeure

Subject to the clause 23.5, the suspension of the obligations of the parties due to a Force Majeure Event ends when the party that has that obligation is no longer prevented from being able to recommence fulfilment of the obligation by the Force Majeure Event. At which time that party must issue a written notice to that effect to the other and immediately recommence the performance of the obligation.

23.5 Termination After Extended Force Majeure

- 23.5.1 If there is a substantial interference to the Services by reason of a Force Majeure Event, and the Principal Representative considers that:
 - (a) in the interests of the community and in particular the health and amenity of the community the Services that have been interfered with must be performed; and
 - (b) those Services could be performed by another entity other than the Contractor,

then the Principal Representative may by written notice to the Contractor elect to:

- (c) exercise rights under clause 23.6;
- (d) terminate this Agreement immediately by written notice under this clause (in which case 28 shall apply); or

(e) take either or both of these actions.

23.5.2 The Principal Representative may make more than one such election and may make elections sequentially as it sees fit.

23.5.3 In this clause 23.5, a substantial interference includes but is not limited to suspension for a period of one week.

23.6 Principal may step in and perform

If the Services are suspended or interrupted by a Force Majeure Event:

23.6.1 the Contractor may elect to appoint a sub-contractor in accordance with clause 21 to perform so much of the Services as the Contractor has suspended or, provided that there is no additional cost to the Principal in doing so; and

23.6.2 if despite clause 23.6.1 Services continue to be suspended or interrupted for a period of more than 5 Business Days, the Principal Representative may (without limiting any other right the Principal may have) either itself or through a Principal Council or alternative contractor perform so much of the Services as the Contractor has suspended or interrupted and the reasonable increase in costs of doing so, over and above the cost that would have been required to be paid under this Agreement by the Principal to the Contractor had the Services not been suspended or interrupted, must be paid by the Contractor.

24. Insurance

24.1 Public liability

The Contractor must procure and maintain public liability insurance from the Commencement Date until the expiry of the Term or the earlier termination of this Agreement as follows:

24.1.1 for an amount not less than the amount set out in Item 10 of Schedule 2 in aggregate and for any one claim relating to third party liability, which:

- (a) covers legal liability of each of the Principal, Principal Representative and the Contractor to any third party in respect of:
 - (i) loss or damage to property, (including property in the care, custody or control of an insured for a sub limit acceptable to the Principal Representative);
 - (ii) nuisance; and
 - (iii) personal injury to, or death of, any person (except where the person is the claiming insured's employee),

to the extent caused by the conduct of the Services;

- (b) includes each Principal Council and Principal Representative severally as indemnified principals for their vicarious liability in respect of acts or omissions of the Contractor; and
- (c) satisfies the insurance requirements of any Authorisation required by the Contractor to perform the Services;

- (d) is maintained for, or includes a run on period of, at least 6 years following the expiry of the Term or earlier termination of this Agreement; and
- (e) applies to occurrences that occur prior to the expiry of the Term or the earlier termination of this Agreement and to claims made within the maintenance or run on period referred to above; and

24.1.2 naming the Contractor and each Principal Council and Principal Representative as joint loss payees for amounts in excess of \$100,000.

24.2 Motor vehicle Insurance

24.2.1 The Contractor must effect and maintain or cause to be effected and maintained motor vehicle third party liability insurance from the Commencement Date until the expiry of the Term or the earlier termination of this Agreement:

- (a) including cover for third party property damage and personal injury and including a tools of trade extension;
- (b) for a limit of liability not less than the amount set out in Item 11 of Schedule 2, for each and every occurrence,

in respect of every registered motor vehicle used in relation to the Services.

24.2.2 The Contractor must effect and maintain compulsory motor vehicle insurance for all registered vehicles as required by law.

24.3 Workers compensation

The Contractor must from the Commencement Date until the expiry of the Term or earlier termination of this Agreement, effect and maintain, and ensure that each of its subcontractors effects and maintains, workers compensation insurance which covers liability of an employer for any death, injury, damage, expense, loss or liability suffered or incurred by any person engaged in the Services (or their dependants) as required by any applicable law.

24.4 Provisions in policies

The Contractor must ensure that:

24.4.1 the public liability insurance referred to in clause 24.1, provides that all insurance agreements and endorsements insure each Principal Council, the Principal Representative and the Contractor for their respective rights and interests;

24.4.2 each insurance referred to in clause 24.1, provides that:

- (a) failure by any insured to observe and fulfil the terms of the policy or the duty of disclosure does not prejudice the insurance of any other insured; and
- (b) notice of a claim by any insured will be accepted by the insurer as notice by all insureds;

24.4.3 except where approved by the Principal Representative (acting reasonably), where a Principal Council is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it may become entitled by way of subrogation against the Principal Council to the extent the Principal Council is insured; and

24.5 Evidence of policies

- 24.5.1 The Contractor must, in respect of each insurance referred to in this clause 24, give the Principal Representative:
- (a) acceptable proof of currency and coverage of the insurances within 10 Business Days after the Commencement Date and on each anniversary of the Commencement Date during the Term; and
 - (b) on request, other evidence of the insurances,
- which the Principal Representative reasonably requires.
- 24.5.2 If the Contractor does not comply with clause 24.5.1, the Principal Representative may affect the relevant insurances and may:
- (a) recover the cost of doing so as a debt due from the Contractor; or
 - (b) deduct the premiums payable for them from amounts payable to the Contractor.

24.6 Notices

The Contractor must promptly notify the Principal Representative in writing each time the insurer gives the Contractor a notice of cancellation or any other material notice in respect of a policy required under this clause 24, including in respect of any variation of the policy terms.

24.7 Premiums

The Contractor must punctually pay all premiums at least yearly in advance in respect of all insurances referred to in this clause 24, and give the Principal Representative evidence of payments for premiums where reasonably requested.

24.8 Undertaking to inform

As soon as a party becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 24 which could materially reduce the available limit of indemnity to a level below that specified in this Agreement or involve a Principal Council or Principal Representative, that party must inform the Principal Representative and the other party.

24.9 Subcontractors

Notwithstanding any other provision of this Agreement, the Contractor must ensure that its subcontractors, agents and consultants are insured as required by this clause 24, as is appropriate including with respect to the amount of insurance, types of insurance and period of insurance given the nature of services or work to be performed by them.

24.10 Insurance for Contractor Facilities

The Contractor must at its cost ensure that for at least:

- 24.10.1 the duration of the Term; and
- 24.10.2 such further period as Allocated Waste, is either Processed or Disposed of,

the Contractor Facilities are insured for their full replacement value and must provide evidence of those policies to the Principal Representative upon request.

25. Indemnity and release

25.1 Contractor indemnity

25.1.1 The Contractor indemnifies each Principal Council and the Principal Representative from and against any Claim, Loss or Liability brought against, suffered or incurred by a Principal Council or the Principal Representative arising out of, or in any way in connection with:

- (a) a breach of the Contractor of its obligations under this Agreement;
- (b) the negligence of the Contractor or any contractor or sub-contractor of the Contractor;
- (c) damage to, or loss or destruction of, any real or personal property arising out of, or in any way in connection with, the performance of, or any act or omission of the Contractor or any contractor or subcontractor of the Contractor in connection with, the Services; or
- (d) injury to, or illness or death of, any person arising out of, or in any way in connection with, the performance of, or any act or omission of the Contractor or any contractor or subcontractor of the Contractor in connection with, the Services.

25.1.2 The Contractor's liability to indemnify a person under this clause 25.1 will be proportionately reduced to the extent that the default or negligence of the person caused or contributed to the Claim, Loss or Liability.

25.2 Release

25.2.1 Subject to this Agreement (including clause 25.2.2), the Contractor releases each Principal Council and the Principal Representative and their respective officers, employees and agents, from any Liability, obligation or duty to the Contractor whatsoever in respect of or in connection with any or all of:

- (a) the suitability of any Contractor Facility for any use;
- (b) the Services, their design or conduct;
- (c) the suitability, location, adequacy, availability or capacity or any other aspect of the Contractor Facilities, Contractor Plant or any service;
- (d) any death, illness or injury of any person to the extent arising as a result of the performance, or lack of performance, of the Services;
- (e) any error, misdescription or omission in any of the Disclosed Information; and
- (f) any other risk accepted by the Contractor under clause 5.2.

25.2.2 For the avoidance of doubt:

- (a) without limiting clause 25.2.1, the release applies to any Loss, Claim, Liability, obligation or duty in respect of the negligence of any person

(including to the Principal) in respect of the matters subject of the release prior to the date of this Agreement; and

- (b) clause 25.2.1 does not require the Contractor to release any person (including the Principal) to the extent that the relevant Liability, obligation or duty arises from the negligence or deliberate act of the person after the date of this Agreement.

25.3 Direction to comply

If for any area of land forming part of a Contractor Facility or any other land impacted by or disturbed by the conduct of the Services, at any time from the Commencement Date until the expiration of the Term, an order, direction, notice or other requirement of an Authority is served on the Principal or Principal Representative or the Contractor in relation to the conduct of any Services, the Principal Representative may by written notice to the Contractor, direct the Contractor to comply with that order, direction, notice or other requirement and the Contractor must at its cost promptly comply with that direction.

25.4 Survives termination

25.4.1 The indemnity in clause 25.1 survives termination of this Agreement.

25.4.2 The release in clause 25.2 survives termination of this Agreement.

25.5 Preservation of Contractor's obligations

25.5.1 The Contractor's obligations in this clause 25 are absolute, unconditional and irrevocable.

25.5.2 The liability of the Contractor under this Agreement is not affected by any circumstance, act or omission which, but for this clause 25.5, might otherwise affect them at Law or in equity.

25.6 Place, Manner and Time of Payment

25.6.1 Payments by the Contractor under this clause 25 must be made:

- (a) at a place and by a method reasonably required by the Principal Representative;
- (b) by 3.00pm local time in the place where payment is to be made;
- (c) unconditionally;
- (d) in immediately available funds and without set-offs, counter claims, abatements or, unless required by law, deductions or withholdings; and
- (e) in Australian dollars.

25.6.2 The Principal Representative may appropriate any payment from the Contractor towards the satisfaction of any part of the moneys owing by the Contractor to the Principal under this clause 25 notwithstanding any appropriation by the Contractor.

26. Limitations on Liability

26.1.1 Despite any other provision of this Agreement other than clause 26.1.6 and to the extent permitted by Law, the liability of the Principal or Principal Representative to

the Contractor for any cause or circumstance (other than a valid Payment Claim under this Agreement or Termination Amount calculated in accordance with clause 28.6):

- (a) subject to paragraph (b) and clause 26.1.2, is limited to the greater of:
 - (i) the amount specified in Item 14 of Schedule 2; and
 - (ii) the amount recovered (if any) under a Principal's policy of insurance (if there is such a policy of insurance) in respect of a Claim for damage to the Contractor's property; and
- (b) in respect of any Consequential Loss, is excluded absolutely.

26.1.2 Clause 26.1.1 (other than clause 26.1.1(b)) does not limit or apply to any liability or Claim:

- (a) for personal injury or death; or
- (b) arising out of or in connection with unlawful conduct, criminal conduct, fraud (including fraudulent misrepresentation), wilful misconduct or wilful default of the Principal or its employees or agents or the Principal Representative.

26.1.3 In addition to any amount payable in accordance with the Payment Schedule (which the parties agree is not limited by this clause), but otherwise:

- (a) subject to clause 26.1.4; and
- (b) despite any other provision of this Agreement,

to the extent permitted by Law, the liability of the Contractor to the Principal Councils in the aggregate for any cause or circumstance (whether under breach of contract, in tort including negligence under statute or otherwise) is limited as follows:

- (c) for any single Claim:
 - (i) for property damage, to the amount of \$20,000,000 except in the following circumstance:
 - (A) the property damage and the liability are the subject of a policy of insurance under this Agreement that provides a limit of cover of at least \$20,000,000 for a single claim;
 - (B) the Contractor has duly and in accordance with the requirements of that policy made and diligently pursued all necessary claims against the policy in respect of the relevant property damage or liability; and
 - (C) the amount recovered under that insurance is less than \$20,000,000 for a reason other than because of an act or omission of the Contractor,

in which circumstance the limit will be the amount recovered under the policy of insurance;

- (ii) for termination in accordance with clause 28.1.2(b), to \$2,500,000;

- (iii) for each other Claim, to \$10,000,000; and
 - (d) Consequential Loss is excluded absolutely.
- 26.1.4 Clause 26.1.3 (other than clause 26.1.3(d)) does not limit or apply to any liability or Claim:
 - (a) for personal injury or death; or
 - (b) arising out of or in connection with unlawful conduct, criminal conduct, fraud (including fraudulent misrepresentation), wilful misconduct or wilful default of the Contractor or its sub-contractors of any tier or any of their respective employees or agents.
- 26.1.5 Without limiting clause 26.1.1, the Principal must:
 - (a) subject to confidentiality requirements under contract or other Law, provide to the Contractor on an annual basis, each certificate of currency in respect of a public liability insurance policy that covers the legal liability of a Collection Vehicle to third parties, or other confirmation that such insurance policy is in place, that has been provided to a Principal Council under the Waste collection contract applicable to that Collection Vehicle; and
 - (b) for any Waste collection contract under which Collection Vehicles are required to deliver Waste to a Nominated Facility:
 - (i) if the Waste collection contract was executed prior to the Commencement Date, take such reasonable steps as are available to the Principal under the Waste collection contract to ensure that; and
 - (ii) if the Waste collection contract was executed after to the Commencement Date, ensure that the Waste collection contract requires that,

there is an insurance policy in place that covers the legal liability of the Collection Vehicles to third parties, including for property damage or personal injury.
- 26.1.6 For the avoidance of doubt, the limitation in clause 26.1.1 shall not be taken as a limit on the liability of a Principal Council's Waste collection contractor.

27. Suspension of Services and other directions

27.1 Principal's Rights not limited

This clause 26.1.6 does not limit any other rights of the Principal or Principal Representative including but not limited to those under clause 28.

27.2 Emergency

- 27.2.1 If the Principal Representative considers that it is necessary to urgently prevent harm to a person or to the Environment, or damage to property, the Principal Representative may direct the Contractor to suspend all or any part of the Services or to take precautions to prevent such harm or damage. The Contractor must comply with the Principal Representative's directions in accordance with their terms.

- 27.2.2 As soon as the Principal Representative becomes aware that the reason for any suspension no longer exists, the Principal Representative shall direct the Contractor to recommence suspended Services as soon as possible.
- 27.2.3 To the extent that compliance with a direction under this clause 27.2 requires the Contractor to carry out additional work over and above the Services otherwise required by this Agreement, then to the extent that such additional work was not required because of a default or negligence by the Contractor or any of its contractors or subcontractors, the Contractor must give notice under clause 22.8.1 and the Principal shall pay the reasonable additional costs of those works valued in accordance with clause 22.
- 27.2.4 The Contractor may not make a claim that a direction under this clause 27.2 constitutes a variation except in accordance with and within the timeframe specified in clause 27.2.3.

27.3 Stop work by Contractor

The Contractor may stop carrying out the Services if the Principal has not paid any amount properly claimed, due and payable following a receipt of a tax invoice properly submitted under clause 19 within 30 Business Days after the due date for payment.

27.4 Principal may step in and perform

If the Contractor fails to perform the Services or suspends or interrupts the performance of the Services, the Principal Representative (or any Principal Council) without notice to the Contractor may either itself or through alternative contractors perform so much of the Services as the Contractor has failed to perform or has suspended or interrupted and:

- 27.4.1 the costs of doing so must be paid by the Contractor on demand from the Principal Representative and shall be recoverable as a debt owed by the Contractor to the Principal; and
- 27.4.2 the Contractor must indemnify and keep indemnified the Principal and the Principal Representative against any cost, expense, liability, duty or obligation suffered or incurred by the Principal or Principal Representative arising out of or in connection with:
- (a) the failure to perform the Services;
 - (b) the suspension or interruption of the Services; or
 - (c) the Principal or Principal Representative exercising its rights under this clause 27.4,

provided that the Contractor's liability to indemnify a person under this clause 27.4.2 will be proportionately reduced to the extent that the default or negligence of the person caused or contributed to the Claim, Loss or Liability.

28. Default and Termination

28.1 Contractor Default Event

Each of the following events is a Default Event in respect of the Contractor:

- 28.1.1 the Contractor breaches any clause of this Agreement or any obligation or duty of the Contractor under or in connection with this Agreement; or

28.1.2 without limiting clause 28.1.1, following the Commencement Date, the Contractor in the reasonable opinion of the Principal Representative:

- (a) substantially ceases to carry out any portion of the Services; or
- (b) fails to achieve the MBT Recovery Target for any 2 consecutive Service Periods.

28.2 Notice from the Principal

If a Default Event referred to in clause 28.1 occurs in respect of the Contractor, then:

28.2.1 the Principal Representative may give the Contractor a Default Notice which:

- (a) must state that it is a Default Notice; and
- (b) requires the Contractor to take such action as is necessary to remedy the Default Event within such reasonable period of time as is specified in the notice; and
- (c) may require that the Contractor submit a rectification plan to the reasonable satisfaction of the Principal Representative, within such reasonable period of time as is specified in the notice, which plan contains a description of the steps that the Contractor will take to:
 - (i) correct and remedy the relevant Default Event; and
 - (ii) if the Default Notice is in respect of the Default Event specified in clause 28.1.2(b), ensure that sufficient Waste is Recovered so that any shortfall in the Recovery Target in previous Service Periods is redressed in subsequent Service Periods and future Recovery Targets are achieved; and

28.2.2 if the Principal Representative gives the Contractor a Default Notice then the Contractor must comply with it.

28.2.3 If the Principal Representative notifies the Contractor that it is satisfied with the rectification plan submitted under clause 28.2.1(c) then the Contractor must fully implement and comply with that rectification plan.

28.2.4 If the Principal Representative notifies the Contractor that it is not satisfied with the rectification plan submitted under clause 28.2.1(c) then the Contractor must promptly and in accordance with any directions of the Principal Representative, review and correct the rectification plan and resubmit it to the Principal Representative and clauses 28.2.1(c), 28.2.2 and 28.2.3 shall reapply.

28.3 Enforcement Notice

28.3.1 If:

- (a) a Default Event referred to in clause 28.1 occurs and the Principal Representative issues a Default Notice under clause 28.2 and the Contractor, in the reasonable opinion of the Principal Representative, does not comply with it;
- (b) an Insolvency Event occurs in respect of the Contractor;

- (c) a Change of Control occurs in contravention of clause 39.9 or an assignment, novation or transfer occurs in breach of clause 39.10;
- (d) the Contractor abandons the Services;
- (e) the Contractor repudiates this Agreement;
- (f) the circumstances in clause 22.2.6 arise and a notice has been served by the Principal Representative under that clause;
- (g) the circumstances in clause 23.5 arise and a notice has been served by the Principal Representative under that clause electing to terminate this Agreement; or
- (h) where a rectification plan is required under clause 28.2.1(c) and the Contractor has failed to comply with that plan,

then the Principal Representative may serve an Enforcement Notice on the Contractor.

28.3.2 An Enforcement Notice can, in order to facilitate the orderly resolution and correction of any default or the termination of this Agreement (or both), specify at the discretion of the Principal Representative (any or all of):

- (a) that information or documents in relation to the Services must be delivered by the Contractor to the Principal or Principal Representative;
- (b) the works or other actions required to be undertaken by the Contractor including:
 - (i) for the orderly cessation of the Services;
 - (ii) for the transfer of the Services, or a portion of the Services pursuant to clause 32.2;
 - (iii) to make any Contractor Facility or Contractor Plant safe;
 - (iv) to prevent any nuisance;
 - (v) to comply with any Authorisation; and
 - (vi) anything referred to in clause 26.1.6;
- (c) that payment under this Agreement be suspended;
- (d) that the Principal (through the Principal Representative) shall step in and perform under clause 27.4; or
- (e) at the election of the Principal Representative that this Agreement is terminated and the time at which such termination will take effect.

28.3.3 Unless the Enforcement Notice was served under clause 28.3.1(g), the cost of the Principal and Principal Representative preparing and serving and the Contractor's compliance with an Enforcement Notice must be borne by the Contractor and the Contractor indemnifies the Principal and Principal Representative against such costs.

- 28.3.4 If an Enforcement Notice is served, the Contractor must promptly comply with it in accordance with its terms.
- 28.3.5 The Principal Representative may serve more than one Enforcement Notice and may serve an Enforcement Notice at such times and on such dates as it considers appropriate and in such sequences as it considers appropriate. An Enforcement Notice may amend an earlier Enforcement Notice.

28.4 Termination

- 28.4.1 If an Enforcement Notice is served and specifies that this Agreement is terminated, this Agreement is terminated as of the latter of the date and time specified in the Enforcement Notice and the date and time that the letter is served on the Contractor. Despite termination, the Contractor must comply with each Enforcement Notice that has been served on it up until the date of termination unless otherwise directed by the Principal Representative.
- 28.4.2 On termination the rights and obligations of the parties will cease except for accrued rights and obligations and any right or obligation that is expressed to continue.

28.5 Payments on Termination

- 28.5.1 Following termination the Principal Representative may on behalf of each Principal Council pay to the Contractor in full and final satisfaction of all Claims by the Contractor the Termination Amount. The Termination Amount will be calculated in accordance with clause 28.6. The Principal Representative must, acting reasonably, calculate the Termination Amount and advise the parties. A party may dispute the calculation of the Termination Amount and clause 30 will apply. The Principal will be under no obligation to pay the Termination Amount unless and until the Contractor has complied with the requirements of any Enforcement Notice that has been served on the Contractor.
- 28.5.2 Subject to clause 30, unless the Enforcement Notice specifying that the Agreement is terminated was served under clause 28.3.1(g) the Contractor must pay the Principal Representative upon demand the amount of any Loss suffered or incurred by any Principal Council arising out of or in connection with the termination of this Agreement or any event or circumstance that is a consequence of or led to the service of the Enforcement Notice by which the Agreement is terminated.

28.6 Termination Amount

The Termination Amount shall be calculated as the sum of the following amounts:

- 28.6.1 any Fee then due and payable and unpaid;
- 28.6.2 the value of Services carried out following the entitlement to a Fee and prior to the date of termination being the fair and reasonable value of those Services less any payments received; and
- 28.6.3 less any amount due and payable from the Contractor under this Agreement as at the date of termination and also any Loss incurred or that on proper and reasonable grounds the Principal demonstrates will be incurred by the Principal in connection with this Agreement.

28.7 Consideration for Services performed and no Claim

Subject to clause 30, if a valid Enforcement Notice is served on the Contractor the Contractor shall have no Claim against the Principal or Principal Representative (other than

in respect of a Claim arising from the breach of this Agreement) and acknowledges that it has received valuable consideration except as otherwise provided in the Agreement.

28.8 No prejudice to accrued rights

The service of an Enforcement Notice or the termination of this Agreement under this clause 28 is without prejudice to the accrued rights of the Principal at the time of such Enforcement Notice or termination including rights as to indemnification, payment or set off.

28.9 Nature of Insolvency Event

For the purposes of this Agreement, an Insolvency Event in respect of the Contractor shall be deemed to be a breach by the Contractor of its obligations under this Agreement.

28.10 Specific performance

The parties acknowledge that damages may not be an adequate remedy in respect of a breach of this Agreement and a party is entitled to seek specific performance or pursue any other equitable remedy, including injunction, which it considers appropriate in respect of any other breach.

28.11 Rights not limited

28.11.1 The provisions of this clause 28 are in addition to and do not limit:

- (a) any other rights, powers or privileges of the Principal and in particular any right of the Principal at law or in equity to terminate this Agreement or to claim damages or other compensation; or
- (b) any liability, duty or obligation of the Contractor.

28.11.2 The rights of the Principal under this clause 28 are not limited by anything in clause 26.1.6 and in particular the Principal may serve notices under clause 28.2 or 28.3 whether or not any notice has been served or action taken under clause 26.1.6.

29. Security Amount

29.1 Purpose

29.1.1 The Security Amount is provided by the Contractor for the purpose of ensuring due and proper performance of the Services and each other obligation of the Contractor under this Agreement including an obligation to pay money.

29.2 Recourse to a Bank Guarantee

29.2.1 The Principal may through the Principal Representative call on, or otherwise have recourse to, any or all of the Security Amount at any time, without notice to the Contractor, including in respect of any money for which the Contractor may be liable to the Principal whether under this Agreement or otherwise.

29.2.2 The Contractor must within 20 Business Days of notice that the Security Amount has been so applied, provide a replacement Bank Guarantee of the same amount as deducted to be held on the same terms as this clause 29.

29.2.3 The Contractor is not entitled to, and must not seek, an injunction against either the Principal or the issuer of any Security Amount (if applicable) preventing a demand or payment under the security (whether the demand extends to the whole of the

security or part thereof) or the use to which the proceeds of such a demand can be put.

29.3 Release of Bank Guarantees

Unless the Principal has exercised, or is entitled to exercise, a right under clause 29.2, the Security Amount must be returned to the Contractor within 35 days after the termination or expiry of this Agreement or at such other time as is expressly provided for in this Agreement.

29.4 Further rights and obligations

Unless expressly provided for if the Principal has exercised a right under clause 29.2 and:

- 29.4.1 the Agreement has been terminated or the Term has expired, the Principal must, after making any deductions from the Security Amount that it is entitled to make under this Agreement, return to the Contractor the remainder of the Security Amount within six months after the date of termination or expiration, provided that the Principal is not required to make any payment to the Contractor under this clause until the Termination Amount has been paid; or
- 29.4.2 the Agreement has not been terminated and the Term has not expired, the Contractor must provide within 20 Business Days of notice that the Security Amount has been so applied, a supplementary Bank Guarantee payable to the Principal for an amount equivalent to the moneys paid to the Principal by the Bank in accordance with clause 29.2.

29.5 Trusts and interest

The Principal:

- 29.5.1 shall not be obliged to pay the Contractor interest on:
- (a) the amount of the Security Amount; or
 - (b) the proceeds of the Security Amount if it is converted to cash; and
- 29.5.2 does not hold the proceeds or the Security Amount on trust for the Contractor.

29.6 Replacement Bank Guarantee

- 29.6.1 Within 10 Business Days of each fifth anniversary of the Commencement Date during the Term and upon the exercise of the option in clause 31, the Contractor must deliver to the Principal Representative a replacement Bank Guarantee in the amount calculated in accordance with clause 29.6.3.
- 29.6.2 The Security Amount held by the Principal immediately prior to the receipt by the Principal Representative of the replacement Bank Guarantee under clause 29.6.1, must be returned to the Contractor upon receipt of the replacement Bank Guarantee.
- 29.6.3 The amount of the replacement Bank Guarantee must be calculated as follows:

$$\text{replacement Bank Guarantee amount} = \text{BG}_1 \left(\frac{\text{CPI}_x - \text{CPI}_1}{\text{CPI}_1} \right)$$

Where:

BG ₁	=	the Bank Guarantee amount at the Commencement Date, as specified in Item 6
CPI _x	=	the Consumer Price Index last published by the Australian Statistician when the replacement Bank Guarantee amount is calculated
CPI ₁	=	the Consumer Price Index last published by the Australian Statistician at the Commencement Date

30. Disputes

30.1 Procedure for resolving Disputes

30.1.1 Unless otherwise expressly provided in this Agreement, the parties agree that any Dispute must be resolved in accordance with this clause 30. This clause does not limit clause 28.

30.1.2 The parties agree that they will attempt to resolve any Dispute:

- (a) firstly, by negotiation of the Dispute under clause 30.4; and then
- (b) either:
 - (i) by mediation of the Dispute under clause 30.5; or
 - (ii) by expert determination under clause 30.6.

30.2 Designated officers

30.2.1 Each party appoints a designated officer for the purposes of this clause as follows:

- (a) the Contractor appoints the person identified in Item 12 of Schedule 2; and
- (b) the Principal appoints the person identified in Item 13 of Schedule 2.

30.2.2 A party may at any time substitute a person referred to in paragraph 30.2.1 with another person who must hold the same or higher position as the person being substituted. The party must promptly give written notice to the other party of the name of that substituted person.

30.3 Notice of Dispute

If a Dispute arises then either party may give notice (**First Dispute Notice**) to the other which must:

- 30.3.1 be in writing;
- 30.3.2 state that it is a notice under this clause 30.3;
- 30.3.3 include or be accompanied by particulars of the Dispute; and
- 30.3.4 be in the form prescribed in Schedule 7.

30.4 Negotiation

- 30.4.1 The parties must make diligent and good faith efforts to resolve all Disputes in accordance with this clause 30.4 before any party commences mediation under clause 30.5 or expert determination under clause 30.6.
- 30.4.2 Upon receipt of the First Dispute Notice under clause 30.3, the parties to the Dispute must within five Business Days of receipt of the notice seek to resolve the dispute by discussion in Sydney between the Contractor Representative and the Principal Representative.
- 30.4.3 If the parties are unable to resolve the Dispute within 20 Business Days (or at such other time as agreed in writing by the parties) after receipt of the First Dispute Notice, either party may, by a second notice to the other (**Second Dispute Notice**), submit the Dispute to the designated officers. The Second Dispute Notice must be in the form prescribed in Schedule 7.
- 30.4.4 The designated officers must:
- (a) meet at least once within 20 Business Days after receipt of the Second Dispute Notice (or at such other time as agreed in writing by the parties to the Dispute);
 - (b) meet in person in Sydney (unless otherwise agreed in writing by the parties);
 - (c) receive a report from the Principal Representative; and
 - (d) each afford sufficient time for the meeting as will provide a good faith attempt to thoroughly explore the issues and resolve the Dispute.

30.5 Mediation

This clause 30.5 applies if a party by written notice (**Mediation Notice**) served on the other party within 40 Business Days of the Second Dispute Notice requires that the Dispute be mediated under this clause 30.5 (a Mediation Notice must be in the form prescribed in Schedule 7 and may not be withdrawn unless the dispute has been resolved or the parties agree):

- 30.5.1 The parties must, within 5 Business Days after service of the Mediation Notice, agree on a mediator for the purposes of this clause.
- 30.5.2 If the parties cannot agree on a mediator within 5 Business Days after service of the Mediation Notice, the mediator must be nominated by the President of the Institute of Arbitrators and Mediators Australia, or any other person authorised by the President to make the appointment, on the application of either party.
- 30.5.3 Within 15 Business Days (or such other period agreed in writing between the parties) after the agreement or nomination of the mediator under paragraph 30.5.2, the parties must:
- (a) arrange for the appointment of the mediator (on terms satisfactory to the mediator) for the purposes of this clause; and
 - (b) attend in person a preliminary conference before the mediator.

- 30.5.4 The parties acknowledge and agree that:
- (a) the mediator must conduct a mediation in relation to the Dispute in accordance with The Institute of Arbitrators & Mediators Australia Mediation Rules (**Rules**);
 - (b) they must abide by the Rules;
 - (c) they may be represented by legal counsel at the mediation;
 - (d) they must use their reasonable endeavours to achieve the resolution of the Dispute at the mediation; and
 - (e) the place of any mediation will be Sydney, Australia, unless the parties otherwise agree.

30.5.5 Each party must:

- (a) bear its own costs in respect of the mediation; and
- (b) share equally the costs of the mediator (including the cost of any expert assistance retained by the mediator).

30.5.6 Any mediation under this clause 30 will be conducted on a without prejudice basis.

30.6 Expert determination

30.6.1 This clause 30.6 only applies if a Mediation Notice has not been served under clause 30.5 within the time limit referred to in that clause and only applies to a dispute where the amount claimed is less than \$500,000 (GST exclusive and exclusive of legal costs and interest).

30.6.2 If following the 40 Business Day period referred to in clause 30.5 no Mediation Notice has been served in respect of a dispute to which this clause 30.6 applies, a party may by written notice in the form prescribed in Schedule 7 (**Expert Notice**) served on the other parties require the Dispute to be the subject of a determination by an expert (**Expert**) in accordance with this clause 30.6.

30.6.3 The Expert must:

- (a) be agreed between and jointly appointed by the Principal and the Contractor or in the absence of agreement within 10 Business Days of a party receiving an Expert Notice (or such longer time as agreed by the parties), appointed by the President of the Institute of Arbitrators and Mediators Australia;
- (b) at the outset confirm with the parties whether they have agreed that the determination of the Expert should be final and binding, and if they have so agreed provide a letter to each party stating that the determination will be final and binding;
- (c) invite and receive, if made, submissions from the Principal and the Contractor;
- (d) act as an expert and not as an arbitrator;
- (e) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;

- (f) not accept verbal submissions unless both parties are present;
- (g) on receipt of a written submission from one party, ensure that a copy of such submission is given promptly to the other parties;
- (h) take into consideration all documents, information and other material which the parties give the expert and which the expert, in its reasonable opinion, considers relevant;
- (i) not be expected or required to obtain or refer to any other documents, information or materials (but may do so if the expert so wishes); and
- (j) act with expedition.

30.6.4 The Principal and the Contractor must enter into an agreement with the Expert setting out the terms of the Expert's fees, which unless otherwise agreed are to be shared equally between the Principal and the Contractor.

30.6.5 The decision of the Expert is only final and binding if:

- (a) the parties so agree;
- (b) the amount claimed in the dispute is less than \$250,000 (exclusive of GST and exclusive of legal costs and interest); or
- (c) neither party issues a written notice to the other party objecting to the decision of the Expert and proposing to commence mediation within 10 Business Days after the Expert notifies the parties of its decision and enclosing a mediation notice under clause 30.5.1.

30.7 Give effect to certain documents

Any mediation under clause 30.5 or expert determination under clause 30.6

- 30.7.1 must as far as is reasonably practical give effect to the Agreement;
- 30.7.2 have regard to the impact on the timing, feasibility and cost of the Services; and
- 30.7.3 may not determine to vary any Services in a manner that will not comply with any Authorisation or other Law, or in a manner that would not be a Permitted Variation under clause 22.

30.8 Litigation

- 30.8.1 If a Dispute goes to mediation under clause 30.5 then a party may not litigate the issues the subject of the mediation except in accordance with this clause 30.8. If a Dispute that goes to mediation is not resolved within 30 Business Days of receipt of the Mediation Notice (or such later date as the parties may agree in writing), any party may commence court proceedings for the resolution of the Dispute.
- 30.8.2 Nothing in this clause 30 shall prejudice the right of a party to institute proceedings to enforce payment or to seek urgent injunctive or declaratory relief.

30.9 No delay to the Works

Despite the existence of any Dispute unless notified in writing by the Principal:

- 30.9.1 the Contractor must continue to carry out the Services; and

30.9.2 the Contractor must continue to perform its other obligations under this Agreement.

31. Option Period

- 31.1.1 The Principal may in its sole discretion provide the Contractor with a written notice, at least 24 months prior to the expiry of the Term, proposing to extend the Term for a further five years.
- 31.1.2 If the Principal provides the Contractor with a notice under clause 31.1.1 the parties must negotiate in good faith any variations to the Agreement (including any adjustments to the Fee) that will apply to the extended Term
- 31.1.3 If the Principal serves a notice to the Contractor under clause 31.1.1 and any variations to the Agreement applicable to the extended Term are agreed by the parties, then the Term shall be extended by a period of five years in accordance with that agreement.

32. Transition

32.1 Transition

- 32.1.1 The Contractor must, not more than six calendar months after the Commencement Date, prepare and submit to the Principal for approval, a draft transition plan for the transfer of the performance of the Services to any new contractor that may be engaged by the Principal.
- 32.1.2 The Contractor must make any amendment to the draft transition plan directed by the Principal.
- 32.1.3 The Contractor must update the approved transition plan annually within one month of the anniversary of the Commencement Date if so directed by the Principal Representative.
- 32.1.4 The Contractor must implement the transition plan as approved by the Principal in writing.

32.2 Obligation to Transfer

- 32.2.1 Upon the termination or expiry of this Agreement, the Contractor must, promptly and peaceably in an orderly manner, transfer the Services, or a portion of the Services as directed by the Principal Representative, to any party who or which is to perform the Services or a portion of the Services subsequently.
- 32.2.2 In complying with clause 32.2.1, the Contractor must:
- (a) implement the transition plan as approved by the Principal in writing under clause 32.1; and
 - (b) ensure that the Contractor, or its employees or agents, do not take any action that may delay, obstruct, damage, mislead or harass such party, or its employees and agents.

33. Intellectual Property

33.1 Ownership of Intellectual Property

33.1.1 The Contractor warrants that:

- (a) the Contractor has or will have a right to use all design, materials, documents and methods of working produced by or on behalf of the Contractor for the purpose of the Services, including the right to use such items for the purpose of designing, constructing, operating, performing, maintaining, repairing, rectifying, adding to and altering the Services; and
- (b) any design, materials, documents and methods of working produced by or on behalf of the Contractor for the purpose of the Services will not infringe any Intellectual Property Rights.

33.1.2 The Contractor indemnifies the Principal from and against any Claim, Loss or Liability brought against, suffered or incurred by the Principal arising out of, or in any way in connection with, any breach by the Contractor of the warranties under this clause 33.1.

33.2 Moral rights warranty

The Contractor:

33.2.1 must ensure that it does not, and its contractors and subcontractors do not, infringe any Moral Right in carrying out the Services; and

33.2.2 indemnifies the Principal from and against any Claim, Liability or Loss brought against, suffered or incurred by the Principal arising out of, or in any way in connection with, any breach by the Contractor of its obligations under clause 33.1.1.

34. Representatives

34.1 Appointment and role of the Principal Representative

34.1.1 The Principal Representative is appointed as the agent of each Principal Council for the purpose of this Agreement.

34.1.2 The Principal must appoint a person to be the Principal Representative for the purposes of this Agreement and must give written notice of that appointment (and any subsequent change) to the Contractor. The Principal Representative may delegate some or all of the Principal Representative's functions and powers under this Agreement to one or more persons, and vary or terminate, in whole or part, such delegations from time to time.

34.1.3 The Principal shall ensure that at all times there is a Principal Representative.

34.1.4 The Principal and the Contractor acknowledge and agree that:

- (a) the role of the Principal Representative is to monitor the performance of the Contractor and its compliance with the requirements of this Agreement and to perform those functions allocated to the Principal Representative under this Agreement; and

(b) subject to clause 34.1.5 and clause 34.1.6, the Principal Representative is subject to the directions of the Principal.

- 34.1.5 In the exercise of its functions the Principal Representative is to act honestly and fairly and, where applicable, arrive at a reasonable measure or value of work, quantities or time.
- 34.1.6 In carrying out its functions under the Agreement, the Principal Representative is to act within a reasonable time and in accordance with the Agreement.
- 34.1.7 The Principal Representative's powers and functions are those given to it under the Agreement.
- 34.1.8 The Principal may from time to time replace the Principal Representative upon 5 days' written notice to the Contractor.
- 34.1.9 If the Contractor considers that any action of the Principal Representative is outside of the powers of the Principal Representative or is in breach of the Agreement, the Contractor must within 5 Business Days inform the Principal Representative, giving details of the action and the reasons why the Contractor has formed that opinion. The Contractor must continue to perform in accordance with the Agreement.

34.2 Principal Representative

The Principal Representative is the representative of each Principal Council:

- 34.2.1 a representation, warranty, notice or communication given to or made to the Principal Representative is taken to be given to or made by each Principal Council;
- 34.2.2 a representation or warranty made by the Principal Representative is made on behalf of each Principal Council but only in respect of those matters under the control, powers or functions of the relevant Principal Council;
- 34.2.3 a notice, order or demand given by the Principal Representative is given on behalf of each Principal Council.

34.3 Appointment and role of the Contractor Representative

- 34.3.1 The Contractor Representative is the agent of the Contractor.
- 34.3.2 The Contractor must appoint a person to be the Contractor Representative for the purposes of this Agreement.
- 34.3.3 All communications, notices, documents or instruments under this Agreement may be served on the Contractor by serving on the Contractor Representative.
- 34.3.4 Matters within the Contractor Representative's knowledge (including directions received from the Principal Representative) shall be deemed to be within the Contractor's knowledge.
- 34.3.5 The Contractor may appoint an alternative Contractor Representative upon 5 days' written notice to the Principal of its intention to do so, provided that the Principal consents to the new appointment (such consent not to be unreasonably withheld).

35. Service Coordination Group

35.1.1 From the date of this Agreement:

- (a) There is to be a Service Coordination Group, made up of:
 - (i) the Principal Representative and one other representative of the Principal as nominated from time to time by the Principal;
 - (ii) the Contractor Representative and one other representatives of the Contractor as nominated from time to time by the Contractor and approved by the Principal;
- (b) a representative of any of the Contractor's subcontractors who the Principal Representative reasonably requires be part of the Service Coordination Group; and
- (c) any other persons the Principal Representative reasonably requires or agrees be part of the Service Coordination Group.

35.1.2 The functions of the Service Coordination Group include:

- (a) to review:
 - (i) co-ordination of the implementation of the Services;
 - (ii) matters arising from the Authorisations;
 - (iii) possible changes to Services throughout the Term; and
 - (iv) proposed plans, specifications and protocols required by this Agreement including the Environmental Management System and WHS System; and
- (b) to monitor the performance of the Services and seek co-operatively to identify and consider:
 - (i) improvements to the efficiency and productivity of the Services;
 - (ii) safer work practices;
 - (iii) technological developments in the waste acceptance, treatment and disposal industries;
 - (iv) performance targets for the Services;
 - (v) review the effectiveness of mitigation measures implemented as a result of Force Majeure Event;
 - (vi) the co-ordination of public relations and educational activities; and
 - (vii) any other improvements that could be made to the operation of the Services.

35.1.3 The Service Coordination Group:

- (a) has no legal responsibility to the Principal or the Contractor; and

- (b) has no power to require the Principal or the Contractor to act or refrain from acting in any way or to impose any binding obligation on the Principal or the Contractor.
- 35.1.4 The Service Coordination Group must meet:
 - (a) at least every three months; and
 - (b) at other times which the Principal Representative or Contractor Representative reasonably requires,

during the Term.
- 35.1.5 The Principal Representative must give reasonable advance notice to any person requested to attend a meeting of the Service Coordination Group under clause 35.1.1(b) or 35.1.1(c) of meetings and of any issues relevant to or having the potential to impact on the delivery or performance of the Services to be discussed to enable the requested attendee to attend and participate (if either so wishes).
- 35.1.6 The Principal Representative shall prepare minutes and provide them to the Contractor Representative. If the Contractor Representative, acting reasonably, determines that the minutes prepared by the Principal Representative do not reflect an accurate representation of that meeting:
 - (a) the Contractor Representative must within 5 Business Days of receipt of those minutes suggest amendments to the minutes to reflect the Contractor Representative's understanding of the conduct of the meeting and provide those amended minutes to the Principal Representative; and
 - (b) if the Principal Representative acting reasonably does not accept those amended minutes, the Contractor Representative may within 3 Business Days of providing the amended minutes call a meeting of the Service Coordination Group at which meeting the parties must in good faith agree on the form that the minutes should take.
- 35.1.7 Each party must take reasonable steps to establish the Service Coordination Group from the date of this Agreement.
- 35.1.8 Each party must bear its own costs in respect of the establishment and management of the Service Coordination Group.

36. GST

36.1 Definitions

In this clause:

- 36.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 36.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

36.2 GST exclusive

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

36.3 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

36.4 Payment of GST

Subject to clause 36.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

36.5 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 36.4.

36.6 Reimbursements

If this Agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

36.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

36.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

36.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

36.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

36.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

37. PPS Law

37.1 Further Assurances

The Contractor acknowledges that if this Agreement and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law, the Contractor must do anything (including amending any document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:

37.1.1 ensuring that the security interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Law;

37.1.2 enabling the Principal to apply for any registration, or give any notification, in connection with the security interest, including the registration of a financing statement or financing change statement; or

37.1.3 enabling the Principal to exercise rights in connection with the security interest and this Agreement.

37.2 Contracting out of PPS Act

If Chapter 4 of the PPS Act applies to the enforcement of the security interest, the Contractor agrees that sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the security interest.

37.3 Acknowledgements and undertakings

The Contractor:

- 37.3.1 acknowledges that the security interests created under or pursuant to this Agreement relate to collateral and all proceeds in respect of that collateral (until the Contractor is paid in full for the collateral);
- 37.3.2 acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the security interest; and
- 37.3.3 undertakes it will not register a financing change statement without the prior written consent of the Principal.

38. Representations, warranties and disclaimers

38.1 Contractor's experience, skills, capabilities and equipment

Before the date of the Agreement, the Contractor represented to the Principal that it has the necessary experience, skills, capabilities and equipment to carry out the Services.

38.2 Representations and warranties of the Contractor

The Contractor represents and warrants to the Principal that:

- 38.2.1 it has full legal capacity and power to:
 - (a) own its property and to carry on its business; and
 - (b) enter into this Agreement and to carry out the transactions that this Agreement contemplates;
 - 38.2.2 it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates;
 - 38.2.3 it holds each Authorisation that is necessary or desirable to:
 - (a) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
 - (c) enable it to properly carry on its business,
- and it is complying with any conditions to which any of these Authorisations is subject;

- 38.2.4 this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping;
- 38.2.5 neither its execution of this Agreement, nor the carrying out by it of the transactions that it contemplates, does or will:
- (a) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;
 - (b) contravene any Authorisation;
 - (c) contravene any undertaking or instrument binding on it or any of its property; or
 - (d) contravene its constitution;
- 38.2.6 as at the date of this Agreement, no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided could have a material adverse effect on its business, property or financial condition or its ability to perform its obligations under this Agreement, whether on it or any of its subsidiaries;
- 38.2.7 no Controller (being a receiver or receiver and manager of that property, or anyone else who, whether or not as agent for the person, is in possession, or has control, of that property to enforce an encumbrance) is currently appointed in relation to any of its property, or any property of any of its subsidiaries; and
- 38.2.8 it is not entering into this Agreement as trustee of any trust or settlement.

38.3 The Principal's representations and warranties

The Principal represents and warrants to the Contractor that:

- 38.3.1 it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- 38.3.2 it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates;
- 38.3.3 it holds each Authorisation that is necessary or desirable to:
- (a) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates; and
 - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence,
 - (c) and it is complying with any conditions to which any of these Authorisations is subject;
- 38.3.4 this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping; and

38.3.5 neither its execution of this Agreement, nor the carrying out by it of the transactions that it contemplates, does or will:

- (a) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property; or
- (b) contravene any undertaking or instrument binding on it or any of its property.

38.4 Reliance on representations and warranties

Each party acknowledges that each other party has executed this Agreement and agreed to take part in the transactions that this Agreement contemplates in reliance on the representations and warranties that are made by that other party in clauses 38.2 and 38.3.

39. General

39.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the parties.

39.2 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

39.3 Costs, expenses and stamp duty

39.3.1 Subject to paragraph 39.3.3, each party must pay its own legal costs and expenses in relation to the negotiating, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

39.3.2 The Contractor must in a timely manner attend to stamping of all documents in connection with this Agreement which require stamping and to pay all duty on or before the due date for payment.

39.3.3 The Contractor must indemnify the Principal against and must pay on demand the amount of any duty (together with any related fines, penalties or interest) that is payable on or in relation to this Agreement or any document, dealing or instrument contemplated by it.

39.3.4 A party which has an obligation to do anything under this Agreement must perform that obligation at its cost unless expressly stated otherwise. In particular, except as expressly provided in this Agreement, the Contractor is responsible for all costs and expenses of complying with its obligations, duties and responsibilities (express or implied) under this Agreement and:

- (a) unless a particular clause expressly states that the Principal shall pay the costs, losses and expenses of or incurred by the Contractor in respect of or arising from any process, action, inaction, document or instrument contemplated or required by that clause, the Contractor shall have no claim against the Principal for any such costs, losses or expenses;
- (b) the Contractor release the Principal absolutely from any Claim by or liability to the Contractor for any such costs, losses or expenses; and

- (c) this clause applies, without limitation, to the provision of documents, information or the taking of action at the request or direction of the Principal or Principal Representative.

39.4 Stamp duty

The Contractor must pay any stamp duty (including all fines and penalties except those arising from the default of another party) in respect of this Agreement and any transactions contemplated under this Agreement or otherwise arising out of, or incidental to, this Agreement.

39.5 Disclosure, confidentiality and the media

39.5.1 The Contractor acknowledges and agrees that the confidentiality arrangements contained in the Tender Documents continue in full force and effect after the date of this Agreement.

39.5.2 Without limiting the generality of clause 39.5.1 but subject to clauses 39.5.3 and 39.5.4, the Contractor must:

- (a) keep confidential the terms of this Agreement and any information relating to the Services including the discussions and negotiations leading to the creation of this Agreement;
- (b) ensure that each of its officers, employees, subcontractors and consultants complies with the terms of paragraph (a); and
- (c) not make, cause or permit to be made, any statement or release any information about the Services to the media without the Principal's written consent.

39.5.3 However, and without limiting the generality of paragraph 39.5.1, the Contractor is not obliged to keep confidential any information:

- (a) which is otherwise in the public domain through no default of that party; or
- (b) the disclosure of which is:
 - (i) required by law but only in accordance with and to the extent of that requirement;
 - (ii) given with the prior written consent of the Principal;
 - (iii) given to a court in the course of proceedings in which that party is involved;
 - (iv) made to a party's legal, financial or commercial adviser; or
 - (v) required by this Agreement.

39.5.4 The Contractor acknowledges that the Principal may publish or disclose any information about the Services to OEH.

39.5.5 The Contractor must:

- (a) not either itself or through its employees, agents or sub-contractors

- (i) respond to any requests regarding the Services or this Agreement directly, from the community, media or Authorities; or
- (ii) make any statement to the media on behalf of the Principal or in relation to the performance of the Agreement,

and must refer any enquiries to the Principal Representative; and

- (b) notify the Principal Representative immediately of any event arising in the course of performing the Services, which may receive media attention.

39.6 Waiver and exercise of rights

39.6.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

39.6.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

39.7 Acknowledgement

The Contractor acknowledges and agrees that:

39.7.1 receipt or review of, or consultation or comments regarding, or failure to review or comment on, any application, plan, instrument, document, specification or anything else, or participating in consultation forums and co-ordination groups, in respect of the Services by the Principal or Principal Representative does not:

- (a) impose or create any duty, liability or obligation on the Principal or Principal Representative;
- (b) release, limit, reduce, alter or affect the Contractor's duties, liabilities, obligations or responsibilities in any way; or
- (c) waive, prejudice or limit the Principal's or Principal Representative's rights;

39.7.2 none of the Principal Representative or the Principal owe or incur any duty, liability or obligation to the Contractor to review any application, plan, document, specification or anything else in respect of the Services for completeness, errors, omissions or compliance with the requirements of this Agreement or otherwise;

39.7.3 the liabilities, duties and obligations of the Contractor are not reduced because of any delay by any Authority;

39.7.4 the Principal is not liable, nor responsible, for the conduct of any Authority including any delay by an Authority; and

39.7.5 to avoid doubt, where this Agreement provides for the Principal or Principal Representative to issue a certification, including a Payment Certificate, the issue of the certificate is not proof of performance.

39.8 Civil Liability Act

39.8.1 It is agreed that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to this Agreement howsoever such rights, obligations or liabilities are sought to be enforced.

39.8.2 The Contractor further agrees that:

- (a) in each subcontract into which it enters for the carrying out of the Services, it will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
- (b) it will require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out of the Services, provisions that, to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

39.9 Change of Control

If, without the prior written approval of the Principal, a Change of Control occurs in respect of:

- 39.9.1 the Contractor; or
- 39.9.2 the holding company of the Contractor,

the Contractor acknowledges that it will be in breach of this Agreement.

39.10 No assignment without consent

- 39.10.1 The Contractor must not sell, assign, novate, transfer, delegate, licence or otherwise deal with, encumber or create a Security Interest over, any of its rights or interests under this Agreement without the prior written consent of the Principal.
- 39.10.2 For the purposes of paragraph 39.10.1, a Change of Control of the Contractor will be deemed to be an assignment by the Contractor respectively of its rights and interests under this Agreement.
- 39.10.3 The Principal may assign and may novate any of its rights, powers, obligations, duties or liabilities under or in connection with this Agreement to a related body corporate, or another person of sufficient financial standing and capacity to meet the obligations of the Principal under this Agreement. The Contractor must sign all documents and do all other things reasonably required by the Principal to effect such assignment or novation.

39.11 Principal Council logo and name

The Contractor may not use the logo or name of any Principal Council on any communication, hoarding, sign or document without the prior written permission of the Principal Representative in respect of the particular communication, hoarding, sign or document.

39.12 Warranty

- 39.12.1 Each party represents and warrants that there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.

39.12.2 The representation and warranty in this clause will be deemed to be repeated by the Contractor and the Principal on each day from the date of this Agreement until the earlier of the date that:

- (a) the expiry of the Term; or
- (b) this Agreement is terminated,

with reference to the facts and circumstances subsisting at that date.

39.13 Time of the essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

39.14 No relationship

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

39.15 Survival of indemnities

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

39.16 Enforcement of indemnities

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

39.17 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.

39.18 Rule of construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this Agreement or any part of it.

39.19 Amalgamation of a Principal Council

If during the Term a Principal Council amalgamates with another council then this Agreement will continue to apply to the Waste from the area that comprised the Covered Area of that Principal Council at the Commencement Date as if there had been no amalgamation.

40. Notices

40.1 Service of notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 40.1.1 personally on the person;
- 40.1.2 by leaving it at the person's current address for service; or
- 40.1.3 by posting it by prepaid post addressed to that person at the person's current address for service.

40.2 Particulars for service

40.2.1 The particulars for service of each party are as follows:

(a) for the Principal:

Address: PO Box 20, Lane Cove NSW 1595

Contact: Assistant Director, Northern Sydney Regional Organisation of Councils

(b) for the Contractor:

Address (for the purpose of clause 40.1.2): NSW State Office, Corner Unwin and Shirley Streets, Rosehill NSW 2142

Address (for the purpose of clause 40.1.3): PO Box 171, Granville NSW 2142

Contact: Mr Mark Taylor

40.2.2 Any party may change the address for service by giving notice to the other parties.

40.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

40.3 Time of service

A notice or other communication is deemed served:

- 40.3.1 if served personally or left at the person's address, upon service;
- 40.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, seven Business Days after posting;
- 40.3.3 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

Signing Page

Executed by the parties

Signed for and on behalf of **Willoughby City Council ABN 47 974 826 099** by DEBRA JUST, but not so as to incur any personal liability in the presence of:

) [Redacted Signature]
)
Print Title: GENERAL MANAGER

[Redacted Signature]
Witness

Signed for and on behalf of **Lane Cove Council ABN 42 062 211 626** by Craig White, but not so as to incur any personal liability in the presence of:

) [Redacted Signature]
)
Print Title: General Manager

[Redacted Signature]
Witness

Signed for and on behalf of **City of Ryde ABN 81 621 292 610** by GAIL CONNOLLY, but not so as to incur any personal liability in the presence of:

) [Redacted Signature]
)
Print Title: GENERAL MANAGER

[Redacted Signature]
Witness

Signed for and on behalf of **Ku-ring-gai Council ABN 86 408 856 411** by JOHN MCKER, but not so as to incur any personal liability in the presence of:

) [Redacted Signature]
)
Print Title: GENERAL MANAGER

[Redacted Signature]
Witness

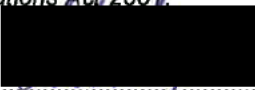
Signed for and on behalf of **Hunter's Hill Council ABN 75 570 316 011** by BARRY SMITH, but not so as to incur any personal liability in the presence of:

) [Redacted Signature]
)
Print Title: Council Manager

[Redacted Signature]
Witness

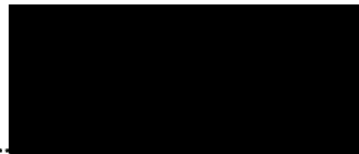
Executed by Veolia Environmental Services
(Australia) Pty Ltd ABN 20 051 316 584 in
accordance with section 127(1) of the
Corporations Act 2001

)
)
)
)



Signature of Director
CHRISTOPHER BRIAN GODFREY

Print full name



Signature of Director ~~(or Company Secretary)~~

STEWART ALLAN WOOD

Print full name

Schedule 1 Party details

Name	Willoughby City Council ABN 47 974 826 099
Address	Level 4/31 Victor St, Chatswood NSW 2067

AND:

Name	Lane Cove Council ABN 42 062 211 626
Address	48 Longueville Rd, Lane Cove

AND:

Name	City of Ryde ABN 81 621 292 610
Address	1 Devlin St, Ryde NSW 2112

AND:

Name	Ku-ring-gai Council ABN 86 408 856 411
Address	818 Pacific Hwy, Gordon NSW 2072

AND:

Name	Hunter's Hill Council ABN 75 570 316 011
Address	22 Alexandra St, Hunter's Hill NSW 2110

together, the **Principal**

AND:

Name	Veolia Environmental Services (Australia) Pty Ltd ABN 20 051 316 584
Address	Level 4, 65 Pirrama Rd, Pyrmont NSW 2009

the **Contractor**

Schedule 2 Reference Schedule

Item	Description	Clause	Details
1.	Principal Representative	Schedule 3	Assistant Director, Northern Sydney Regional Organisation of Councils Address: PO Box 20 Lane Cove 1595
2.	Contractor Representative	Schedule 3	Address: NSW State Office, Corner Unwin and Shirley Streets, Rosehill NSW 2142 Post: PO Box 171, Granville NSW 2142
3.	Term	Schedule 3	10 years
4.	Waste Transfer Stations	Schedule 3	(a) Clyde Transfer Terminal, located at 322 Parramatta Road, Auburn NSW 2142 for Waste excluding Clean up Waste (Clyde) (b) Greenacre Resource Recovery Facility, located at 75 Anzac Street, Greenacre NSW 2190 for Clean up Waste (Greenacre) (c) Camellia Recycling Centre, located at 37 Grand Avenue, Camellia. (Camellia MRF)
5.	Nominated Facility	Schedule 3	Disposal Facility For all categories of Waste: Woodlawn Landfill, located at 716 Collector Road, Woodlawn, Tarago, NSW 2580. (Disposal Facility) Processing Facility For all categories of Waste other than Clean up Waste: Woodlawn MBT, located at the site of the Disposal Facility (Woodlawn MBT); and For Clean up Waste only: (a) Greenacre Resource Recovery Facility, located at 75 Anzac Street,

Item	Description	Clause	Details								
			<p>Greenacre NSW 2190 for Clean up Waste; (Greenacre) and</p> <p>(b) Camellia Recycling Centre, located at 37 Grand Avenue, Camellia. (Camellia MRF)</p> <p>Waste Transfer Stations</p> <p>For all categories of Waste other than Clean up Waste:</p> <p>Clyde Transfer Terminal, located at 322 Parramatta Road, Auburn NSW 2142 (Clyde).</p> <p>For Clean up Waste:</p> <p>(a) Greenacre Resource Recovery Facility, located at 75 Anzac Street, Greenacre NSW 2190 (Greenacre) and</p> <p>(b) Camellia Recycling Centre, located at 37 Grand Avenue, Camellia. (Camellia MRF).</p>								
6.	Security Amount	29 and 5.3	\$1million								
7.	Agreed Proportion		<p>For each Service Period:</p> <table border="1"> <thead> <tr> <th>Nominated Transfer Facility</th> <th>Prescribed range of Allocated Waste (between x% and y% of total tonnes of Waste)</th> </tr> </thead> <tbody> <tr> <td>Clyde</td> <td>100% (excluding Clean up Waste)</td> </tr> <tr> <td>Camellia MRF</td> <td>100% (Clean up Waste) from Service Period 4</td> </tr> <tr> <td>Greenacre</td> <td>100% (Clean up Waste) for Service Periods 1, 2 and 3</td> </tr> </tbody> </table>	Nominated Transfer Facility	Prescribed range of Allocated Waste (between x% and y% of total tonnes of Waste)	Clyde	100% (excluding Clean up Waste)	Camellia MRF	100% (Clean up Waste) from Service Period 4	Greenacre	100% (Clean up Waste) for Service Periods 1, 2 and 3
Nominated Transfer Facility	Prescribed range of Allocated Waste (between x% and y% of total tonnes of Waste)										
Clyde	100% (excluding Clean up Waste)										
Camellia MRF	100% (Clean up Waste) from Service Period 4										
Greenacre	100% (Clean up Waste) for Service Periods 1, 2 and 3										
8.	Disposal Facility	Schedule 3	Woodlawn Landfill, located at 716 Collector Road, Woodlawn, Tarago, NSW 2580 or other facility approved in writing by the Principal Representative from time to time.								
9.	Processing Facility	Schedule 3	For all categories of Waste other than Clean up Waste:								

Item	Description	Clause	Details	
			<p>Woodlawn MBT, located at 716 Collector Road, Woodlawn, Tarago, NSW 2580 (Woodlawn MBT), or such other facility approved in writing by the Principal Representative from time to time.</p> <p>For Clean up Waste only:</p> <p>Greenacre Resource Recovery Facility, located at 75 Anzac Street, Greenacre NSW 2190 (Greenacre), or other facility approved in writing by the Principal Representative from time to time</p>	
10.	Public liability insurance	24.1	\$20million for any one claim and unlimited in the aggregate	
11.	Motor vehicle insurance	24.2	\$20million for any one claim and unlimited in the aggregate	
12.	Contractor designated officer	30.2	██████████	
13.	Principal designated officer	30.2	Chairperson of the Northern Sydney Councils Waste Services Alliance	
14.	Limitation of Principal liability	26.1.1	\$1million for any one claim and in aggregate	
15.	Waiting Time Rate	14.6.5	██████ per hour or part thereof	
16.	Reference Weight	Schedule 3	For each Covered LGA	
			Covered LGA	Reference Weight (tonnes)
			City of Ryde	Waste (excluding Clean up Waste): 24,683 Clean Up Waste: 3,044
			Hunter's Hill	Waste (excluding Clean up Waste): 3,080 Clean Up Waste: 192
			Ku-ring-gai	Waste (excluding Clean up Waste): 26,592 Clean Up Waste: 2,854
			Lane Cove	Waste (excluding Clean up Waste): 6,446

Item	Description	Clause	Details	
				Clean Up Waste: 973
			Willoughby	Waste (excluding Clean up Waste): 0 Clean Up Waste: 0

Schedule 3 Definitions and interpretation

1. Definitions

In this Agreement unless expressed or implied to the contrary:

Adjustment Date means the date that is 20 Business Days after the end of each Service Period (other than the initial Service Period).

Agreed Proportion means for each Nominated Facility a proportion of Waste which is within the prescribed range specified for the Nominated Facility in Item 7 of Schedule 2.

Agreement means this document, including all Schedules.

Allocated Waste means for each Nominated Facility, the Available Waste which is delivered to the Nominated Facility during each Service Period.

Alternative Facility means a facility other than a Nominated Facility, which is approved by Council under clause 13.3 for receiving Waste under this Agreement.

Application means any application for an Authorisation relating to the performance of the Services including, for the avoidance of doubt, any Application for an Authorisation to operate a Contractor Facility or to transport Waste.

Authorisation means:

- (a) an approval, consent, declaration, exemption, accreditation, notarisisation, licence, permit, certificate, waiver or other authorisation, however described, required by any law (including, for the avoidance of doubt, approvals specifically defined in this Agreement); and
- (b) in relation to anything that could be prohibited or restricted by law if an Authority acts in any way within a specified period, the expiry of that period without that action being taken,

including any variation, modification, renewal or amendment with any Authority.

Authority means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person carrying out any statutory authority or function; or
- (c) other person (whether autonomous or not) who is charged with the administration of a Law,

including, for the avoidance of doubt, Authorities specifically defined in this Agreement and including the Principal when performing its regulatory functions but in that capacity only.

Available Waste means for each Service Period (or part thereof), the total Waste from all Covered LGAs.

Bank means an Australian trading bank.

Bank Guarantee means an irrevocable and unconditional on demand undertaking on terms approved in writing by the Principal (for which purpose the parties acknowledge and agree

that the form set out in Schedule 9 is approved) with no expiry date, issued by a Bank approved in writing by the Principal.

Base Fee means the fee calculated in accordance with clause 5.1 of the Payment Schedule.

Business Day means Monday to Friday excluding public holidays in New South Wales.

Camellia MRF means the Camellia Recycling Centre, located at 37 Grand Avenue, Camellia.

Carbon Price means a tax, duty, charge, levy, excise, impost, fee, expense or other financial requirement relating to the existence or abatement of Greenhouse Gas emissions, or fuel or energy use, and includes any financial requirement arising from the *Clean Energy Act 2011* (Cth) and its associated Acts and regulations or their repeal.

Catch-up Amount means the amount (if any) payable under clause 19.12, which is calculated in accordance with the Payment Schedule plus GST if applicable.

Change of Control means the change in direct legal or beneficial ownership of the Contractor's Australian parent company of more than 50% of the issued share capital or (if it is convertible into shares), of the loan capital, of the Contractor.

Change in Law means:

- (a) a change in an existing Law; or
- (b) a new Law,

which takes effect after the date of this Agreement.

Characteristic means in respect of any waste the type, classification, character, nature, content, quality, consistency, degree of homogeneity or heterogeneity, volume, or weight of waste or any combination of these and the manner in which the waste may break down or react in any circumstance and any consequential effects or bi-products of any such breakdown or reaction.

Claim includes any claim, action, demand, proceeding, judgment or order however arising, whether at law or in equity and including:

- (a) under or in connection with this Agreement;
- (b) by statute;
- (c) in tort for negligence or otherwise, including negligent misrepresentations;
- (d) in restitution for unjust enrichment,

and includes any notice, order, demand or other official requirement of any Authority.

Collection Vehicle means a vehicle used to deliver Waste to the Contractor for or on behalf of the Principal.

Commencement Date means 1 December 2015.

Committed Waste means following the Transition In Date for a Principal Council, the Waste from the Covered LGA of that Principal Council.

Consequential Loss means for a party any and all loss of profit, loss of revenue, loss of goodwill, loss of future opportunities and loss of anticipated savings by that party whether arising in contract, tort (including negligence) or equity or under statute.

Consumer Price Index means All Groups Consumer Price Index, Index numbers, quarterly, weighted average of eight capital cities published by the Australian Bureau of Statistics (Cat 6401.0).

Contamination (of Land) means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present on, in or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment. For the purpose of this definition a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance or Environmental Aspect, structure or other matter (and **Contaminated** and **Contaminant** have corresponding meanings).

Contractor Facilities means the facilities used by the Contractor to undertake the Services, including each of the Disposal Facility, Processing Facility and Waste Transfer Stations.

Contractor Plant means all or any of the plant, implements, appliances and equipment used by the Contractor to undertake the Services.

Contractor Representative means the representative of the Contractor specified in Item 2 of Schedule 2, as changed from time to time by written notice from the Contractor to the Principal in accordance with clause 34.3.

Controller means, in relation to a person's property:

- (a) a receiver or receiver and manager of that property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that property to enforce an encumbrance.

Covered LGA means a local government area for which:

- (a) a Principal Council is constituted as the local government authority under the LG Act; and
- (b) the Transition In Date for the relevant Principal Council has occurred.

Default Event means in respect of the Contractor, an event specified in clause 28.1.

Default Notice means a notice under clause 28.2 in the form prescribed as such in Schedule 7.

Direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Disclosed Information means all of the information disclosed to the Contractor by or on behalf of the Principal and includes all of the information listed or referred to in this Agreement.

Dispose or Disposal means activities or works to load, transport and dispose at the Disposal Facility any:

- (a) Waste from the Nominated Facility; or

(b) Residue from the Processing Facility.

Disposal Facility means each of the disposal facilities specified in Item 8 of Schedule 2.

Disposal Amount means that portion of the Allocated Waste (in tonnes) that is not Processed at the Processing Facility but is lawfully Disposed of.

Disposal Rate means the amount of money payable per tonne of Waste specified in clause 10.2 and 10.3 of the Payment Schedule.

Dispute means any dispute or difference between the Principal and the Contractor arising out of or in connection with this Agreement.

Diverted Material means resources Recovered from the Waste Processing Services.

Enforcement Notice means a notice under clause 28.3 in the form prescribed in Schedule 7.

Environment means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or man-made or modified features or structures,

and includes ecosystems and all elements of the biosphere.

Environmental Aspect means in respect of any land (including a Contractor Facility):

- (a) each interaction of any activity on the land or of the land itself with the Environment; and
- (b) each of the following:
 - (i) heritage items or relics on the land or heritage values or significance of the land or anything on it;
 - (ii) Contamination of or from the land or from activities on the land;
 - (iii) pollution of or from the land or from activities on it;
 - (iv) the flora and fauna on or in the vicinity of the land including threatened species, populations or ecological communities or their habitats on or in the vicinity of the land;
 - (v) critical habitat on or in the vicinity of the land;
 - (vi) the propensity of the land to be affected by natural disasters such as bushfires, flooding or geotechnical instability or earthquakes; and
 - (vii) the physical, chemical or geotechnical characteristics of the land or any structures on it.

Environmental Law means any legislation which regulates or has as its purpose, objective or effect the regulation, protection or enhancement of any Environmental Aspect.

Environmental Management System means an environmental management system, which is required to be in place and adhered to under clause 10.1.

EPA means the NSW Environment Protection Authority constituted under the *Protection of the Environment Administration Act 1991* (NSW).

Facilities Delivery Program means the program included as Schedule 12, setting out the key dates for the construction of each of the Processing Facilities and to satisfy the Contractor's obligations under clause 13.2.

Fee means the fees, costs, expenses and disbursements set out in the Payment Schedule.

Final Payment Claim means the final Payment Claim required to be issued by the Contractor under clause 20.2 in the form prescribed in Schedule 7.

Final Payment Certificate means a letter issued by the Principal to the Contractor under clause 20.4 in the form prescribed in Schedule 7.

Force Majeure Event means an act of war (whether declared or not) or terrorism, civil commotion or riot, earthquake, tsunami, flood or national or state wide industrial action (other than where caused or contributed to by the Contractor or any subcontractor to the Contractor (of any tier)), but only to the extent these render it impossible for the Contractor to perform the Services or relevant obligation forming part of the Services.

Good Environmental Practice means the implementation of all of those measures for:

- (a) the protection and/or enhancement of the Environment; and
- (b) the conservation and/or sustainability of natural resources,

which would reasonably be expected from a competent, experienced and qualified contractor for the performance of services in Australia comparable to the Services, which may include:

- (c) efficient waste and recycling management;
- (d) water conservation, use and management;
- (e) minimisation of emissions and matters which may be hazardous or harmful to air quality;
- (f) adoption of energy efficient practices;
- (g) use of energy efficient plant, machinery and equipment;
- (h) minimisation of energy use;
- (i) minimisation of matters which may be hazardous or harmful to the Environment; and
- (j) management of eco-systems.

Greenhouse Gas means one or more of the gases listed in Annex A to the Protocol of the United Nations Framework Convention on Climate Change adopted at the meeting of the parties in Kyoto, Japan on 10 December 1997 as amended or implemented by the conference of the parties to the Protocol.

Insolvency Event means, in respect of the Contractor:

- (a) an order is made, or the Contractor passes a resolution or takes any steps to pass a resolution, for its winding up;
- (b) an administrator is appointed to the Contractor;
- (c) the Contractor resolves to appoint or takes any other steps to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the Contractor or any of the Contractor's property;
- (d) the appointment of a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the Contractor or any of the Contractor's property;
- (e) a Bank or other financier taking possession of any of the Contractor's property;
- (f) the Contractor entering into a compromise or arrangement with, or assignment for the benefit of all of its members or creditors;
- (g) the Contractor informs the Principal in writing or creditors generally that the Contractor is insolvent;
- (h) the Contractor has a meeting of its creditors for the purpose of:
 - (i) entering a scheme of arrangement or composition with creditors; or
 - (ii) placing it under official management;
- (i) execution is levied against a material part of its assets by creditors, debenture holders or trustees under a floating charge; or
- (j) where the Contractor is a company, the company is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth) as amended or replaced or is presumed to be insolvent under the *Corporations Act 2001* (Cth) as amended or replaced,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the Principal.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended from time to time).

Item means an item of Schedule 2.

Law includes any legislation or any rule, principle, duty or requirement of or under common law or equity, and for the avoidance of doubt includes any Authorisations and the lawful requirements of Authorities.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

LG Act means the *Local Government Act 1993* (NSW), as may be amended from time to time.

Loss includes any damage, loss (including Consequential Loss), cost (including legal costs on a solicitor/own client basis), expense, duty, obligation or liability, either direct or indirect.

MBT Recovery Target means for each Service Period, the tonnes of Waste specified in clause 3 of Part 1 of Schedule 6 for that Service Period.

Moral Rights means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being 'droit moral' or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth)) or any other Law (including any Law outside Australia), that exist, or that may come to exist, anywhere in the world.

Nominated Facility means each Contractor Facility specified in Item 5 of Schedule 2, as amended from time to time under clause 13.3.

Nominated Transfer Facility means any Waste Transfer Station that is a Nominated Facility.

OEH means the NSW Office of Environment and Heritage and where the term is used in respect of a function to be performed by the EPA, then OEH means the EPA.

Party means a party to this Agreement.

Payment Certificate means a letter issued by the Principal to the Contractor under clause 19.5 in the form prescribed in Schedule 7 as the Payment Certificate and, for the avoidance of doubt, includes a Final Payment Certificate.

Payment Claim means a claim for payment in the form set out in Schedule 7 that complies with the requirements of clause 19.3.

Payment Period means:

- (a) the period from the Commencement Date until the last date of that same month;
- (b) thereafter, each calendar month; and
- (c) in the final month of the Term, the period from the first day of that calendar month until the last day of the Term.

Payment Schedule means Schedule 6.

Pollution means a release, emission or discharge into the Environment (including of a substance) which causes or has the potential to cause (directly or indirectly) damage or harm to any aspect of the Environment, for example:

- (a) pollution of air
- (b) pollution of waters
- (c) noise; and
- (d) pollution of land,

which is not authorised by a licence obtained under the *Protection of the Environment Operations Act 1997* (NSW) or other Environmental Law.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

PPS Law means the PPS Act and the regulations made pursuant thereto.

Principal means each Principal Council severally in respect of its Covered LGA, its Committed Waste and in its Relevant Proportion.

Principal Council means each of the councils specified in Schedule 1, excluding Willoughby City Council if it serves a notice under 6.2.1 electing not to participate in this Agreement or fails to serve a notice under clause 6.2.1.

Principal Representative means the representative of the Principal specified in Item 1 of Schedule 2, as changed from time to time by written notice from the Principal to the Contractor under clause 34.1.2, and includes any delegate of that person. The Principal Representative may also be referred to in communications from the Principal or Principal Representative as the 'NSCWSA Contract Manager'.

Process or **Processing** means the activities associated with the processing of Waste at the Processing Facility to achieve Recovery.

Processing Facility means:

- (a) for all Waste excluding Clean up Waste, the Processing Facility described as such in Item 9 of Schedule 2;
- (b) for Clean up Waste, the Processing Facility described as such in Item 9 of Schedule 2.

Processing Rate means the amount of money payable per tonne of Waste specified in clause 11.1 and 11.3 of the Payment Schedule.

Proportional Fee means for each Principal Council, for any Fee:

- (a) that Principal Council's Relevant Proportion of the Fee; or
- (b) if the Principal Councils have agreed that the Fee should be apportioned between the Councils on a basis different to the Relevant Proportion, the proportion of the Fee determined in accordance with that agreement.

Quarterly Reconciliation means the reconciliation under clause 19.11.

Quarterly Reconciliation Statement means a statement in the form of Schedule 10 or such other form as may be agreed from time to time.

Reconciliation Amount means the amount (if any) payable under clause 19.12, which is calculated in accordance with the Payment Schedule plus GST if applicable.

Recover means to divert Waste from landfill by the Waste Processing Services. To avoid doubt, any:

- (a) Residue from Processing;
- (b) material that is produced through Processing at the Processing Facility that is then used for operational cover,

is not considered to be 'diverted from landfill' for the purposes of this definition. (**Recovery** and **Recovered** have a corresponding meaning).

Recovery Amount means for each Service Period, the tonnes of Allocated Waste that are Recovered by the Waste Processing Services, calculated in accordance with:

- (a) clause 2 of Part 1 of the Payment Schedule, in respect of all categories of Waste (excluding Clean up Waste); and
- (b) clause 2 of Part 2 of the Payment Schedule, in respect of Clean up Waste (excluding all other categories of Waste).

Recovery Target means each of the following targets:

- (a) in respect of all categories of Waste (excluding Clean up Waste), for each Service Period the tonnes of Allocated Waste (excluding Clean up Waste) that are required under this Agreement to be Recovered by the Waste Processing Services, as specified in column 2 of the table in clause 3 of Part 1 of the Payment Schedule; and
- (b) in respect of Clean up Waste (excluding all other categories of Waste), for each Service Period the tonnes of Allocated Waste (comprising Clean up Waste) that are required under this Agreement to be Recovered by the Waste Processing Services, as specified in column 2 of the table in clause 3 of Part 2 of the Payment Schedule.

Reference Weight means the weight estimate (in tonnes) of Available Waste for each Covered LGA in Service Period 1, as specified in Item 16 of Schedule 2 for each Covered LGA.

Relevant Proportion for a Principal Council means:

- (a) until the Transition In Date for the Council, zero; and
- (b) following the Transition In Date for the Council, the ratio of the Waste from the Covered LGA of the Principal Council to the total of the Available Waste in tonnes from all Covered LGAs.

Residue means material remaining following the Processing of Waste and which requires Disposal.

Security Amount means the Bank Guarantee required to be provided to the Principal under clause 5.3.

Security Interest means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person.

Service Coordination Group means the group referred to in clause 35.

Service Objectives means the objectives set out in clause 4.

Service Period means each of the following periods during the Term:

- (a) initially, the period commencing on the Commencement Date and ending on 30 June 2016 (**Service Period 1**);
- (b) the period commencing on 1 July 2016 and ending on 30 June 2017 (**Service Period 2**);

- (c) the period commencing on 1 July 2017 and ending on 30 June 2018 (**Service Period 3**);
- (d) the period commencing on 1 July 2018 and ending on 30 June 2019 (**Service Period 4**);
- (e) the period commencing on 1 July 2019 and ending on 30 June 2020 (**Service Period 5**);
- (f) the period commencing on 1 July 2020 and ending on 30 June 2021 (**Service Period 6**);
- (g) the period commencing on 1 July 2021 and ending on 30 June 2022 (**Service Period 7**);
- (h) the period commencing on 1 July 2022 and ending on 30 June 2023 (**Service Period 8**);
- (i) the period commencing on 1 July 2023 and ending on 30 June 2024 (**Service Period 9**);
- (j) the period commencing on 1 July 2024 and ending on 30 June 2025 (**Service Period 10**); and
- (k) the period commencing on 1 July 2025 and ending on the tenth anniversary of the Commencement Date (**Service Period 11**).

Services means all work, services, activities, things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Agreement, including:

- (a) the Waste Transfer Services;
- (b) the Waste Disposal Services;
- (c) the Waste Processing Services;
- (d) the Waste Management Services;
- (e) any other works or activities described in Schedule 4 or forming part of the Services; and
- (f) anything incidental or ancillary thereto.

Services Specification means Schedule 4.

Specified Risk means each risk specified in the table in Schedule 8.

Tax means a tax, levy, contribution requirement, duty, charge, deduction or withholding, however it is described, that is imposed by law (including by an Authority), together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

Tender Documents means the following documents:

- (a) Request for Tender EX007 – Waste Processing and Disposal Services, released by Local Government Procurement (RFT);
- (b) the Contractor's proposal submitted in response to the RFT via TenderLink.

Term means the period specified in Item 3 of Schedule 2, commencing on and from the Commencement Date, as may be extended under clause 31.1.3.

Termination Amount means an amount determined in accordance with clause 28.6.

Total Base Fee means the fee calculated in accordance with clause 5.2 of the Payment Schedule.

Transition In Date means for a Principal Council the date determined under and for the purposes of clause 6.1 of this Agreement.

Unlawful Material means material that either:

- (a) satisfies all of the following criteria:
 - (i) is contained within a load delivered by a Collection Vehicle;
 - (ii) forms a substantial proportion of that load of that Collection Vehicle being at least 30% of the load;
 - (iii) at the date of this Agreement would not have been anticipated by an experienced and competent contractor performing services similar to the Services in the Sydney region as potentially being present in waste streams of the type forming the Waste;
 - (iv) was in fact not anticipated by the Contractor as at the date of the Agreement as potentially being present in waste streams of the type forming the Waste;
 - (v) is prohibited from being accepted at a Nominated Transfer Facility by the environment protection licence or the development consent for that Facility; and
 - (vi) is not Waste; or
- (b) is one of the following types of material:
 - (i) a substance, apparatus or device regulated as regulated material under the *Radiation Control Act 1990*; or
 - (ii) a substance that is a distinct and identifiable object within a load that is regulated as an explosive under the *Explosives Act 2003*,
provided that the substance, apparatus or device:
 - (iii) at the date of this Agreement would not have been anticipated by an experienced and competent contractor performing services similar to the Services in the Sydney region as potentially being present in waste streams of the type forming the Waste; and
 - (iv) was in fact not anticipated by the Contractor as at the date of the Agreement as potentially being present in waste streams of the type forming the Waste.

Unlawful Material Protocol means a protocol prepared and finalised under clause 14.8 that specifies the measures to be taken to identify, assess and dispose of Unlawful Materials within the Allocated Waste that is delivered to a Nominated Transfer Facility.

Waste means the waste collected by Collection Vehicles which waste has been sourced from each category of waste listed in clause 1 of Schedule 5 in any Covered LGA during the Term.

Waste Disposal Services means the services described as such in Schedule 4.

Waste Levy means the dollar amount applied to each tonne of waste received at the Disposal Facility that is levied under s88 of the *Protection of the Environment Operations Act 1997*.

Waste Management Services means the services described as such in Schedule 4.

Waste Processing Services means the services described as such in Schedule 4.

Waste Transfer Services means the receipt, storage and transfer of the Allocated Waste at each Nominated Facility as described in Schedule 4.

Weighing Protocol means the document at Schedule 11 or that document as varied by agreement in writing between the parties.

Weight Estimates the estimated weight (in tonnes) of Available Waste for each Covered LGA in the relevant Service Period, as determined under clause 18.

WHS Act means the *Work Health and Safety Act 2011 (NSW)*.

WHS Law means the WHS Act, the WHS Regulation, and any other work health and safety law, regulation, by-law standards and codes of practice that applies to work being carried out as part of the Services.

WHS Regulation means the *Work Health and Safety Regulation 2011 (NSW)*.

WHS System means a work health and safety system, which is required to be in place and adhered to under clause 11.3.

WTS or Waste Transfer Station means each of the waste transfer stations specified in Item 4 of Schedule 2, as amended from time to time under clause 13.3.

Working Day means Monday to Friday of every week of the year including public holidays which fall on Monday to Friday.

2. Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

3. Persons

In this Agreement, a reference to:

- 3.1.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 3.1.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and

- 3.1.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

4. Joint and several

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

5. Principal Council Several

No Principal Council is liable or jointly liable for the act of any other Principal Council.

6. Legislation

In this Agreement, a reference to legislation or any particular legislation includes any delegated legislation and any consolidations, amendments, re-enactments or replacements of any of that legislation from time to time.

7. This Agreement, clauses and headings

In this Agreement:

- 7.1.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 7.1.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- 7.1.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 7.1.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 7.1.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 7.1.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

8. Severance

- 8.1.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 8.1.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

9. Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

10. Currency

In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

11. Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

12. Number and gender

In this Agreement, a reference to:

12.1.1 the singular includes the plural and vice versa; and

12.1.2 a gender includes the other genders.

13. Property

In this Agreement, a reference to any property or assets of a person includes the legal and beneficial interest of that person in those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise.

14. Personal knowledge

A reference to a matter being to the knowledge of a person means the matter is to the best of the knowledge and belief of the person after making proper enquiry including enquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.

15. Diversion from landfill

A reference to Waste having been diverted from landfill or recovered does not include:

15.1.1 Residue from Processing;

15.1.2 material that is produced through Processing at the Processing Facility that is then used for operational cover.

Schedule 4 Services Specification

This Schedule 4 describes the general scope of the Services to be included in the defined term 'Services' to be performed by the Contractor at the cost of the Contractor, except as expressly provided to the contrary in the Agreement.

Part 1 sets out the minimum contractual requirements. Part 2 sets out the Contractor's proposal, which is included for reference. Part 1 will prevail over Part 2 to the extent of any inconsistencies, except to the extent that a requirement in Part 2 is more stringent than in Part 1.

PART 1 Minimum Requirements

1. Waste Transfer Services

1.1 The Contractor must:

1.1.1 ensure that Waste Transfer Stations are made available by the Contractor, being transfer stations or facilities where Waste collected at the kerbside or as a result of council operations or services may be deposited prior to the Waste being transported to a Processing Facility or Disposal Facility;

1.1.2 do and provide all necessary services, facilities, plant, equipment and personnel to:

- (a) receive Collection Vehicles at convenient and acceptable locations within the Waste Transfer Stations; and
- (b) permit the prompt, efficient and convenient entry, unloading and departure of all Collection Vehicles; and
- (c) receive Waste from Collection Vehicles in a timely fashion, so that the Collection Vehicles are not delayed when delivering Waste to the Contractor; and
- (d) process the Waste through the Waste Transfer Station in a timely, lawful and efficient manner, including to move and transfer Waste from Collection Vehicles:
 - (i) to a bulk haul vehicle in order to achieve long distance transportation efficiency for transport to the nominated disposal or processing facility; or
 - (ii) to the nominated processing or disposal facility;
- (e) undertake such other activities as are necessary to achieve the effective and efficient transfer of Waste from Collection Vehicles to the Disposal Facility or the Processing Facility; and
- (f) receive Available Waste from Collection Vehicles at Nominated Facilities on Monday to Friday of every week of the year including public holidays which fall on Monday to Friday.

1.1.3 weigh all Collection Vehicles in accordance with the Weighing Protocol.

2. Waste Disposal Services

2.1 The Contractor must:

- 2.1.1 dispose of Waste that is not processed or is residual (remaining from processing) at Disposal Facilities licensed for that purpose by the NSW Environment Protection Authority and lawfully able to accept the Waste;
- 2.1.2 ensure that each Disposal Facility:
 - (a) has designated areas into which solid waste is placed, resulting in permanent removal of waste from human or environmental contact;
 - (b) ensures the safe and lawful treatment of leachates;
 - (c) has adequate soil cover, effective odour management and traffic movement controls that preserve the amenity of surrounding areas; and
 - (d) is managed in accordance with operating, management and closure plans approved by all relevant Authorities; and
- 2.1.3 measure and record all information and data relating to Greenhouse Gas emissions, energy consumption or energy production arising from, or in connection with, the Waste Disposal Services as is required to satisfy reporting obligations under the National Greenhouse and Energy Reporting Act 2007 (Cth) or similar legislation.

3. Waste Processing Services

- 3.1 In this Agreement, the Waste Processing Services include all activities carried out in respect of Waste that is delivered to a Processing Facility by the Contractor under this Agreement. The 'Processing Rate' must be inclusive of all costs associated with such Waste, including:
 - 3.1.1 the costs related to the receipt, storing, containing, handling, processing and treating the Waste;
 - 3.1.2 all management, monitoring and assurance costs and all overheads;
 - 3.1.3 the costs related to the disposal of all outputs from the Processing, whether they be beneficial products such as compost or compost-like output or Residue that must be directed to landfill; and
 - 3.1.4 any taxes and charges payable (except as specified in this Agreement).
- 3.2 The Contractor must:
 - 3.2.1 receive the Waste to be Processed at each Processing Facility, including undertaking the following activities:
 - (a) weighbridge operation and reporting;
 - (b) receipt, unloading, sorting and stockpiling and preparing for Processing;
 - (c) monitoring and assurance;
 - 3.2.2 provide services through an EPA licensed Processing Facility (or facilities) for the processing or treatment of Waste; and
 - 3.2.3 ensure that each Processing Facility:
 - (a) applies the processes and technologies to reduce the volume and weight of Waste going to landfill and achieve Recovery as are generally described for

each Processing Facility in Part 2 of this Schedule 4 (unless otherwise agreed by the parties); and

- (b) is fully licensed under the *Protection of the Environment Operations Act 1997* (if required).

3.3 Reuse, storage, handling or other activities with the Processing product will be matters for the Contractor to achieve on its own behalf and are not part of the Services.

3.4 Following completion of the Processing of Waste under this Agreement, the Contractor must ensure that any waste generated by the Processing has been properly and lawfully re-used or disposed of.

4. Waste Management Services

4.1 The Contractor must:

4.1.1 provide excellent client service, including by identifying and incorporating efficiencies in the administration and management of payment claims through the Principal Representative;

4.1.2 provide data to the Principal Councils (and a copy of the data to the Principal Representative), including data on the Waste transferred from Collection Vehicles from each Covered LGA that deliver Waste to a Waste Transfer Station or directly to a Disposal or Processing Facility, to enable:

- (a) the Principal Councils to verify and reconcile the data with records received from the Waste collection contractors; and

- (b) the Principal Representative to:

- (i) reconcile payment claims based on advice from the Principal Councils; and

- (ii) audit the progress made by the Contractor in achieving the Recovery Targets;

- (c) provide reasonable assistance to the Principal Councils in delivering waste education programmes; and

4.1.3 at regular intervals, and upon reasonable request by the Principal Representative, provide information to the Principal Representative regarding:

- (a) any options for improvement or innovation in relation to the performance of the Services that would reduce the cost of the Services or otherwise enhance the ability of the parties to achieve the Service Objectives; or

- (b) the ability of the Contractor to Process a greater amount of Waste under this Agreement.

5. Contractor Facilities

5.1 For each of the Contractor Facilities identified in the following table, the Contractor must, on or before the date nominated in that item in respect of that Contractor Facility, ensure that the Nominated Facility is constructed and capable of operation to provide the relevant Services and provide the documentation required under clause 13.2.

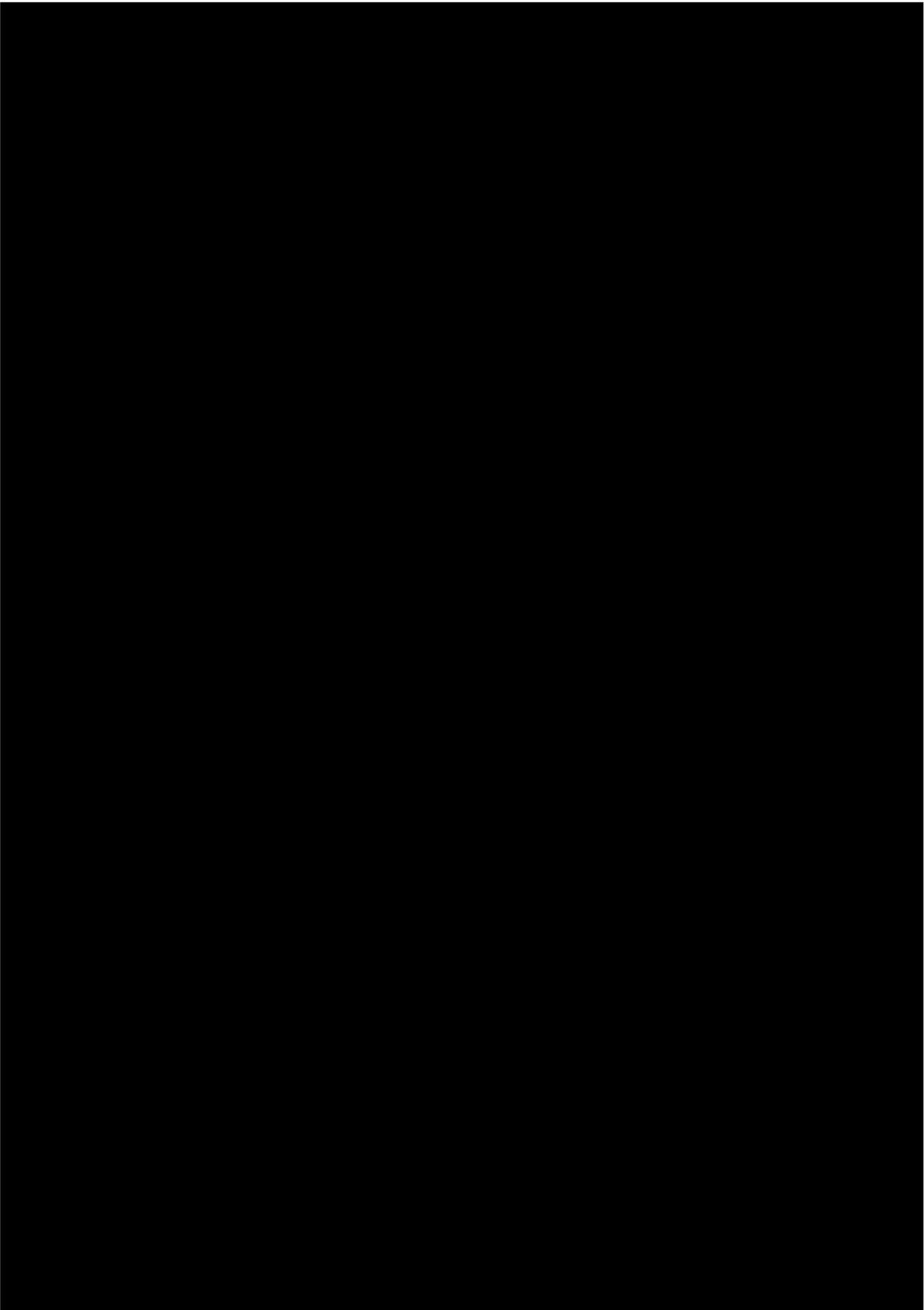
No.	Contractor Facility (as described in Item 5 of Schedule 2)	Date by which: (a) Contractor Facility must be operational and (b) documentation must be provided, under clause 13.2.3
1.	Woodlawn MBT (capacity to process the Processing Amount)	(a) at the commencement of Service Period 3 (b) 3 months prior to the commencement of Service Period 3
2.	Camellia MRF	(a) At the commencement of Service Period 4 (b) 6 months prior to the commencement of Service Period 4
3.	Disposal Facility	(a) Commencement Date (b) Upon request by the Principal
4.	Clyde	(a) Commencement Date (b) Upon request by the Principal
5.	Greenacre	(a) Commencement Date (b) Upon request by the Principal

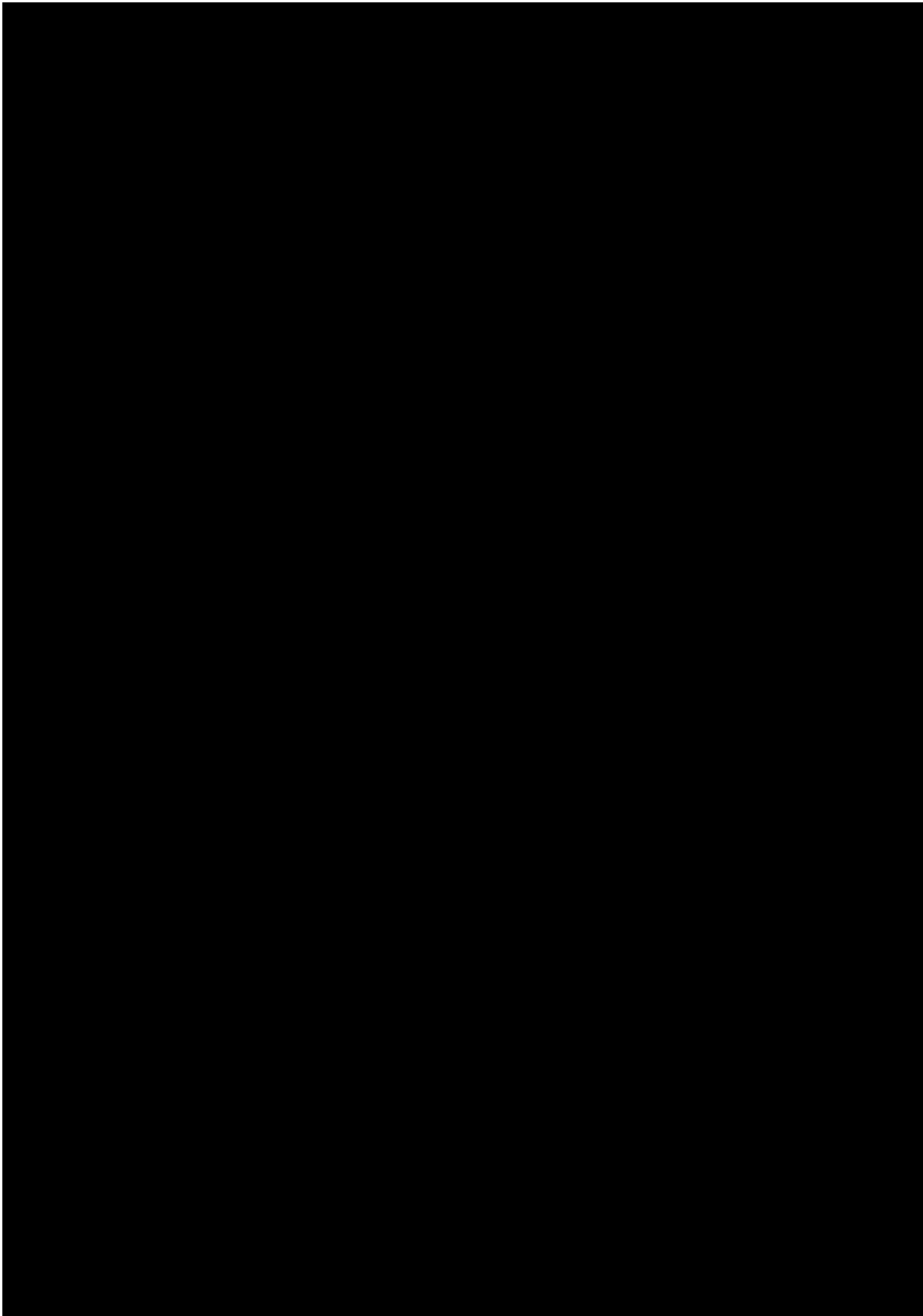
5.1 During the Term the Contractor must maintain and have open for business an office during the hours of 8:00 am to 5.00 pm, Monday to Friday (including public holidays). Prior to the Commencement Date, the Contractor must provide the Principal Representative with the following information in respect of that office:

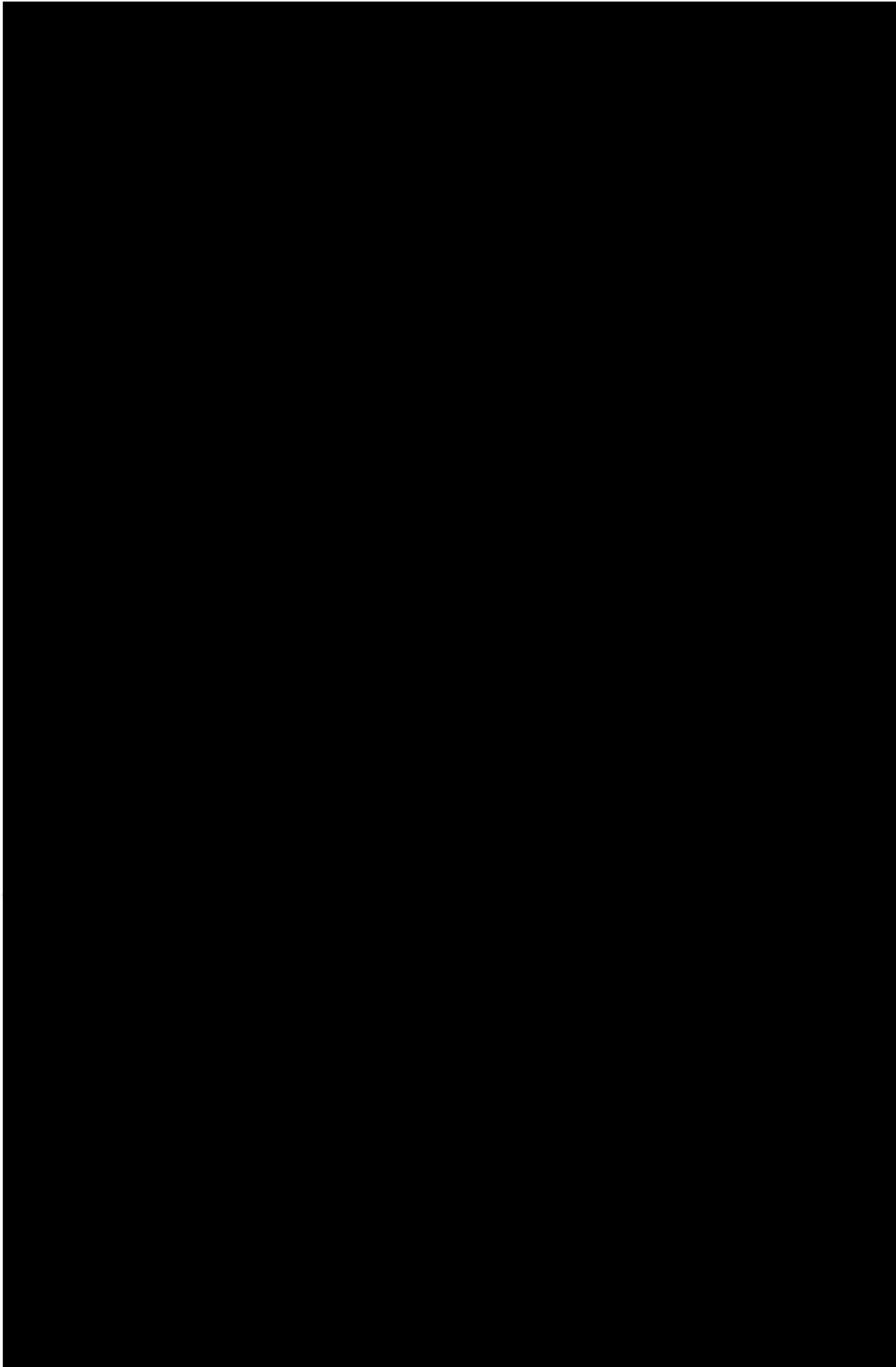
- 5.1.1 Office street address.
- 5.1.2 Day time phone number.
- 5.1.3 Postal address.
- 5.1.4 Fax number.
- 5.1.5 Email.
- 5.1.6 Answering service for after-hours calls.
- 5.1.7 After hours contact number for contact in the event of an emergency (this cannot be an answering service).

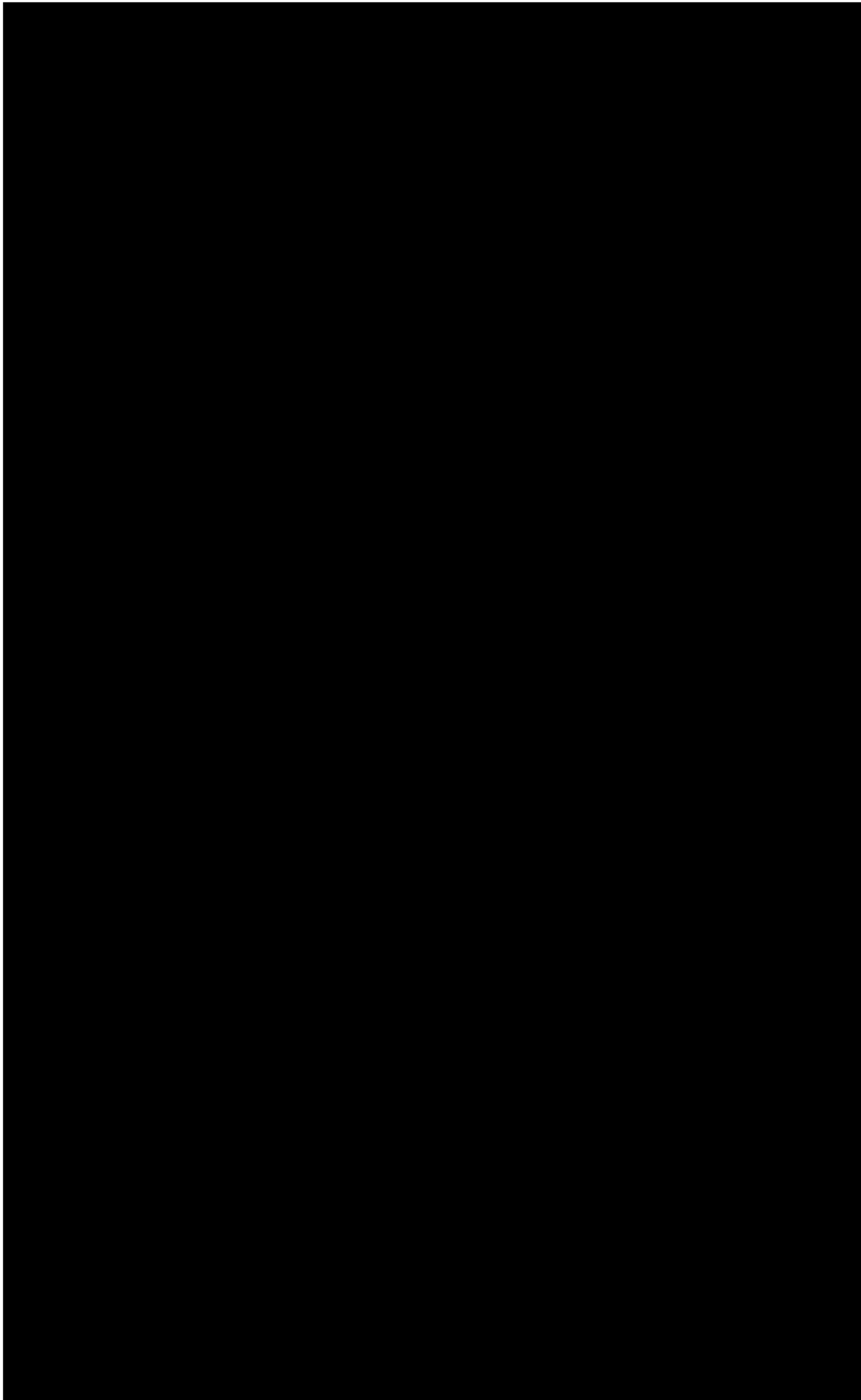
5.2 Should the contact details for the office required in clause 5.1 change at any time during the Term the Contractor must update the Principal Representative immediately. In addition, the

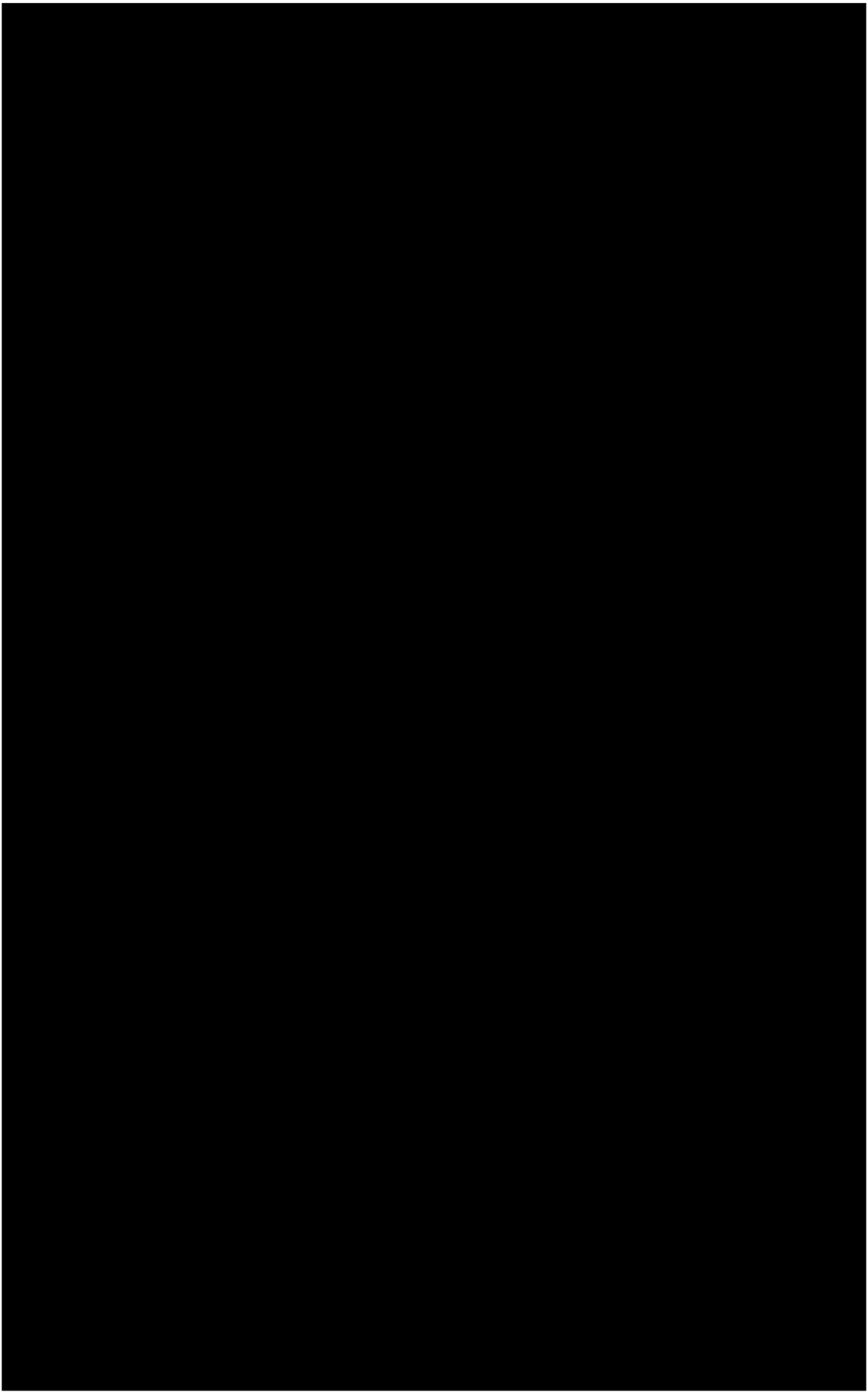
Contractor must provide Principal Representative with a mobile phone number, on which the Contractor can be contacted outside of business hours.

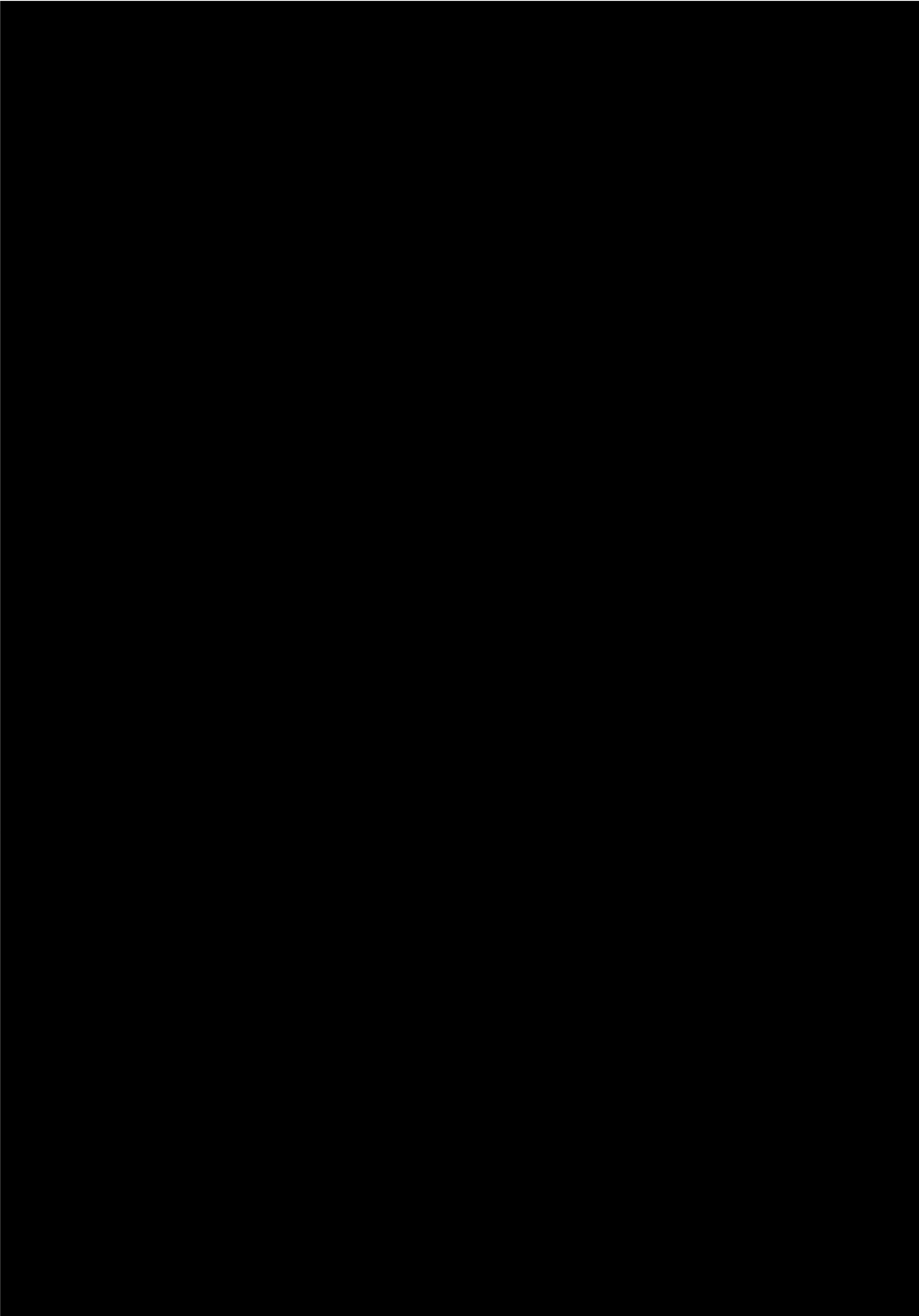


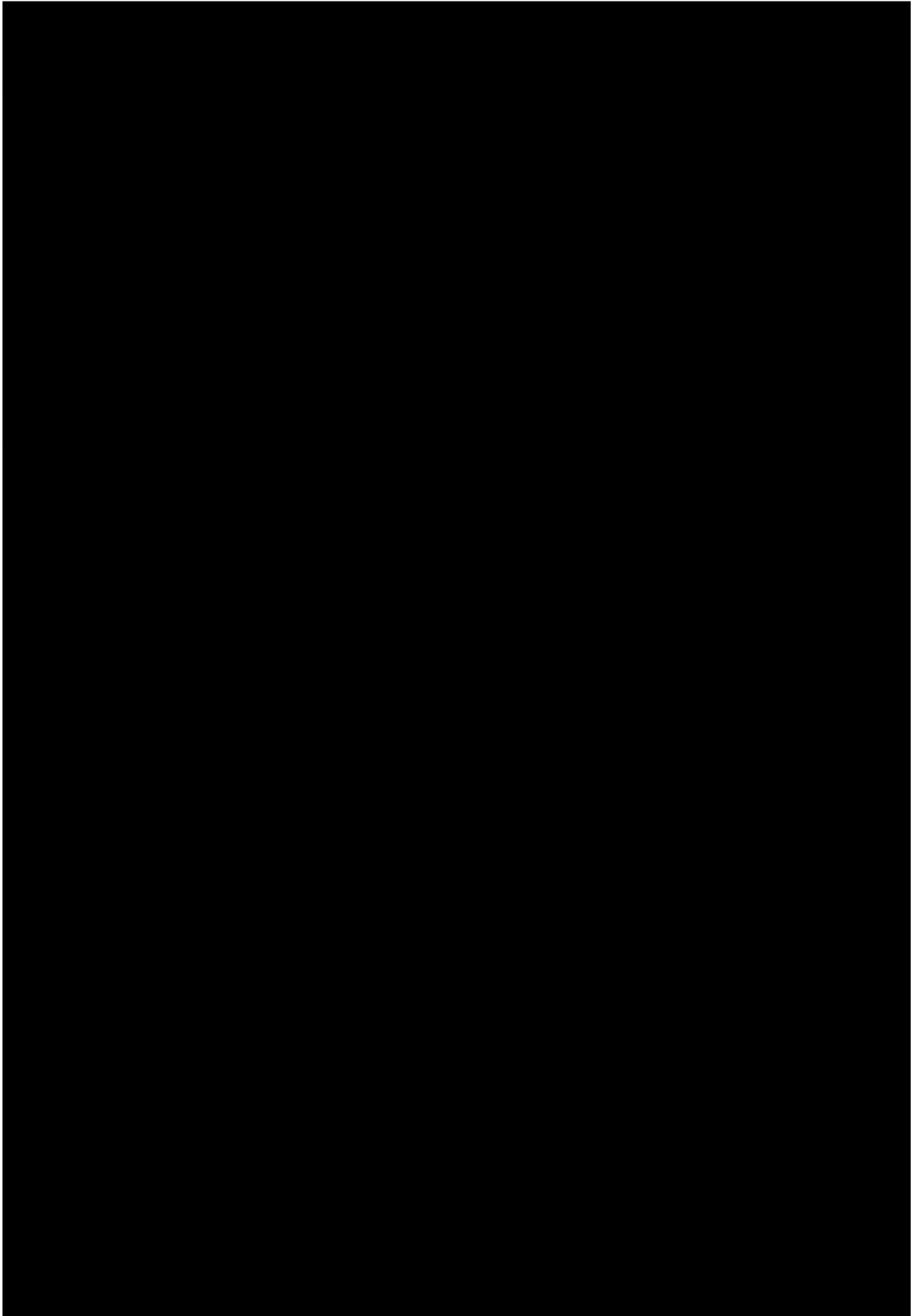


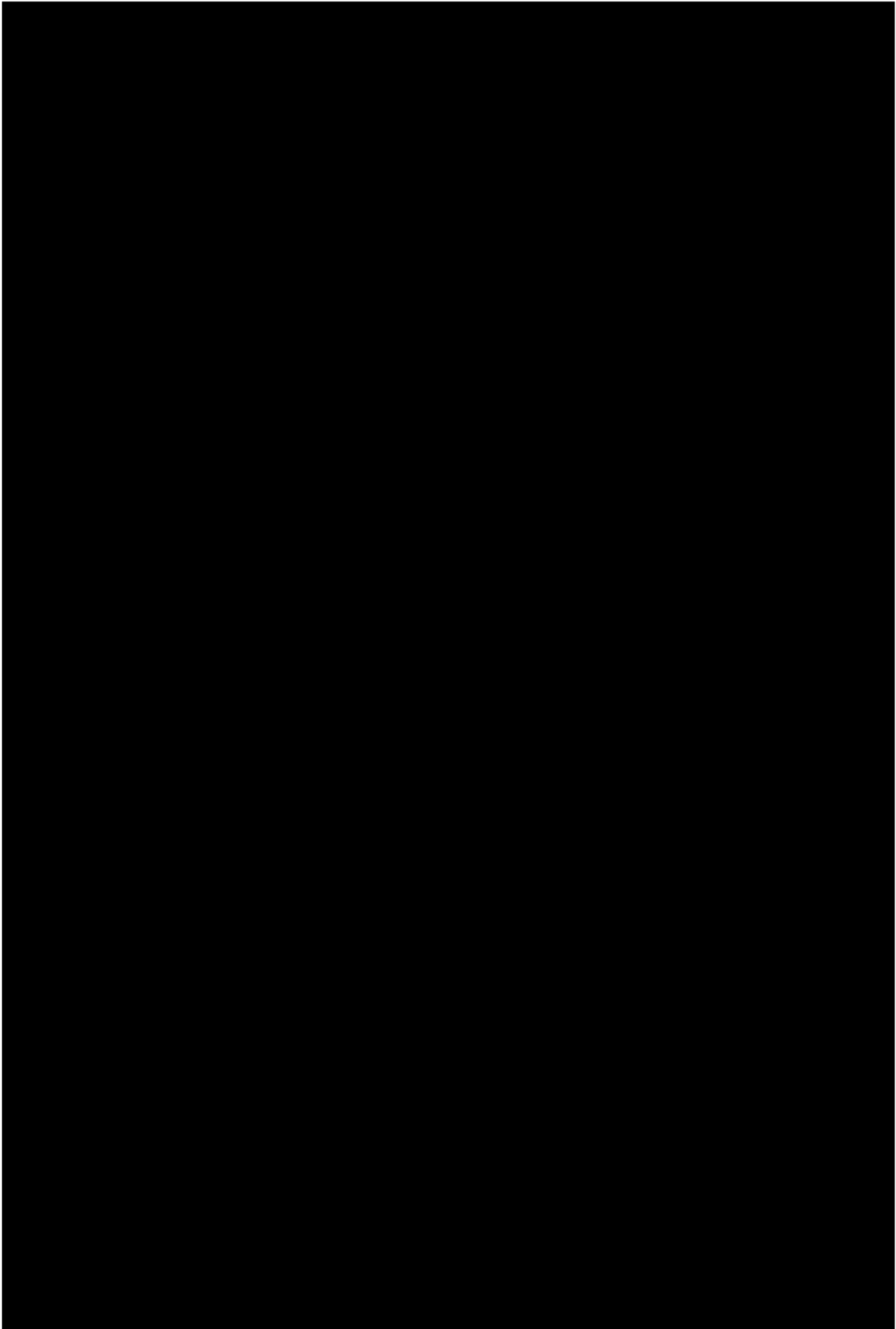


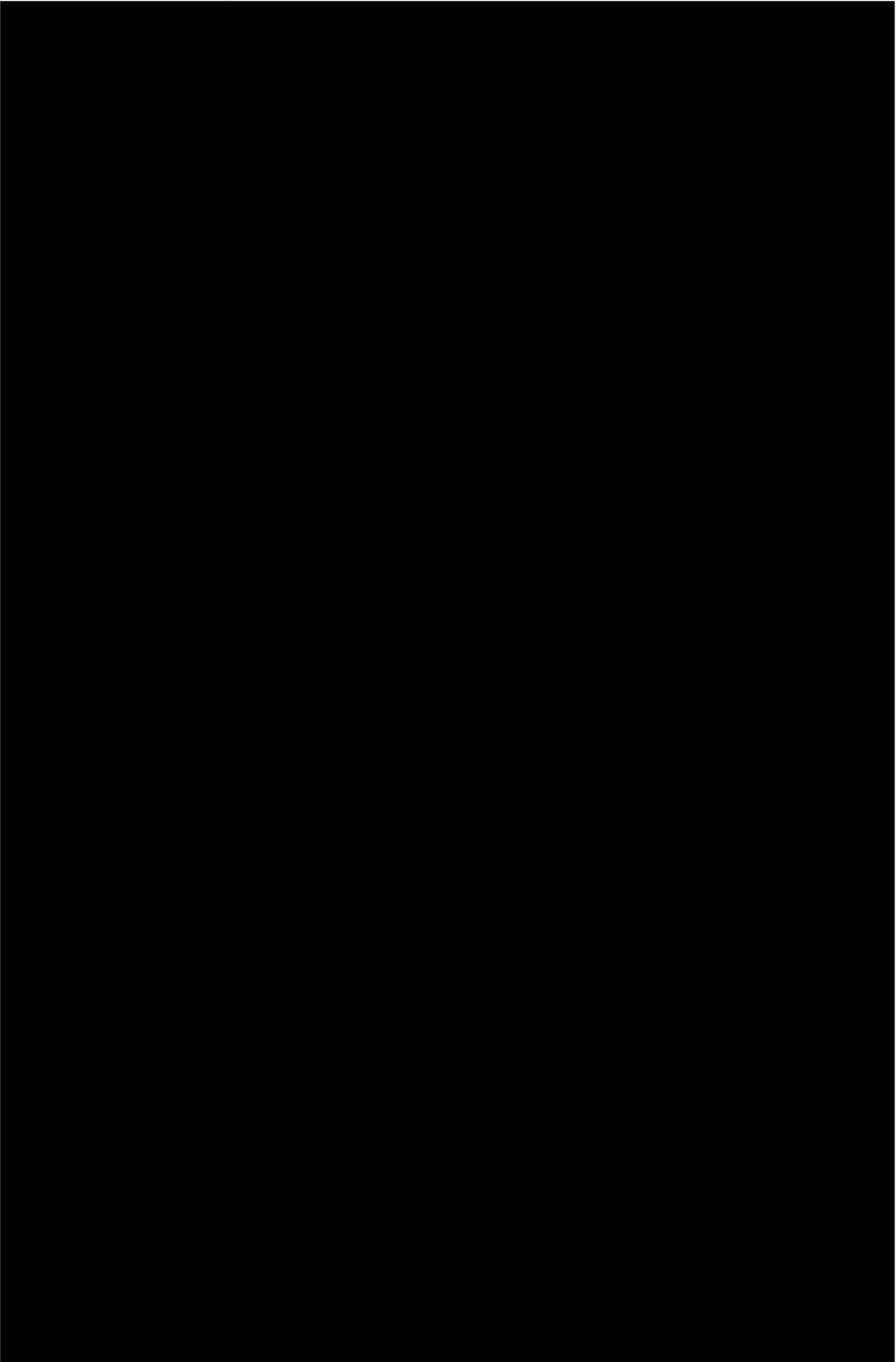


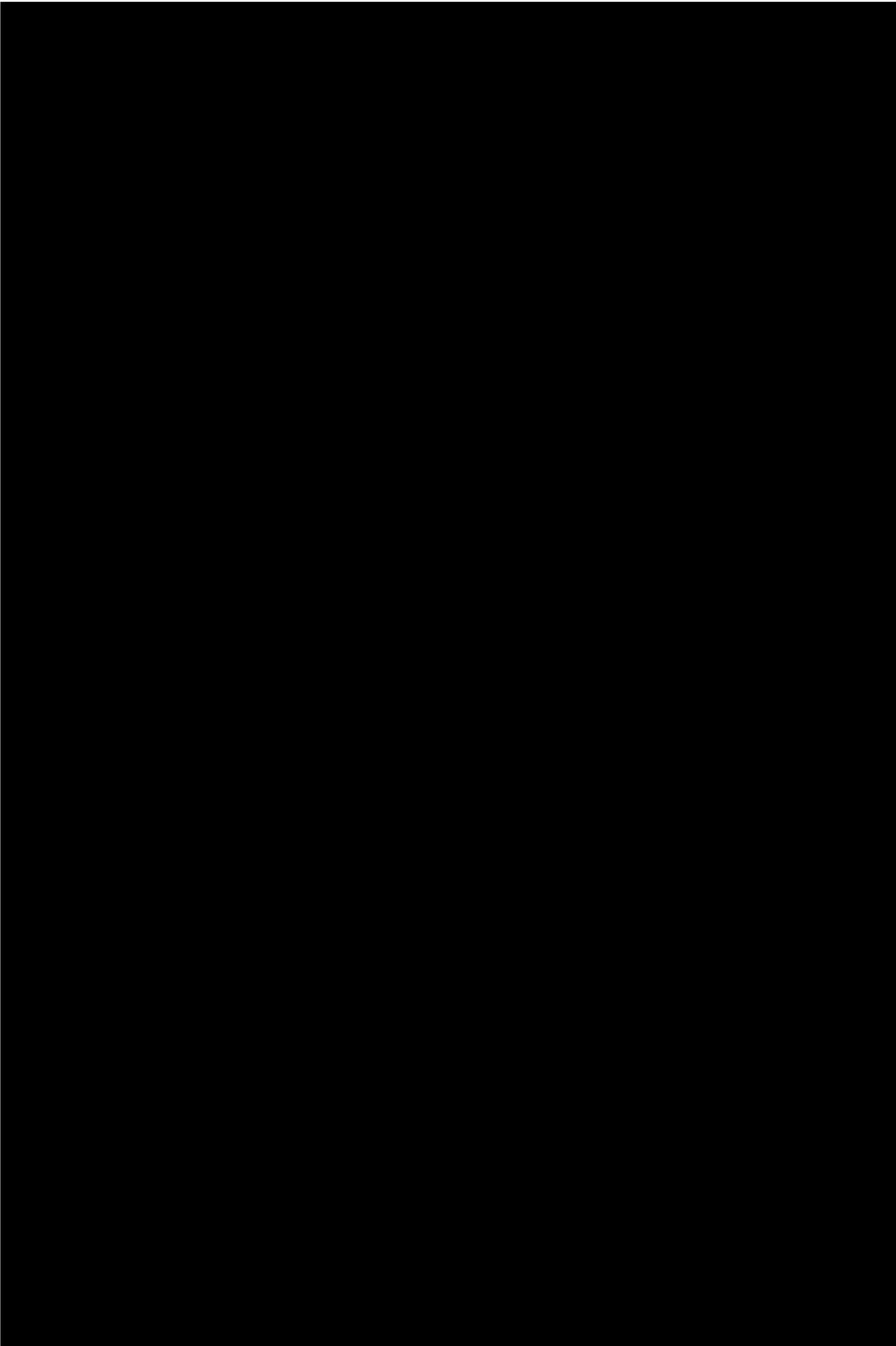


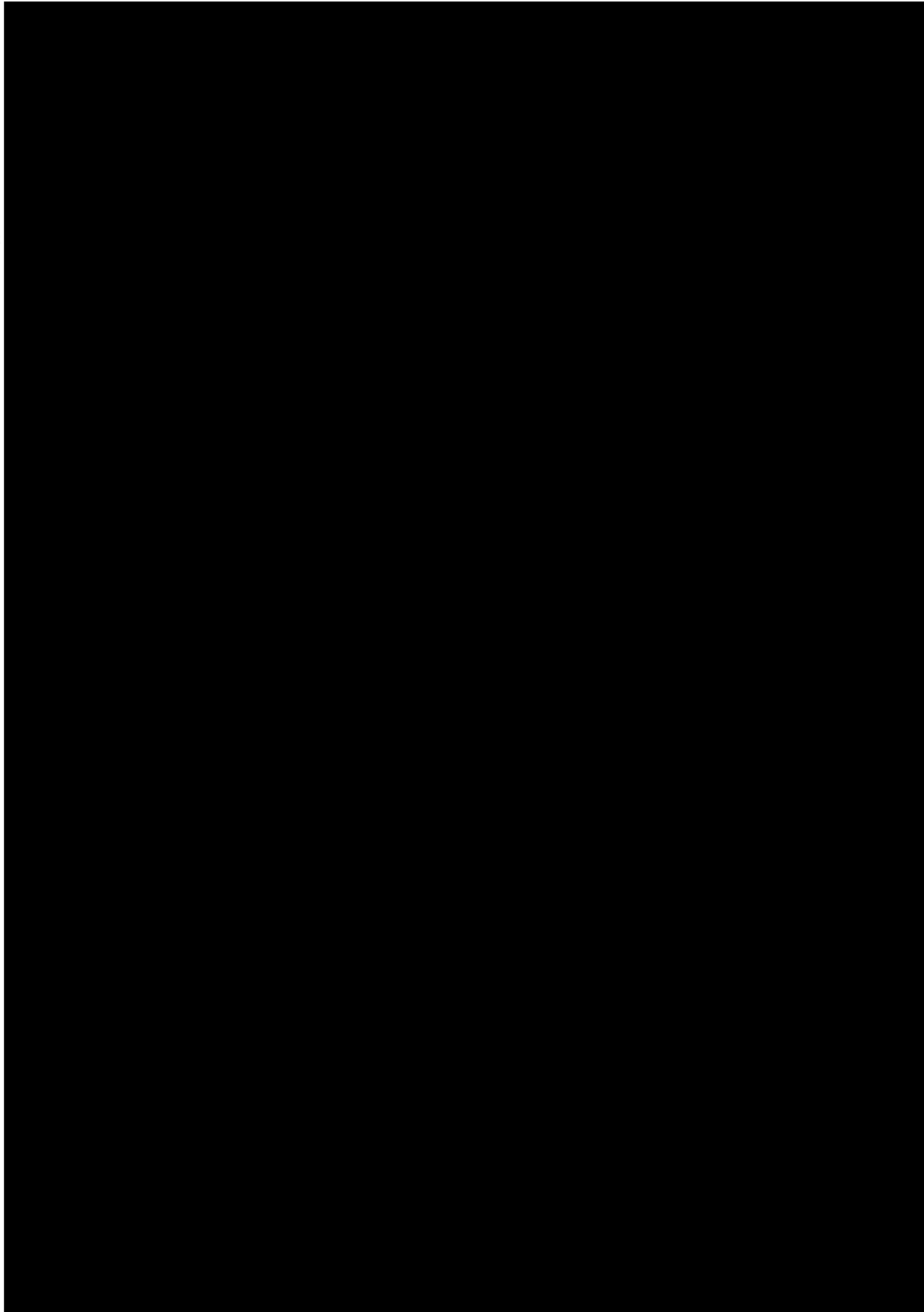


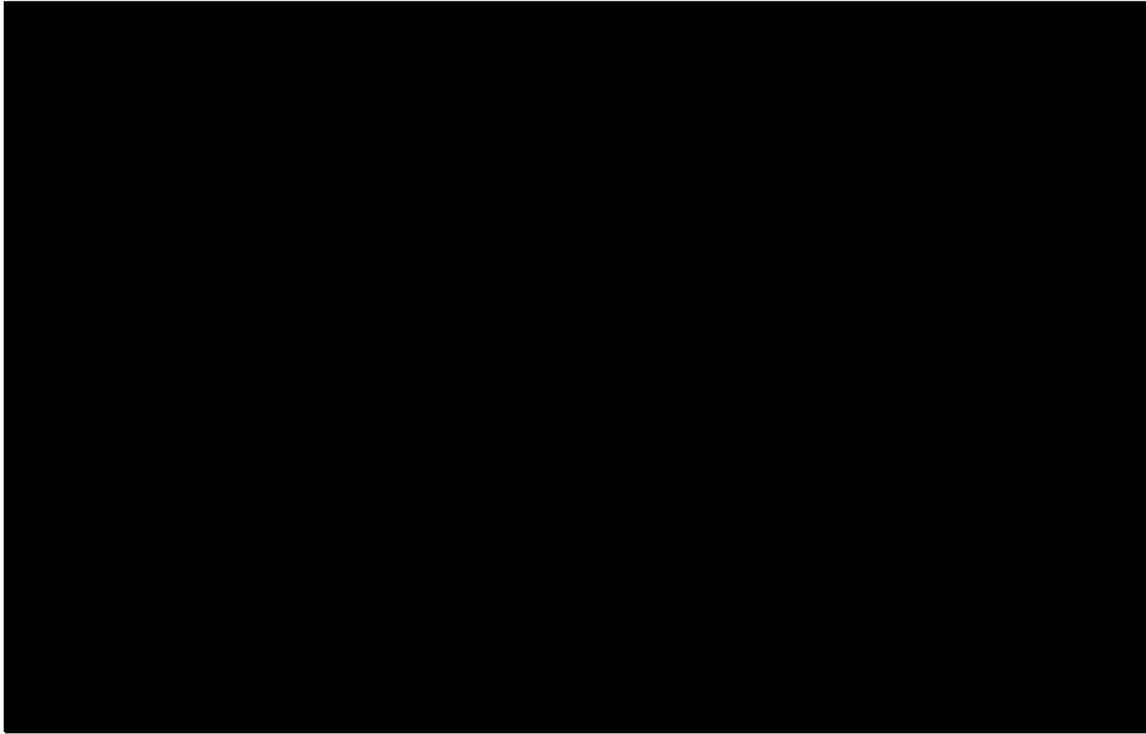












Schedule 5 Waste definition

1. Categories of Waste for each Covered LGA

Waste sourced from the following categories of waste that is collected by Collection Vehicles is included in definition of Waste in this Agreement:

- (a) Red bin;
- (b) Clean Up Waste;
- (c) Street sweepings;
- (d) Commercial;
- (e) Public waste bins, litter bins; and
- (f) Illegal dumping.

2. Waste definitions

Each waste category referred to in clause 1 of this Schedule, is defined as follows:

- (a) **Red bin** means general household waste collected in red bins. This includes all materials disposed of to landfill as well as those that are recovered from the waste stream for recycling or energy recovery.
- (b) **Clean Up Waste** means household waste which cannot be placed in the red or yellow bin or is not otherwise recycled through separate single waste stream collection and disposal services contracted for separately by the Principal Councils, including furniture, mattresses, toys, carpet, metals, green waste, floor coverings, empty cans, baths, laundry tubs, stoves, television sets, washing machines, clothes dryers, refrigerators, small household appliances, guttering, timber and fence palings, together with any material which the Principal Representative directs to be removed in the Clean Up Waste service.
- (c) **Street sweepings** means general waste picked up from the roadside including leaves, litter, straws, bottle tops, dirt and debris.
- (d) **Commercial** means all refuse and solid waste or any kind of garbage which is deposited for collection for the Principal Councils from shops, offices, factories, boarding houses, hospitals, schools or any institution or place of business which the Principal Representative shall notify the Contractor of from time to time. This excludes other wastes such as paint tins, hazardous materials or industrial waste.
- (e) **Public waste bins, litter bins** means waste collected from public bins.
- (f) **Illegal dumping** means waste that is unlawfully disposed of onto land or into water within a Covered LGA, including waste materials that have been dumped, tipped or otherwise deposited onto land where no licence or approval exists to accept such waste on that land.

Schedule 6 Payment Schedule

PART 1 Waste (excluding Clean up Waste)

In this Part 1 of Schedule 6 (except in clauses 9, 10, 12 and 13 of Schedule 6) all references to Waste (and all related definitions, including 'Available Waste' and 'Allocated Waste') are exclusive of Clean up Waste.

1. Defined terms

1.1 In this Part 1 of Schedule 6, defined terms have the same meaning as in Schedule 3 of the Agreement, unless otherwise defined below:

- 1.1.1 **Adjustment Amount** means for each Service Period other than the first Service Period, an amount referred to in clause 12 of this Schedule 6 and added to the Processing Rate or the Disposal Rate for that Service Period in accordance with clause 10 (Disposal Rate and adjustments) and 11 (Processing Rate and adjustments) of Part 1 of this Schedule 6.
- 1.1.2 **AW_{Total PP}** means the total weight in tonnes of all Allocated Waste delivered to Nominated Facilities in the relevant Payment Period minus the Allocated Waste that is identified as Unlawful Materials under the Unlawful Material Protocol in that Payment Period.
- 1.1.3 **AW_{Total SP}** means the total weight in tonnes of all Allocated Waste delivered to Nominated Facilities in the relevant Service Period minus the Allocated Waste that is identified as Unlawful Materials under the Unlawful Material Protocol in that Service Period.
- 1.1.4 **Base Fee** or **BF** means the amount of money to be calculated in respect of a Payment Period in accordance with clause 5.1 of Part 1 of this Schedule 6.
- 1.1.5 **Consumer Price Index** means All Groups Consumer Price Index, Index numbers, quarterly, weighted average of eight capital cities published by the Australian Bureau of Statistics (Cat 6401.0).
- 1.1.6 **Disposal Fee** or **DF** means the amount of money to be calculated in respect of a Payment Period in accordance with clause 6.1 of Part 1 of this Schedule 6.
- 1.1.7 **Disposal Amount** or **DA** means for each Service Period, the amount of tonnes specified as such in clause 4 of Part 1 of this Schedule 6 that is not to be Processed at the Processing Facility but is to be lawfully Disposed of.
- 1.1.8 **Disposal Rate** means the amount of money payable per tonne of Waste specified in clause 10.2 and 10.3 of Part 1 of this Schedule 6, in respect of all categories of Waste other than Clean up Waste.
- 1.1.9 **Electricity Cost Index** means All Groups Sydney Electricity which forms part of CPI published by the Australian Bureau of Statistics (Cat 6401.0).
- 1.1.10 **Labour Cost Index** means Total hourly rates of pay excluding bonuses; Australia; Private; Electricity, gas, water and waste services which forms part of Wage Price Index Australia published by the Australian Bureau of Statistics (Cat 6345.0).
- 1.1.11 **MBT Recovery Target** or **MBTRT** means the tonnes specified in clause 3 of Part 1 of this Schedule 6 for each Service Period.

- 1.1.12 **Processing Fee** or **PF** means the amount of money to be calculated in respect of a Payment Period in accordance with clause 7.1 of Part 1 of this Schedule 6.
- 1.1.13 **Processing Amount** or **PA** means for each Service Period, the amount of tonnes specified as such in clause 4 of Part 1 of this Schedule 6 that is to be Processed at the Processing Facility.
- 1.1.14 **Processing Rate** means the amount of money payable per tonne of Waste specified in clause 11.1 and 11.3 of Part 1 of this Schedule 6, in respect of all categories of Waste other than Clean up Waste.
- 1.1.15 **Proportional Fee** the amount of money to be calculated in accordance with clause 9 of Part 1 of this Schedule 6.
- 1.1.16 **Reconciliation Amount** means the amount of money to be calculated in respect of a Service Period in accordance with clause 8 of Part 1 of this Schedule 6.
- 1.1.17 **Recovery Target** or **RT** means the tonnes specified in clause 3 of Part 1 of this Schedule 6 for each Service Period, being the tonnes of Allocated Waste that are required under this Agreement to be Recovered by the Waste Processing Services in each Service Period.
- 1.1.18 **Recovery Amount** or **RA** means the tonnes calculated in accordance with clause 2 of Part 1 of this Schedule 6, being for each Service Period, the tonnes of Allocated Waste that is Recovered by the Waste Processing Services.
- 1.1.19 **Total Base Fee** or **TBF** means the amount of money to be calculated in respect of a Service Period in accordance with clause 5.2 of Part 1 of this Schedule 6.
- 1.1.20 **Transport Cost Index** means the All Groups Sydney Transport which forms part of CPI published by the Australian Bureau of Statistics (Cat 6401.0).

2. Recovery Amount

The Recovery Amount must be determined for a Service Period in accordance with the following formula:

$$RA = MER \times PAW_{\text{Total SP}}$$

Where:

RA = the Recovery Amount achieved for the relevant Service Period in respect of Allocated Waste

MER (Model efficiency rate in the Service Period for the Processing Facility)

$$= 1 - (T_{\text{Residue}} / T_{\text{Received}})$$

T_{Residue} = total weight of

- Residue produced by; and
 - material used as operational cover that was produced by,
- Processing at the Processing Facility in the relevant Service Period

T_{Received} = total weight of all waste received at the Processing Facility in the relevant Service Period

PAW_{Total SP} = the total weight in tonnes of all Allocated Waste delivered to the Processing Facility in the relevant Service Period.

3. Achieving Recovery Targets

For each Service Period specified in column 1 of the following table:

- 3.1.1 the Recovery Target for that Service Period is specified in column 2 of the following table; and
- 3.1.2 the MBT Recovery Target for that Service Period is specified in column 3 of the following table.

Column 1	Column 2	Column 3
Service Period	Recovery Target (tonnes) for Service Period	MBT Recovery Target (tonnes) for Service Period
Service Period 1	0	0
Service Period 2	0	0
Service Period 3	27,390	18,150
Service Period 4	27,390	18,150
Service Period 5	27,390	18,150
Service Period 6	27,390	18,150
Service Period 7	27,390	18,150
Service Period 8	27,390	18,150
Service Period 9	27,390	18,150
Service Period 10	27,390	18,150
Service Period 11	11,412.5	7,562.5

Note: 'Recovery Target' means the Recovery Target for the relevant Service Period expressed in tonnes, as agreed at the Commencement Date of this Agreement.

4. Processing Amount and Disposal Amount

4.1 For each Service Period specified in column 1 of the following table:

- 4.1.1 the Disposal Amount is the amount of tonnes specified in column 2 of the following table, calculated at the beginning of the relevant Service Period based on:
 - (a) the Reference Weight for Service Period 1; and

(b) the applicable Weight Estimate for each other Service Period,

subject to the reconciliation after the end of each Service Period under clause 8 of Part 1 of this Schedule 6; and

4.1.2 the Processing Amount is the amount of tonnes specified in column 3 of the following table.

Column 1	Column 2	Column 3
Service Period	Disposal Amount* (tonnes)	Processing Amount* (tonnes)
Service Period 1	AW _{Total SP}	0
Service Period 2	AW _{Total SP}	0
Service Period 3	AW _{Total SP} – 33,000	33,000
Service Period 4	AW _{Total SP} – 33,000	33,000
Service Period 5	AW _{Total SP} – 33,000	33,000
Service Period 6	AW _{Total SP} – 33,000	33,000
Service Period 7	AW _{Total SP} – 33,000	33,000
Service Period 8	AW _{Total SP} – 33,000	33,000
Service Period 9	AW _{Total SP} – 33,000	33,000
Service Period 10	AW _{Total SP} – 33,000	33,000
Service Period 11	AW _{Total SP} – 13,750	13,750

*unless otherwise agreed

5. Base Fee and Total Base Fee

5.1 The Base Fee must be calculated (for each Payment Period) as follows:

$$BF = DF + PF$$

Where:

- BF = Base Fee (\$)
- DF = Disposal Fee (\$)
- PF = Processing Fee (\$)

5.2 The Total Base Fee must be calculated (for each Service Period) as follows:

$$\text{TBF} = \text{BF} \times \text{PP}$$

Where:

TBF = Total Base Fee (\$)

BF = Base Fee (\$)

PP = the number of Payment Periods in the Service Period

6. Disposal Fee

6.1 The Disposal Fee must be calculated (for each Payment Period) as follows:

$$\text{DF} = (\text{DR} + \text{L}) \times \text{DA}_{\text{PP}}$$

Where:

DF = Disposal Fee (\$)

DR = Disposal Rate (\$/tonnes)

L = Waste Levy (\$/tonnes)

DA_{PP} = Disposal Amount for the Payment Period, being for any Payment Period in:

- Service Period 1 or Service Period 2: AW_{Total PP}; and
- any other Service Period: AW_{Total PP} – PA_{PP}

PA_{PP} = Processing Amount for the Service Period in which the Payment Period occurs (calculated in accordance with clause 4 of Part 1 of this Schedule 6) (tonnes) divided by the number of Payment Periods in the Service Period

7. Processing Fee

7.1 The Processing Fee must be calculated for each Payment Period as follows:

$$\text{PF} = \text{PR} \times \text{PA}/\text{PP}$$

Where:

PF = Processing Fee (\$)

PR = Processing Rate (\$/tonnes)

PA = Processing Amount for the Service Period in which the Payment Period occurs (calculated in accordance with clause 4 of Part 1 of this Schedule 6) (tonnes)

PP = the number of Payment Periods in the Service Period

8. Previous Service Period Reconciliation

After the end of each Service Period the Principal Representative must carry out a reconciliation in accordance with this clause 8 of Part 1 of this Schedule 6 in order to calculate the Reconciliation Amount and Catch-up Amount:

8.1 Step 1: Reconciliation of Volumes

The Principal Representative will validate and reconcile the actual and estimated volumes and weights of Allocated Waste the subject of the Services and any part of the Services during the previous Service Period.

8.2 Step 2: Reconciliation against actual Recovery tonnes

The Principal Representative will calculate any Recovery Shortfall (tonnes) for the previous Service Period where:

$$\text{RSF (tonnes)} = \text{the greater of zero (0) and (RT - RA)}$$

(i.e. if $RA > RT$, then $RSF \text{ (tonnes)} = 0$)

Where:

RSF (tonnes) = Recovery Shortfall for the previous Service Period (tonnes)

RT = Recovery Target for the previous Service Period (tonnes)

RA = Recovery Amount for the previous Service Period (tonnes)

8.3 Step 3: Calculate Reconciliation Amount

The Principal Representative will calculate the Reconciliation Amount for the previous Service Period, where:

$$\text{RA}(\$) = \text{RA1}(\$) + \text{RA2}(\$)$$

Where:

$$\text{RA1}(\$) = \text{the greater of } \$0 \text{ and } \$[\text{RSF1(tonnes)} \times (\text{PR} - \text{DR} - \text{L})]$$

(i.e. if $\text{PR} < (\text{DR} + \text{L})$, then $\text{RA1}(\$) = 0$)

and

$$\text{RA2}(\$) \text{ for Service Period 1 and 2} = \$0$$

$$\text{RA2}(\$) \text{ for Service Period 3, 4 and 5} = \text{the greater of } \$0 \text{ and } \$[\text{RSF2(tonnes)} \times (\$20.16^*)]$$

$$\text{RA2}(\$) \text{ for each other Service Period} = \text{the greater of } \$0 \text{ and } \$[\text{RSF2(tonnes)} \times (\$40.32^*)]$$

(i.e. if $\text{RSF2(tonnes)} < 0$, then $\text{RA2}(\$) = 0$)

*Each of the amounts \$20.16 and \$40.32 are the amounts that would be applicable for Service Period 1, and for each other Service Period an adjustment amount must be added to each of those amounts, calculated in the same manner as the Other Adjustment Amount is calculated for the Processing Rate under clause 12.7 of this

Schedule 6 except that 'R₁' is \$20.16 or \$40.32 (as applicable) and the 'Other Costs Weighting' equals 1.

Where:

RA(\$)¹ = Reconciliation Amount for the previous Service Period (\$)

RA1(\$)¹ = Reconciliation Amount 1 for the previous Service Period (\$)

RA2(\$)¹ = Reconciliation Amount 2 for the previous Service Period (\$)

RA = Recovery Amount for the previous Service Period (tonnes)

RSF1(tonnes) = the greater of zero (0) and (MBTRT – RA)

RSF2(tonnes) = (RT – MBTRT) – [the greater of zero (0) and (RA – MBTRT)]

MBTRT = the MBT Recovery Target for the previous Service Period

PR = Processing Rate for the previous Service Period (\$/tonnes)

DR = Disposal Rate for the previous Service Period (\$/tonnes)

L = Waste Levy (\$/tonnes)

8.4 Step 4: determine if there is any Catch-up Amount in respect of catch up Recovery

8.4.1 For each Service Period that has completed, the Principal Representative will calculate:

- (a) Recovery Amount; and
- (b) Recovery Target.

8.4.2 If the aggregate amount of tonnes calculated under clause 8.4.1(a) of Part 1 of this Schedule 6 for all Service Periods that have completed is greater than or equal to the aggregate amount of tonnes calculated under clause 8.4.1(b) of Part 1 of this Schedule 6 for all Service Periods that have completed, then the Catch-up Amount equals:

- (a) if the Catch-up Amount is being calculated for Service Period 1, 2, 3, 4 or 5 - the aggregate sum of all Reconciliation Amounts that that have been paid to the Principal relating to any of those Service Periods less any Catch-up Amount that has already been paid to the Contractor relating to any of those Service Periods;
- (b) if the Catch-up Amount is being calculated for Service Period 6, 7, 8, 9, 10 or 11 - the aggregate sum of all Reconciliation Amounts that that have been paid to the Principal relating to any of those Service Periods less any Catch-up Amount that has already been paid to the Contractor relating to any of those Service Periods;
- (c) if the Catch-up Amount is being calculated for any Service Period following Service Period 11 - the aggregate sum of all Reconciliation Amounts that that have been paid to the Principal relating to any of those Service Periods following Service Period 11 less any Catch-up Amount that has already been paid to the Contractor relating to any of those Service Periods following Service Period 11.

9. Proportional Fee

9.1 This clause applies to all categories of Waste including Clean up Waste.

9.2 For any Fee that the Principal is required to pay to the Contractor under this Agreement, the Proportional Fee for each Principal Council must be calculated as follows:

$$PF = F \times (AW_{\text{Total Covered LGA}} / AW_{\text{Total}})$$

Where:

PF = Proportional Fee

$AW_{\text{Total Covered LGA}}$ = for any Fee attributable to:

- Service Period 1, the Reference Weight for the Covered LGA of the Principal Council (tonnes); and
- other Service Periods, the Weight Estimate for the Covered LGA of the Principal Council in that Service Period (tonnes).

AW_{Total} = for any Fee attributable to:

- Service Period 1, the combined total of the Reference Weights of each Covered LGA; and
- for other Service Periods, the combined total of the Weight Estimates of each Covered LGA in that Service Period (tonnes).

10. Disposal Rate and adjustments

10.1 This clause applies to all categories of Waste including Clean up Waste.

10.2 For Service Period 1 the Disposal Rate is:

10.2.1 [REDACTED]/tonne, for all categories of Waste (excluding Clean up Waste); and

10.2.2 [REDACTED]tonne, for Clean up Waste.

10.3 For each subsequent Service Period, the Disposal Rate is calculated on each Adjustment Date in accordance with the following formula and then rounded to the nearest whole cent:

$$DR_x = DR_1 + AA_x + VA$$

Where:

DR_x = Disposal Rate for the relevant Service Period

DR_1 = Disposal Rate at the Commencement Date

AA_x = the sum of any Adjustment Amounts included in respect of the Disposal Rate in accordance with clause 12 of Part 1 of this Schedule 6

VA = any Variation Amount permitted under clause 22

11. Processing Rate and adjustments

11.1 This clause applies to all categories of Waste including Clean up Waste.

- 11.2 For Service Period 1 the Processing Rate is:
- 11.2.1 [REDACTED]/tonne, for all categories of Waste (excluding Clean up Waste); and
- 11.2.2 [REDACTED]tonne, for Clean up Waste.
- 11.3 For each subsequent Service Period, the Processing Rate is calculated on each Adjustment Date in accordance with the following formula and then rounded to the nearest whole cent:

$$PR_x = PR_1 + AA_x + VA$$

Where:

- PR_x = Processing Rate for the relevant Service Period
- PR_1 = Processing Rate at the Commencement Date
- AA_x = the sum of any Adjustment Amounts included in respect of the Processing Rate in accordance with clause 12 of Part 1 of this Schedule 6
- VA = any Variation Amount permitted under clause 22

12. Adjustment Amounts

- 12.1 This clause applies to all categories of Waste including Clean up Waste.
- 12.2 After the initial Service Period, the following Adjustment Amounts may be added to the Disposal Rate for each subsequent Service Period in accordance with clause 10.3 of Part 1 of this Schedule 6:
- 12.2.1 **'Transport Adjustment Amount'**, calculated in accordance with clause 12.4 of Part 1 of this Schedule 6;
- 12.2.2 **'Electricity Adjustment Amount'**, calculated in accordance with 12.5 of this Schedule 6;
- 12.2.3 **'Labour Adjustment Amount'**, calculated in accordance with 12.6 of this Schedule 6; and
- 12.2.4 **'Other Adjustment Amount'**, calculated in accordance with 12.7 of Part 1 of this Schedule 6.
- 12.3 After the initial Service Period, the following Adjustment Amounts may be added to the Processing Rate for each subsequent Service Period in accordance with clause 11.3 of this Schedule 6:
- 12.3.1 **'Transport Adjustment Amount'**, calculated in accordance with clause 12.4 of Part 1 of this Schedule 6;
- 12.3.2 **'Electricity Adjustment Amount'**, calculated in accordance with 12.5 of this Schedule 6;
- 12.3.3 **'Labour Adjustment Amount'**, calculated in accordance with 12.6 of this Schedule 6;
- 12.3.4 **'Other Adjustment Amount'**, calculated in accordance with 12.7 of Part 1 of this Schedule 6; and

12.3.5 'Waste Levy Adjustment Amount', calculated in accordance with 12.8 of Part 1 of this Schedule 6

12.4 The Transport Adjustment Amount must be calculated as follows:

$$\text{Transport Adjustment Amount} = R_1 \left(\frac{T_X - T_1}{T_1} \right) W_T$$

Where:

R_1 = the Processing Rate or Disposal Rate at the Commencement Date

T_X = the Transport Cost Index for the current Service Period

T_1 = the Transport Cost Index at the Commencement Date

W_T = the 'Transport Costs Weighting', being:

- in respect of the Processing Rate: 8.7% (for all categories of Waste excluding Clean up Waste) and 5.75% (for Clean up Waste); and
- in respect of the Disposal Rate: 28.5% (for all categories of Waste excluding Clean up Waste) and 5.75% (for Clean up Waste),

as adjusted under clause 13 of Part 1 of this Schedule 6.

12.5 The Electricity Adjustment Amount must be calculated as follows:

$$\text{Electricity Adjustment Amount} = R_1 \left(\frac{E_X - E_1}{E_1} \right) W_E$$

Where:

R_1 = the Processing Rate or Disposal Rate at the Commencement Date

E_X = the Electricity Cost Index for the current Service Period

E_1 = the Electricity Cost Index at the Commencement Date

W_E = the 'Electricity Costs Weighting', being:

- in respect of the Processing Rate: 4.9% (for all categories of Waste excluding Clean up Waste) and 2.66% (for Clean up Waste); and
- in respect of the Disposal Rate: 1.6% (for all categories of Waste excluding Clean up Waste) and 2.66% (for Clean up Waste),

as adjusted under clause 13 of this Schedule 6.

12.6 The Labour Adjustment Amount must be calculated as follows:

$$\text{Labour Adjustment Amount} = R_1 \left(\frac{L_X - L_1}{L_1} \right) W_L$$

Where:

R_1 = the Processing Rate or Disposal Rate at the Commencement Date

- L_x = the Labour Cost Index for the current Service Period
- L_1 = the Labour Cost Index at the Commencement Date
- W_L = the '**Labour Costs Weighting**', being:
- in respect of the Processing Rate: 6.4% (for all categories of Waste excluding Clean up Waste) and 13.34% (for Clean up Waste); and
 - in respect of the Disposal Rate: 8.9% (for all categories of Waste excluding Clean up Waste) and 13.34% (for Clean up Waste),
- as adjusted under clause 13 of this Schedule 6.

12.7 The Other Adjustment Amount must be calculated as follows:

$$\text{Other Adjustment Amount} = R_1 \left(\frac{O_x - O_1}{O_1} \right) W_o$$

Where:

- R_1 = the Processing Rate or Disposal Rate at the Commencement Date
- O_x = the Consumer Price Index last published by the Australian Statistician when the Adjustment Amount is calculated
- O_1 = the Consumer Price Index last published by the Australian Statistician at the Commencement Date
- W_o = the '**Other Costs Weighting**', being:
- in respect of the Processing Rate: 59.3% (for all categories of Waste excluding Clean up Waste) and 78.24% (for Clean up Waste); and
 - in respect of the Disposal Rate: 61% (for all categories of Waste excluding Clean up Waste) and 78.24% (for Clean up Waste),
 - as adjusted under clause 13 of Part 1 of this Schedule 6.

12.8 The Waste Levy Adjustment Amount is zero for Clean up Waste and must be calculated as follows for all other categories of Waste:

$$\text{Waste Levy Adjustment Amount} = PR_1 \left(\frac{WL_x - WL_1}{WL_1} \right) W_{WL}$$

Where:

- PR_1 = the Processing Rate at the Commencement Date
- WL_x = the Waste Levy applicable under the *Protection of the Environment Operations Act 1997* (NSW) when the Adjustment Amount is calculated
- WL_1 = the Waste Levy applicable under the *Protection of the Environment Operations Act 1997* (NSW) at the Commencement Date

W_{WL} = the 'Waste Levy Weighting', being 20.7%, in respect of the Processing Rate for all categories of waste excluding Clean up Waste, as adjusted under clause 13 of Part 1 of this Schedule 6.

13. Changes to Adjustment Amount weightings

The Transport Costs Weighting, Electricity Costs Weighting, Transport Costs Weighting, Waste Levy Weighting or Other Costs Weighting referred to in clause 12 of Part 1 of this Schedule 6 (**Weightings**) may be changed if:

- 13.1.1 at any time prior to an Adjustment Date, the Contractor issues a written notice to the Principal Representative (**Weightings Notice**) that:
 - (a) requests that the Weightings be changed;
 - (b) states the requested adjustments to the Weightings; and
 - (c) includes all evidence on an open book basis reasonably necessary to fully substantiate and justify each change to the Weightings;
- 13.1.2 within 15 Business Days after the Principal Representative's receipt of the Weightings Notice the Principal Representative has made a reasonable request for further evidence to be provided by the Contractor to justify and substantiate any adjustment to the Weightings, such additional evidence has been provided to the Principal's reasonable satisfaction; and
- 13.1.3 a Dispute notice has not been issued by the Principal under clause 30 to dispute any aspect of the Weightings Notice, within 20 Business Days after the Principal's receipt of the Weightings Notice.

PART 2 Clean up Waste

In this Part 2 of Schedule 6 all references to Waste (and all related definitions, including 'Available Waste' and 'Allocated Waste') are to Clean up Waste only (and are exclusive of all other categories of Waste).

1. Defined terms

1.1 In this Part 2 of Schedule 6, defined terms have the same meaning as in Schedule 3 of the Agreement, unless otherwise defined below:

- 1.1.1 **AW_{Total SP}** means the total weight in tonnes of all Allocated Waste delivered to Nominated Facilities in the relevant Service Period minus the Allocated Waste that is identified as Unlawful Materials under the Unlawful Material Protocol in that Service Period.
- 1.1.2 **Base Fee** or **BF** means the amount of money to be calculated in respect of a Payment Period in accordance with clause 5.1 of Part 2 of this Schedule 6.
- 1.1.3 **Disposal Fee** or **DF** means the amount of money to be calculated in respect of a Payment Period in accordance with clause 6.1 of Part 2 of this Schedule 6.
- 1.1.4 **Disposal Amount** or **DA** means for each Service Period, the amount of tonnes specified as such in clause 4 of Part 2 of this Schedule 6 that is not to be Processed at the Processing Facility but is to be lawfully Disposed of.
- 1.1.5 **Disposal Rate** means the amount of money payable per tonne of Waste specified in clause 10.2 and 10.3 of Part 1 of this Schedule 6, in respect of Clean up Waste.
- 1.1.6 **Processing Fee** or **PF** means the amount of money to be calculated in respect of a Payment Period in accordance with clause 7.1 of Part 2 of this Schedule 6.
- 1.1.7 **Processing Amount** or **PA** means for each Service Period, the amount of tonnes specified as such in clause 4 of Part 2 of this Schedule 6 that is to be Processed at the Processing Facility.
- 1.1.8 **Processing Rate** means the amount of money payable per tonne of Waste specified in clause 11.1 and 11.3 of Part 1 of this Schedule 6, in respect of Clean up Waste.
- 1.1.9 **Recovery Target** or **RT** means the tonnes specified in clause 3 of Part 2 of this Schedule 6 for each Service Period, being the tonnes of Allocated Waste that are required under this Agreement to be Recovered by the Waste Processing Services in each Service Period.
- 1.1.10 **Recovery Amount** or **RA** means the tonnes calculated in accordance with clause 2 of Part 2 of this Schedule 6, being for each Service Period, the tonnes of Allocated Waste that is Recovered by the Waste Processing Services.
- 1.1.11 **Total Base Fee** or **TBF** means the amount of money to be calculated in respect of a Service Period in accordance with clause 5.2 of Part 2 of this Schedule 6.

2. Recovery Amount (Clean up Waste)

The Recovery Amount must be determined for a Service Period in accordance with the following formula:

$$RA = MER \times PAW_{\text{Total SP}}$$

Where:

RA = the Recovery Amount achieved for the relevant Service Period in respect of Allocated Waste

MER (Model efficiency rate in the Service Period for the Processing Facility)

$$= 1 - (T_{\text{Residue}} / T_{\text{Received}})$$

T_{Residue} = total weight of

- Residue produced by; and
 - material used as operational cover that was produced by,
- Processing at the Processing Facility in the relevant Service Period

T_{Received} = total weight of all waste received at the Processing Facility in the relevant Service Period

$PAW_{\text{Total SP}}$ = the total weight in tonnes of all Allocated Waste delivered to the Processing Facility in the relevant Service Period.

3. Achieving Recovery Targets (Clean up Waste)

For each Service Period specified in column 1 of the following table, the Recovery Target for that Service Period is specified in column 2 of the following table.

Column 1	Column 2
Service Period	Recovery Target (tonnes) for Service Period
Service Period 1	0
Service Period 2	0
Service Period 3	0
Service Period 4	$0.5 \times AW_{\text{Total SP}}$
Service Period 5	$0.85 \times AW_{\text{Total SP}}$
Service Period 6	$0.85 \times AW_{\text{Total SP}}$
Service Period 7	$0.85 \times AW_{\text{Total SP}}$
Service Period 8	$0.85 \times AW_{\text{Total SP}}$
Service Period 9	$0.85 \times AW_{\text{Total SP}}$

Column 1	Column 2
Service Period	Recovery Target (tonnes) for Service Period
Service Period 10	0.85 x AW _{Total SP}
Service Period 11	0.85 x AW _{Total SP}

4. Processing Amount and Disposal Amount (Clean up Waste)

4.1 For each Service Period specified in column 1 of the following table:

4.1.1 the Disposal Amount is the amount of tonnes specified in column 2 of the following table; and

4.1.2 the Processing Amount is the amount of tonnes specified in column 3 of the following table,

calculated at the beginning of the relevant Service Period based on:

4.1.3 the Reference Weight for Service Period 1; and

4.1.4 the applicable Weight Estimate for each other Service Period,

subject to the reconciliation after the end of each Service Period under clause 8 of Part 2 of this Schedule 6.

Column 1	Column 2	Column 3
Service Period	Disposal Amount (tonnes)	Processing Amount (tonnes)
Service Period 1	AW _{Total SP}	0
Service Period 2	AW _{Total SP}	0
Service Period 3	0	AW _{Total SP}
Service Period 4	0	AW _{Total SP}
Service Period 5	0	AW _{Total SP}
Service Period 6	0	AW _{Total SP}
Service Period 7	0	AW _{Total SP}
Service Period 8	0	AW _{Total SP}

Column 1	Column 2	Column 3
Service Period	Disposal Amount (tonnes)	Processing Amount (tonnes)
Service Period 9	0	AW _{Total SP}
Service Period 10	0	AW _{Total SP}
Service Period 11	0	AW _{Total SP}

5. Base Fee and Total Base Fee (Clean up Waste)

5.1 The Base Fee must be calculated (for each Payment Period) as follows:

$$BF = DF + PF$$

Where:

BF = Base Fee (\$)

DF = Disposal Fee (\$)

PF = Processing Fee (\$)

5.2 The Total Base Fee must be calculated (for each Service Period) as follows:

$$TBF = BF \times PP$$

Where:

TBF = Total Base Fee (\$)

BF = Base Fee (\$)

PP = the number of Payment Periods in the Service Period

6. Disposal Fee (Clean up Waste)

6.1 The Disposal Fee must be calculated (for each Payment Period) as follows:

$$DF = (DR + L) \times DA/PP$$

Where:

DF = Disposal Fee (\$)

DR = Disposal Rate (\$/tonnes)

L = Waste Levy (\$/tonnes)

DA = Disposal Amount (tonnes) for the Service Period in which the Payment Period occurs (calculated in accordance with clause 4 of Part 2 of this Schedule 6)

PP = the number of Payment Periods in the Service Period

7. Processing Fee (Clean up Waste)

7.1 The Processing Fee must be calculated for each Payment Period as follows:

$$PF = PR \times PA/PP$$

Where:

PF = Processing Fee (\$)

PR = Processing Rate (\$/tonnes)

PA = Processing Amount (tonnes) for the Service Period in which the Payment Period occurs (calculated in accordance with clause 4 of Part 2 of this Schedule 6)

PP = the number of Payment Periods in the Service Period

8. Previous Service Period Reconciliation (Clean up Waste)

The Principal Representative must carry out a reconciliation after the end of each Service Period to validate and reconcile the actual and estimated volumes and weights of Allocated Waste the subject of the Services and any part of the Services during the previous Service Period.

Schedule 7 Forms

[Default Notice – clause 28.2 Agreement]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: [REDACTED]

Default Notice Clause 28.2 Agreement

This is a Default Notice issued in accordance with clause 28.2 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [*insert contract date*] 2015.

1. The Default Event to which the Default Notice applies is as follows:
[insert details of the Default Event to which the Default Notice applies].
2. The action/s the Contractor must take to remedy the Default Event is/are as follows:
[insert the action/s the Contractor must take to remedy the Default Event].
3. The date by which the Default Event must be remedied is [*insert date*].

[Optional]

4. [*If the Principal Representative requires a rectification plan under clause 28.2.1(c)*] Please submit a rectification plan by [*insert date*], detailing the steps that will be undertaken to:
 - (a) correct and remedy the Default Event; and
 - (b) [*if the Default Notice is in respect of the Default Event specified in clause 28.1.2(b)*] ensure that sufficient Waste is Recovered so that any shortfall in the Recovery Target in previous Service Periods is redressed in subsequent Service Periods and future Recovery Targets are achieved.

Yours faithfully

Principal Representative

***[Note: If the Contractor Representative has changed, then insert the new Contractor Representative]**

[Enforcement Notice – clause 28.3 Agreement]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: [REDACTED]

**Enforcement Notice
Clause 28.3 Agreement**

This is an Enforcement Notice in accordance with Clause 28.3 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015.

This Enforcement Notice is being served on the basis that:

[insert relevant basis listed in clause 28.3.1]

The Principal directs that:

[insert conditions/effect of Enforcement Notice in accordance with clause 28.3.2]

Yours faithfully

Principal Representative

***[Note: If the Contractor Representative has changed, then insert the new Contractor Representative]**

[First Dispute Notice – clause 30.3 Agreement]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: [REDACTED]

OR

Northern Sydney Regional Organisation of Councils
PO Box 20
LANE COVE NSW 1595

Attention: Assistant Director*

**First Dispute Notice
Clause 30.3 Agreement**

This is a notice under clause 30.3 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [*insert contract date*] 2015.

The [*Principal/Contractor*] hereby gives notice of the following dispute:

[Specify the details of the dispute adequately identifying the dispute or attach details to letter].

Yours faithfully

[*Principal Representative / Contractor Representative*]

***[Note: If the Principal Representative or Contractor Representative has changed, then insert the new Principal Representative or Contractor Representative]**

[Second Dispute Notice – clause 30.4 Agreement]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: [REDACTED]

OR

Northern Sydney Regional Organisation of Councils
PO Box 20
LANE COVE NSW 1595

Attention: Assistant Director*

**Second Dispute Notice
Clause 30.4 Agreement**

We refer to the First Dispute Notice dated [insert date].

In accordance with clause 30.4 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015, the [Contractor/Principal] hereby submits the Dispute to the designated officers specified in Schedule 2 to the Agreement.

We propose that the first meeting be held on [insert nominated date, being no more than 20 Business Days after date of notice] in Sydney.

Yours faithfully

[Principal Representative / Contractor Representative]

***[Note: If the Principal Representative or Contractor Representative has changed, then insert the new Principal Representative or Contractor Representative]**

[Mediation Notice – clause 30.5 Agreement]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: [REDACTED]

OR

Northern Sydney Regional Organisation of Councils
PO Box 20
LANE COVE NSW 1595

Attention: Assistant Director*

**Mediation Notice
Clause 30.5 Agreement**

We refer to the Second Dispute Notice dated [insert date].

In accordance with clause 30.5 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015, the [Contractor / Principal] requires that the Dispute be mediated between the designated officers specified in Schedule 2 to the Agreement.

We propose that the mediation be conducted by [insert nominated mediator].

Yours faithfully

[Principal Representative / Contractor Representative]

***[Note: If the Principal Representative or Contractor Representative has changed, then insert the new Principal Representative or Contractor Representative]**

[Expert Notice – clause 30.6 Agreement]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: [REDACTED]

OR

Northern Sydney Regional Organisation of Councils
PO Box 20
LANE COVE NSW 1595

Attention: Assistant Director*

**Expert Notice
Clause 30.6 Agreement**

We refer to the Second Dispute Notice dated [insert date].

[If the Dispute relates to a Claim amount] We confirm that the Dispute where the amount claimed is less than \$500,000 (GST exclusive and exclusive of legal costs and interest).

In accordance with clause 30.6 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015, the [Contractor / Principal] requires that the Dispute be the subject of a determination by an Expert.

We propose that the expert determination be conducted by [insert nominated Expert].

Yours faithfully

[Principal Representative / Contractor Representative]

***[Note: If the Principal Representative or Contractor Representative has changed, then insert the new Principal Representative or Contractor Representative]**

[Payment Claim – clause 19.3]

[Date]

Northern Sydney Regional Organisation of Councils
PO Box 20
LANE COVE NSW 1595

Attention: Assistant Director*

**Payment Claim
Clause 19.3**

In accordance with clause 19.3 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around *[insert contract date]* 2015.

The Contractor claims the amount of \$*[insert amount claimed]* by way of payment under *[insert relevant subsection of clause 19.3.1]*.

In support of this Payment Claim we enclose:

1. supporting documentation verifying the amount claimed, including the Services performed and the Fee applicable to those Services;
2. *[If the Payment Claim is in respect of the Base Fee for Disposal]* certification from the *[insert name of Disposal Facility where Waste was disposed of]* in accordance with clause 19.4.2(a) of the Agreement;
3. *[If the Payment Claim is in respect of the Base Fee for Processing]* certification from the *[insert name of Processing Facility where Waste was Processed]* in accordance with clause 19.4.2(b) of the Agreement; and
4. a Statutory Declaration certifying that the requirements of clause 19.3.4 have been met.

Yours faithfully

Veolia Environmental Services (Australia) Pty Ltd

****[Note: If the Principal Representative has changed, then insert the new Principal Representative]***

[Statutory Declaration to accompany Payment Claim]

STATUTORY DECLARATION – Oaths Act 1900 (NSW)

In this Statutory Declaration, except where the contrary intention is expressed, defined terms have the same meaning as in the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015

I,.....(insert full name)
.....(insert position held)
of.....(insert name of Contractor)
.....(insert address of Contractor)

in the State of New South Wales, do solemnly and sincerely declare that in relation to the Payment Claim dated [insert date of Payment Claim], the Contractor:

1. has paid all wages and allowances owing to any of its employees in respect of the work claimed for;
2. has paid all amounts due to any person, including any relevant government taxes, levies or charges, in respect of the work claimed for to which it has subcontracted any of its rights and obligations under the Agreement;
3. has made any payments that it is required to make in respect of the Contractor Vehicles, Contractor Plant and the Contractor Facilities up to the end of the period to which the claim applies;
4. it has paid all superannuation components payable; and
5. it has made all other payments for costs which were expended in delivering services under the Agreement.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1900*.

Declared at)
in the State of New South Wales this)
day of 2015)

Before me:

Signature:

Full Name:

Address:

Occupation:

(Justice of the Peace; Solicitor or Barrister holding a current practising certificate; Notary Public, Commissioner of the court for taking affidavits)

ATTACHMENT A

Certificate under s 34 (1) (c) of Oaths Act 1900 (NSW)

I **##name** a solicitor of the Supreme Court of NSW, certify the following matters concerning the making of this statutory declaration by the person who made it:

1. **##I** saw the face of the person. OR

##I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2. **##I** have known the person for at least 12 months. OR

##I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was **##describe** identification document relied on.

Signed:

Date:

DECLARED at)
in the State of New South Wales this)
day of)
.....)
Two thousand and fifteen)

Before me
(A person authorised under the *Oaths Act* (NSW) 1900 to take Statutory Declarations)

[Payment Certificate – clause 19.5]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: Mr [REDACTED]

**Payment Certificate
Clause 19.5**

This is a Payment Certificate in accordance with Clause 19.5 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015.

[If the Payment Certificate relates to a Payment Claim] The Payment Claim to which this Payment Certificate relates was issued by the Contractor on [insert date] in the amount of [insert].

The amount assessed by the Principal Representative as payable is:

[insert amount payable including a breakdown of calculations against the Payment Claim if relevant]

[insert the Proportional Fee payable by each Principal Council]

[insert any differences in the amount claimed under the Payment Claim and any reasons for this difference]

[insert amounts otherwise due from the Principal to the Contractor or the Contractor to the Principal or for which the Principal is entitled to set-off under clause 19.13 of the Agreement].

[insert total amounts previously paid to the Contractor under the Agreement].

Yours faithfully

Principal Representative

***[Note: If the Contractor Representative has changed, then insert the new Contractor Representative]**

[Final Payment Claim – clause 20.2 Agreement]

[Date]

Northern Sydney Regional Organisation of Councils
PO Box 20
LANE COVE NSW 1595

Attention: Assistant Director*

**Final Payment Claim for Service Period [insert Service Period]
Clause 20.2 Agreement**

In accordance with clause 20.2 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015.

The Contractor claims the amount of \$[insert amount claimed] by way of final payment up to the end of Service Period [insert Service Period to which final payment claim relates].

In support of the Final Payment Claim we enclose:

1. supporting documentation:
 - (a) verifying the amount claimed, including the Services performed and the Fee applicable to those Services, which also fully identifies and justifies all claims against all prior Payment Claims and Payment Certificates;
 - (b) *[if the Final Payment Claim is in respect of the last Service Period of the Term]* identifying the Security Amount held and all other amounts retained by the Principal;
 - (c) *[if the Final Payment Claim is in respect of the last Service Period of the Term]* provides notice of all liability, cost or expense that the Contractor claims from the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with the Agreement which occurred during the Term;
2. *[If the Final Payment Claim is in respect of the Base Fee for Disposal]* certification from the *[insert name of Disposal Facility where Waste was Disposed of]* in accordance with clause 19.4.2(a) of the Agreement;
3. *[If the Final Payment Claim is in respect of the Base Fee for Processing]* certification from the *[insert name of Processing Facility where Waste was Processed]* in accordance with clause 19.4.2(b) of the Agreement; and
4. a Statutory Declaration certifying that the requirements of clause 19.3.4 have been met.

Yours faithfully

Veolia Environmental Services (Australia) Pty Ltd

***[Note: If the Principal Representative has changed, then insert the new Principal Representative]**

[Statutory Declaration to accompany Final Payment Claim]

STATUTORY DECLARATION – Oaths Act 1900 (NSW)

In this Statutory Declaration, except where the contrary intention is expressed, defined terms have the same meaning as in the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015

I,.....(insert full name)
.....(insert position held)
of.....(insert name of Contractor)
.....(insert address of Contractor)

in the State of New South Wales, do solemnly and sincerely declare that in relation to the Final Payment Claim dated [insert date of Final Payment Claim], the Contractor:

1. has paid all wages and allowances owing to any of its employees in respect of the work claimed for;
2. has paid all amounts due to any person, including any relevant government taxes, levies or charges, in respect of the work claimed for to which it has subcontracted any of its rights and obligations under the Agreement;
3. has made any payments that it is required to make in respect of the Contractor Vehicles, Contractor Plant and the Contractor Facilities up to the end of the period to which the claim applies;
4. it has paid all superannuation components payable; and
5. it has made all other payments for costs which were expended in delivering services under the Agreement.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1900*.

Declared at)
in the State of New South Wales this)
day of 2015)

Before me:

Signature:

Full Name:

Address:

Occupation:

(Justice of the Peace; Solicitor or Barrister holding a current practising certificate; Notary Public, Commissioner of the court for taking affidavits)

ATTACHMENT A

Certificate under s 34 (1) (c) of Oaths Act 1900 (NSW)

I **##name** a solicitor of the Supreme Court of NSW, certify the following matters concerning the making of this statutory declaration by the person who made it:

- 1. **##I** saw the face of the person. OR

##I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2. **##I** have known the person for at least 12 months. OR

##I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was **##describe** identification document relied on.

Signed:

Date:

DECLARED at)
 in the State of New South Wales this)
 day of)
)
 Two thousand and fifteen)
 Before me)
 (A person authorised under the *Oaths Act* (NSW) 1900 to take Statutory Declarations)

[Final Payment Certificate – clause 20.4]

[Date]

Veolia Environmental Services (Australia) Pty Ltd
PO Box 171
GRANVILLE NSW 2142

Attention: [REDACTED]

**Final Payment Certificate
Clause 20.4**

This is a Payment Certificate in accordance with Clause 20.4 of the agreement (**Agreement**) between Willoughby City Council, Lane Cove Council, City of Ryde, Ku-ring-gai Council and Hunter's Hill Council (**Principal Councils**) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584) (**Contractor**) dated on or around [insert contract date] 2015.

The Final Payment Claim to which this Final Payment Certificate relates was issued by the Contractor on [insert date] in the amount of [insert].

[Insert Option 2 if the Final Payment Certificate relates to the Final Payment Claim for the final Service Period in the Term, otherwise Option 1]

[Option 1] The amount assessed by the Principal Representative as payable is:

[insert amount payable including a breakdown of calculations against the Final Payment Claim if relevant]

[insert the Proportional Fee payable by each Principal Council]

[insert any differences in the amount claimed under the Final Payment Claim and any reasons for this difference]

[insert amounts otherwise due from the Principal to the Contractor or the Contractor to the Principal or for which the Principal is entitled to set-off under clause 19.13 of the Agreement].

[insert total amounts previously paid to the Contractor under the Agreement].

[Option 2] The Principal Representative certifies that amount which is finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of the Agreement is:

[insert amount payable including a breakdown of calculations against the Final Payment Claim if relevant]

[insert the Proportional Fee payable by each Principal Council]

[insert any differences in the amount claimed under the Final Payment Claim and any reasons for this difference]

[insert amounts otherwise due from the Principal to the Contractor or the Contractor to the Principal or for which the Principal is entitled to set-off under clause 19.13 of the Agreement].

[insert total amounts previously paid to the Contractor under the Agreement].

Yours faithfully

Principal Representative

***[Note: If the Contractor Representative has changed, then insert the new Contractor Representative]**

Schedule 8 Specified Risks

See clause 5.2. This is a list of some particular risks accepted by the Contractor subject to the Agreement. The list does not limit the generality of clause 5.2 or any other provision of the Agreement.

No.	Specified Risks
1.	The actual cost of performing the Services or any portion of them being greater than the cost estimated at any time.
2.	Liability for Taxes. <i>[Note: clause 22 permits a rate adjustment for a Qualifying Change]</i>
3.	The creation or imposition of Taxes or imposts in relation to the Services, whether or not existing at the date of this Agreement. <i>[Note: clause 22 permits a rate adjustment for a Qualifying Change]</i>
4.	Any Law as at the date of this Agreement or in the future (including any Change in Law) affecting the nature or extent of its rights or obligations under this Agreement (including the carrying out of or performance of any Services or its ability to exercise those rights or perform those obligations including any requirement to obtain any Authorisation or the conditions of, delay in obtaining or refusal of any Authorisation or the challenge to the validity of any Authorisation). <i>[Note: clause 22 permits a rate adjustment for a Qualifying Change]</i>
5.	The risk (including delay, cost or disruption to the delivery of the Services) of industrial action or industrial interference from third parties except to the extent that such industrial action or industrial interference arises out of or in connection with the negligence of or breach of this Agreement by the Principal, its employees, contractors (other than the Contractor) or agents.
6.	The risks associated with inclement weather, including the risk of delay, increased cost or decreased revenue.
7.	The condition (whether latent or manifest) of or availability of any Contractor Facility or Contractor Plant.
8.	The cost or delay in obtaining access to any Contractor Facility.
9.	The ability to obtain or cost of obtaining any Authorisation or the requirements of or delay by any other act or omission of any Authority including the imposition of any conditions or delay in granting or refusal to grant an Authorisation.
10.	The availability or cost of or adequacy of any insurance.
11.	Work health and safety matters.
12.	Pollution or other Environmental Aspect.
13.	The risk that Waste has or does not have any or any particular Characteristic.
14.	The risk of delay in the delivery of any plant, equipment or facility or in the performance of the Services.

Schedule 9 Form of Bank Guarantee

Approved form of Bank Guarantee

At the request of
ACN ABN(the *Contractor*) and in consideration of
Willoughby City Council ABN 47 974 826 099, Lane Cove Council ABN 42 062 211 626, City of Ryde ABN 81
621 292 610, Ku-ring-gai Council ABN 86 408 856 411 and Hunter's Hill Council ABN 75 570 316 011
(together, the *Principal*) accepting this undertaking in respect of the *Contract* for Waste Processing and
Disposal Services (the *Project*)
.....
ACN ABN(the *Financial Institution*) unconditionally
undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to
a maximum aggregate sum of
..... (\$)

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer
required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the
Principal by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by
..... for and on behalf of the *Principal* that the *Principal* desires
payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial
Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and
notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required to do so pay to the
Principal the sum of
..... (\$)
less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be
required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall
immediately cease.

Dated at this day of 20

Schedule 10 Quarterly Reconciliation Statement

Note: in this statement, references to 'AW' are to 'Available Waste excluding Clean up Waste' and references to 'CU' are to 'Clean up Waste'.

1. Particulars for Quarter

<insert date, reference to Service Period, description of Quarter/relevant Payment Periods, other information, etc>

<insert summary information including: Waste accepted in total from the Principal, tonnes processed for each facility (tonnes in total and total tonnes from all Principal Councils), Diverted/non-Diverted Material for each facility, etc>



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2. Quarterly Waste accepted (proportioned by Principal Council)

Variable	Unit	Total	Portion by Council				Contract Reference
			Council 1	Council 2	Council 3	Council 4	
Agreed Estimate for Quarter (~ 25% of Agreed Annual Estimate)							
AW TOTAL	Tonnes						
CU TOTAL	Tonnes						
AW + CU TOTAL	Tonnes						
Actual Accepted Available Waste [AW] for Quarter							
AW (First Month)	Tonnes						
AW (Second Month)	Tonnes						
AW (Third Month)	Tonnes						
AW (Quarter Total)	Tonnes						
Actual Accepted Clean-up Waste [CU] for Quarter							
CU (First Month)	Tonnes						
CU (Second Month)	Tonnes						
CU (Third Month)	Tonnes						
CU (Quarter Total)	Tonnes						
AW + CU (Quarter Total)	Tonnes						
	\$						



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3. Quarterly Facility Performance – Processing

Variable	Unit	Total	Woodlawn	Camellia
Expected NSROC Processing Tonnage for Quarter [- Processing Amount for Service Period x (months in Quarter)/(months in Service Period)]				
(33000 tpa)	Tonnes	8250		
Total Tonnage Processed in Quarter				
AW (First Month)	Tonnes			
AW (Second Month)	Tonnes			
AW (Third Month)	Tonnes			
AW (Total for Quarter)	Tonnes			
CU (First Month)	Tonnes			
CU (Second Month)	Tonnes			
CU (Third Month)	Tonnes			
CU (Total for Quarter)	Tonnes			
AW + CU (Quarter Total)	Tonnes			
NSROC Tonnage Processed in Quarter				
AW (First Month)	Tonnes			
AW (Second Month)	Tonnes			
AW (Third Month)	Tonnes			
AW (Total for Quarter)	Tonnes			
CU (First Month)	Tonnes			
CU (Second Month)	Tonnes			
CU (Third Month)	Tonnes			
CU (Total for Quarter)	Tonnes			
AW + CU (Quarter Total)	Tonnes			



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4. Quarterly Facility Performance – Recovery

Variable	Unit	Total	Diverted Material				Non-Diverted Material		
			Compost Like Output	Refuse Derived Fuel	Recyclables	Other	Residue	Operational Cover	Other
Tonnage (Diverted Material and Non-Diverted Material) in Quarter									
Expected Recovery Tonnage for Quarter [- Recovery Target x (months In Quarter)/(months In Service Period)]									
Diverted Material	Tonnes								
Non-Diverted Material	Tonnes								
Woodlawn - Total Recovery Performance in Quarter									
AW (First Month)	Tonnes								
AW (Second Month)	Tonnes								
AW (Third Month)	Tonnes								
AW (Total for Quarter)	Tonnes								
CU (First Month)	Tonnes								
CU (Second Month)	Tonnes								
CU (Third Month)	Tonnes								
CU (Total for Quarter)	Tonnes								
AW + CU (Quarter Total)	Tonnes								
Camellia - Total Recovery Performance in Quarter									
AW (First Month)	Tonnes								
AW (Second Month)	Tonnes								
AW (Third Month)	Tonnes								
AW (Total for Quarter)	Tonnes								
CU (First Month)	Tonnes								
CU (Second Month)	Tonnes								
CU (Third Month)	Tonnes								
CU (Total for Quarter)	Tonnes								
AW + CU (Quarter Total)	Tonnes								



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5. Quarterly Disposal, Processing and Recovery records

<insert schedule listing and providing full details for Disposal dockets, Processing and Recovery data, errors, etc, relating to the Quarter in spread sheet format>

Schedule 11 Weighing Protocol

General

The Agreement prevails in the case of any inconsistency with this Schedule 11, and nothing in this protocol is taken to be a variation to the Agreement.

Waste delivered to a Nominated Facility must be weighed at that entry and exit of the facility in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and related Regulations, including the *Protection of the Environment Operations (Waste) Regulation 2014*, and the requirements set out in this protocol.

The weight of the Waste must be calculated based on the actual weight of Waste not the total weight of the Waste plus the Collection Vehicle less the tare of the Collection Vehicle. Therefore, for all Nominated Facilities the vehicle must be weighed at the entrance and at the exit of the facility.

Only those vehicles that have been notified to the Contractor by the Principal Representative as being authorized vehicles under the Principal Councils' collection contracts will be accepted for transfer services under the Contract. The authorized vehicles will change from time to time and the Principal Representative will be responsible for providing the Contractor with an updated list as required.

Location of weighbridges

Current

Clyde Transfer Terminal (Clyde), transfer facility for Waste other than Clean up Waste located at 322 Parramatta Road, Auburn.

Greenacre Resource Recovery Facility transfer facility for Clean up Waste, located at 75 Anzac Street, Greenacre.

2016

Banksmeadow Transfer Terminal, located at Beauchamp Road Matraville. (*Note that the use of this facility under the Agreement is subject to clause 13.3 of the Agreement.*)

2017

Woodlawn Mechanical Biological Treatment facility incorporating refuse-derived fuel, for Waste other than Clean up Waste, located at Collector Road Tarago.

2018

Camellia Materials Recovery Facility, for Clean up Waste, located at Grand Avenue Camellia.

Receipt and transfer of Principal Waste

The general process and procedures for receipt of Waste set out in this Schedule 11 apply to all facilities accepting Waste from Principal Councils under this Agreement.

Screening and Recording of Waste

There are two main screening points when waste is delivered to the site:

- weighbridge operator questions driver as to contents of load, with follow up inspection if necessary, before allowing vehicle to proceed to the tipping facility; and

- Site Plant Operator inspection of waste as it is discharged from vehicle, to check for Unlawful Material.

The weighbridge operator is also responsible for recording all details of the waste accepted onto the site.

Weighbridge Transfer Terminal

As the vehicle approaches the weighbridge the weighbridge operator will check the customer details by entering the vehicle's registration number on the weighbridge data system. If there are any concerns or queries, the site manager will be contacted and the driver's office may be contacted.

In the case of a new or infrequent user, the weighbridge operator will follow the Veolia Procedure for New Customers, including ensuring all drivers are inducted in the operation of the site as is relevant to the delivery of waste.

The driver will indicate to the weighbridge operator the waste type that is in the load. The weighbridge operator will be trained in the waste types that are not permitted at the site.

From visual inspection, knowledge of the customer (if appropriate), driver response and weight of the waste, the weighbridge operator will assess whether the load is suitable to be allowed on the site in accordance with the Agreement including the Unlawful Material Protocol.

Should there be any reason to not permit the load onto the site, the customer will be informed and a log of waste rejected will be kept. The Unlawful Materials Protocol must be followed.

Once the weighbridge operator is satisfied that the waste appears acceptable, the following details must be recorded on the site database:

- Date
- Time
- Vehicle Registration
- Customer
- Gross weight
- Waste type.

An open ticket will be processed on the weighbridge system with the above details.

The weighbridge operator will direct the driver to front of the tipping facility where he will stop at the entrance to the tipping area, indicated by traffic lights, barrier or stop signage and wait for a signal from the Plant Operator as to where to tip his load

Once the load has been tipped the vehicle will proceed to the weighbridge on the exit side for weigh out recording. A transaction docket will be produced confirming the key details above, and the weighbridge operator will obtain the driver's signature (where applicable) to confirm the details. A copy will be given to the driver, and copies will be retained on the site for invoicing and records as required under the *Protection of the Environment Operations (Waste) Regulation 2014*.

Inspection at Unloading Point

Site operators are trained to recognise wastes that are not to be accepted at the site. In addition, operators will be trained to recognise wastes discharged in an incorrect part of the site.

As the waste truck discharges its load, if the site operator sees Unlawful Material, the driver will be informed and asked to wait at the weighbridge area. The site manager will be immediately informed who will arrange for the customer to be notified.

Where Unlawful Material is identified, if appropriate, the site operator will isolate the load, either by leaving it or by moving it to a separate place so as not to cause hazard or disruption to others. The operator must follow the Unlawful Materials Protocol.

If the operator is in any doubt as to the contents of the load, the load will be left in place and the Site Manager consulted. If possible, the driver will be asked to provide any further information on the contents.

In the event that part or the entire load is to be rejected, the Unlawful Materials Protocol must be followed.

Driver to exit the tipping area and follow the site directions to site exit.

Driver is issued with a docket detailing the date, time, waste type, gross vehicle weight, vehicle registration number and waste charges.

Driver to review the docket and sign if details are correct. If docket is incorrect the driver is to advise weighbridge operator to make necessary amendments.

Driver to exit site.

Weighbridge - Woodlawn Bioreactor

The weighbridge system at Woodlawn Bioreactor is an automatic unmanned system, using a tag system to identify specific containers. The vehicle enters the facility and proceeds to the weighbridge. The following details must be recorded on the site database:

- Date
- Time
- Vehicle Registration/Container number
- Customer
- Gross weight
- Waste type

An open ticket will be processed on the weighbridge system with the above details.

Once the load has been tipped the vehicle will proceed to the weighbridge on the exit side and a tare weight will be recorded. A transaction docket will be produced confirming the key details above, copies will be retained on the site for invoicing and records.

Inspection at Unloading Point

Site operators are trained to recognise wastes that are not to be accepted at the site.

Driver to exit the tipping area and follow the site directions to site exit.

Driver is issued with a docket detailing the date, time, waste type, gross vehicle weight, vehicle registration number.

Driver to exit site

Weighbridge – MBT

The nominated load enters the facility and proceeds to the weighbridge. The following details must be recorded on the site database:

- Date
- Time
- Vehicle Registration
- Customer
- Gross weight
- Waste type.

An open ticket will be processed on the weighbridge system with the above details.

Once the load has been tipped the vehicle will proceed to the weighbridge on the exit side (where applicable) and a tare weight will be recorded. A transaction docket will be produced confirming the key details above, copies will be retained on the site for invoicing and records.

Inspection at Unloading Point

Site operators are trained to recognise Unlawful Material that is not to be accepted at the site.

As the Collection Vehicle discharges its load, if the site operator sees Unlawful Material the truck driver will be informed and asked to wait at the weighbridge area. The site manager will be immediately informed who will arrange for the customer to be notified.

Where Unlawful Material is identified, if appropriate, the site operator will isolate the load, either by leaving it or by moving it to a separate place so as not to cause hazard or disruption to others. The operator must follow the Unlawful Materials Protocol for potential delivery to the Woodlawn Bioreactor.

Driver to exit the tipping area and follow the site directions to site exit.

Driver to exit site

Weighbridge - Woodlawn Bioreactor (Residual Waste)

Residual waste that remains after the MBT process will be loaded in vehicles for delivery to the Woodlawn Bioreactor.

The nominated load will exit the Woodlawn MBT via the weighbridge and enter the Woodlawn facility and proceeds to the weighbridge. The following details must be recorded on the site database:

- Date
- Time
- Vehicle Registration
- Customer
- Gross weight

- Waste type.

An open ticket will be processed on the weighbridge system with the above details.

Once the load has been tipped the vehicle will proceed to the weighbridge on the exit side (where applicable) and a tare weight will be recorded. A transaction docket will be produced confirming the key details above; copies will be retained on the site for invoicing and records.

The Contractor currently uses a weighbridge data system referred to as PWS (Paperless Weighbridge System)

The PWS architecture is designed for 24/7 operation.

Store and forward technology is used in all components to ensure data is not lost.

Once connectivity is established, queued data flows in both directions automatically.

Weighbridge Calibration

The Contractor must ensure all weighbridges at Nominated Facilities are verified before use by a servicing licensee or inspector and all Contractor weighbridges are recalibrated twice yearly and certification is kept on file and available for review by customers, EPA, work cover etc.

The Contractor must also ensure that each weighbridge at a Nominated Facility:

- is of an approved type
- is calibrated to zero before use
- is level when in use
- positioned so that the customer can easily see the measurement process, or else provide a written statement of the measurement
- kept clean and in good working order
- verified after each repair or metrological adjustment
- suitable for its intended purpose
- used in the correct manner.

Schedule 12 Facilities Delivery Program

Processing Facility: Woodlawn MBT		
1.	Modifications to design for MBT expansion finalised and agreed with contractor	August 2015
2.	Detailed design works complete and amended works incorporated into contractor construction programme	October 2015
3.	Revised design drawings provided to Planning Certifier	October 2015
4.	All necessary planning approvals obtained for expansion of Processing capacity to achieve Key Milestone number 7.	February 2016
5.	Construction of MBT complete	March 2017
6.	Commissioning of MBT and final completion certificate issued	April 2017
7.	Capacity to Process the Processing Amount applicable for Service Period 3.	June 2017 - 1 month prior to the commencement of Service Period 3
Processing Facility: Camellia MRF		
8.	All necessary planning approvals obtained for construction of Processing Facility to achieve Key Milestone number 14.	December 2015
9.	Site Pre-loading prior to construction	January 2016
10.	Construction contract commencement	January 2017
11.	Construction of Camellia MRF complete	November 2017
12.	Commissioning of MRF and final completion certificate issued	December 2017
13.	Completion of RDF production trials	April 2017
14.	Capacity to process all Principal Clean up Waste.	Commencement of Service Period 4

