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# Waste, Recyclables, Organics and Bulky Waste Collection Services Agreement

Willoughby City Council ABN 47 974 826 099 and

J.J. Richards & Sons Pty Ltd ACN 000 805 425



# Contents

1.	Interpretation		
	1.1	Definitions	2
	1.2	Rules for interpreting this Agreement	13
	1.3	Endorsement	15
	1.4	Business Days	16
	1.5	Multiple parties	16
	1.6	Priority of documents	16
2.	Commencement and Term		
	2.1	Commencement	17
	2.2	Extended Term	
	2.3	Pre-Start meeting.	17
	2.4	Contract Program	18
	2.5	Mobilisation Period	18
3.		sentatives	
-	•	Council's Representative	
	3.1	Contractor's Representative	10
	3.2		
4.	Services		
	4.1	Performance of the Services	
	4.2	Representation	20
	4.3	Standard of Services	20
	4.4	Acceptance of risks	21
	4.5	Contractor supplied plant, equipment and infrastructure	21
5.	Compliance		
	5.1	Compliance with Law generally	22
	5.2	Approvals	24
	5.3	Environment	24
	5.4	Cartage	25
	5.5	Cooperation with other Council staff and other contractors	25
	5.6	Contractor's Staff	26
	5.7	Subcontracting	27
	5.8	Access to Council premises and systems	27
	5.9	Making good damage	28
	5.10	Urgent action	28
	5.11	Work health and safety	28
	5.12	Principal Contractor	30
	5.13	WHS Law definitions	30
	5.14	Incidents	
	5.15	Transition of existing workforce, plant, equipment and property	31
6.	Contractor's plant, facilities and vehicles		
	6.1	Use of Contractor's Plant, Contractor's Facilities and Collection Vehicles	31
7.	Management Systems and Services Management Plans		
	7.1	Contractor's Management Systems	32
	7.2	Contractor's Services Management Plans	33
	7.3	Endorsement of Management Systems and Services Management Plans	33
	7.4	Updating Management Systems and Services Management Plans	34
	7.5	Application and Audit	
8.		mance Management System	
٠.			
	8.1	Key Performance Indicators	35



	8.2	Change to Key Performance Indicators	
	8.3	Measuring performance	35
	8.4	Performance improvement plan	35
	8.5	Council's rights not affected	36
	8.6	Acknowledgement	36
9.	Complaints and Disputed Services		
•			
	9.1	General	
	9.2	Failure to rectify complaint	30
	9.3	Disputed Services	
10.	Meetings, record keeping, reporting and verification		
	10.1	Meetings	37
	10.2	Reporting	37
	10.3	Accounts	
	10.4	Records	
	10.5	Compatibility of information systems	38
11.	Variati	ons	38
2	11.1	Definitions	38
	11.2	Variation directed by Council	39
	11.3	Agreed Variation	40
	11.4	Qualifying Change	40
	11.5	Payment of Variation Amount	43
	11.6	Variation Amount for directed Variation - covered by specified rates	
	11.7	Variation Amount for directed Variation - not covered by specified rates	44
	11.7	Contractor claim of a directed variation	45
	11.9	Limited application of clause	
		Beneficial variations	46
	11.10 11.11	Fee exclusive of Carbon Price	40
	X.		
12.	Prices	and Payment	
	12.1	Fees	47
	12.2	Monthly Statement	48
	12.3	Provision of tax invoice	49
	12.4	Payment dispute notice	
	12.5	Payment – where Monthly Statement not disputed	50
	12.6	Payment – where Monthly Statement disputed	51
	12.7	Set-off	51
	12.8	Fee adjustment	52
	12.9	Failure to provide Services	
	12.3	Reconciliation amount	53
	12.10	Rent	
13.	,		
		Definitions	(+)
	13.1		
	13.2	Interpretation	
	13.3	Payment of GST	
	13.4	Reimbursements	
	13.5	Indemnities and Claims	
	13.6	Other Taxes	
14.	Grant of Depot Lease		
3	14.1	Execution of Lease	54
	14.2	Depot Lease binding on the parties	
	14.3	No warranty as to suitability for the Services	55
	14.4	Depot availability	55



15.	Securi	ty	56
8	15.1	General	56
	15.2	Form of Security	
	15.3	Failure to lodge Security	56
	15.4	Recourse to Security	56
	15.5	Reinstatement of Security	57
	15.6	Release of Security	
	15.7	Trusts and interest	
	15.7	Survival	
16.	Emergency		
	16.1	Exercise of powers	57
	16.2	Emergency	58
	16.3	Provision of Services in an Emergency and step-in rights	58
	16.4	Contractor's obligations	58
	16.5	Suspension of obligations	
	16.6	Council's Loss	
	16.7	Council's obligations	
17.	Risk ar	nd Insurance	59
	17.1	Care of assets	
2.7	17.1	Obligation to maintain insurances	
	17.2		
ē		Public and products liability insurance	
	17.4	Workers' Compensation Insurance	
	17.5	Plant and equipment insurance	
	17.6	Motor Vehicle Insurance	60
	17.7	Evidence of insurance	
	17.8	Management of insurances	
	17.9	No cancellation or avoidance	
	17.10	Subcontractors	62
	17.11	Registration with Compliance Company	62
18.	Indemr	nity and release of Council	62
	18.1	Indemnity of Council	62
	18.2	Rélease of Council	
	18.3	Survives termination and preservation of Contractor's obligations	
	18.4	Place, manner and time of payment	
	18.5	Benefit of indemnity	64
19.			
13.		ions on liability	
	19.3	Obligation to mitigate	66
20.	Force I	Majeure	7.6
	20.1	Contractor must not suspend	
	20.2	Notice of Force Majeure	66
	20.3	Mitigation	
81	20.4	Alternate arrangements	67
	20.5	Continued payment	68
	20.6	End of period of Force Majeure	68
	20.7	Recommencement Plan	68
	20.8	Termination due to Force Majeure	69
21.	Contra	ctor's default and termination	
	21.1	Default Notice	
	21.1	Enforcement Notice	
	21.2	Contractor's obligations upon receipt of termination and	
		Contractor's obligations upon receipt of termination notice	
	21.4	Council's liability on termination	
	21.5	No prejudice to accrued rights	73



	21.6	Rights limited	73
	21.7	Reconciliation of payments following termination	73
	21.8	Consideration for Services performed and no Claim	73
	21.9	Right to carry out Services.	74
	21.10	Assignment of agreements	74
	21.11	No limitation of Council's rights under the Depot Lease	74
1.5	21.12	Interdependent documents	75
22.	Contra	ctor's obligations on expiration or termination	
	22.1	Services Termination Transition Plan	
	22.2	Contractor's obligations	75
	22.3	Removal of plant and equipment	75
	22.4	Specific performance	
23.	Suspe	nsion directed by an Enforcement Notice	76
	23.1	Suspension notice	76
	23.2	Suspension of Services	76
	23.3	Payment on suspension	
	23.4	Recommencement of Services	
24.	Intelled	ctual Property	77
	24.1	Warranty	77
\$2	24.2	Intellectual Property Rights	
	24.3	Moral rights	
25.	Confid	entiality	
		Contractor's obligations	
	25.1 25.2	Contractor's acknowledgement	
26.		ment and Change In Control	
20.	_		
	26.1	Assignment by Contractor	79
	26.2	Change in Control	
27.	Notice	S	
	27.1	Delivery of notice	79
	27.2	Particulars for delivery	79
	27.3	Time of service	79
28.	Disput	es	80
1.5	28.1	Dispute resolution	80
	28.2	Mediation	
	28.3	Expert determination of Nominated Disputes	
	28.4	Proceedings	83
	28.5	Give effect to certain documents	84
	28.6	Urgent relief	
	28.7	Performance	
29.		n Slavery	
		Compliance	
	29.1		
	29.2	Information	
	29.3	Modern Slavery due diligence	
	29.4	Subcontractors	
	29.5	Response to Modern Slavery incident	
30.	Genera	al	86
	30.1	Law and jurisdiction	
	30.2	Giving effect to this Agreement	
	30.3	Waiver of Rights	
	30.4	Consents	



30.5	Operation of this Agreement	97
30.6	Operation of indemnities	
30.7	Relationship of the parties	
30.8	Costs, expenses and stamp duty	
30.9	Amendment	
30.10	Survival of termination	88
30.11	Attorneys	
30.12	No fetter of discretion	89
30.13	Acknowledgment	
30.14	Acknowledgments - representations	89
30.15	Disclosed Information	90
30.16	GIPA	
30.17	Civil Liability Act	
30.18	Warranty regarding solvency	94
30.19	Counterparts	94
Schedule 1	Agreement particulars	96
Schedule 2	Agreement Prices	
Schedule 3	Performance Management System	128
Schedule 4	Services Specification	
Schedule 5	Approved form of security	228
Schedule 6	Draft Contract Program	229
Schedule 7	Depot Lease	232
Schedule 8	Plant and Equipment	270
Schedule 9	Service Area Maps	272
Schedule 10	Transition of existing workforce, plant, equipment and property	274

# Waste, Recyclables, Organics and Bulky Waste Collection Services Agreement

### **Dated**

## **Parties**

Willoughby City Council ABN 47 974 826 099 Name Address 31 Victor Street, Chatswood 2067 NSW Email email@willoughby.nsw.gov.au Contact Short name Council Name J.J. Richards & Sons Pty Ltd ACN 000 805 425 3 Grant Street, Cleveland QLD 4163 Address Email Contact Short name Contractor

## **Background**

- A. By request for tender process T04-2022 Council sought tenders for the provision of the Services to Council.
- B. The Contractor was selected to provide the Services to Council, under this Agreement.
- C. Subject to and upon the terms and conditions of this Agreement:
  - C.1 the Contractor has agreed to provide the Services to Council; and
  - C.2 Council has agreed to grant the Depot Lease to the Contractor.

## **Operative Terms**

#### The parties agree

#### Interpretation

#### 1.1 Definitions

The following definitions apply in this Agreement, unless expressed to the contrary:

**Agreement** means this document, including the schedules, annexures, attachments and any other document or materials incorporated by reference from time to time.

Agreement Prices means for each of the Services the rates and prices which are stated in and calculated in accordance with Schedule 2, as adjusted under this Agreement.

Anti-slavery Commissioner means the Anti-slavery Commissioner appointed under the Modern Slavery Act 2018 (NSW).

Application means any application for an Approval relating to the Services.

#### Approval means

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

including any renewal, amendment, modification or variation of or to any of them by any Authority.

#### Authority means any:

- government, government department, government agency or government authority;
- governmental, semi-governmental, municipal, judicial, quasi-judicial, administrative or fiscal entity or person carrying out any statutory authority or function; or
- (c) other person or entity which, under a Law, has a right to impose a requirement or whose consent is required in relation to the Services,

including Council when performing its regulatory functions but in that capacity only.

**Best Industry Practice** means the degree of skill, professionalism, care, prudence, diligence and contracting practice which would reasonably be expected from a skilled and experienced operator, contractor, manager or consultant engaged in the performance of services the same as, or substantially similar to, the Services.

**Business Day** means, unless the parties agree otherwise, any day that is not a Saturday, Sunday or public holiday in New South Wales.



Bulk Green Waste has the meaning given to that term in the Services Specification.

**Bulk Green Collection Service Waste** has the meaning given to that term in the Services Specification.

Bulky Waste has the meaning given to that term in the Services Specification.

**Bulky Waste Collection Service** has the meaning given to that term in the Services Specification.

Carbon Credit Scheme means any legislated or administrative arrangement or scheme under which a person is entitled to receive any valuable right, credit, certificate, cost abatement, payment or other interest in connection with the abatement of Greenhouse Gas emissions.

**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 *National Greenhouse and Energy Reporting Act 2007* (Cth).

Change in Control means any act, event or circumstance that results in or causes any variation, amendment or modification of the Control of the Contractor, where Control has the meaning in section 50AA(1) of the Corporations Act.

#### Change in Law means:

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

(whether or not it is also a Qualifying Change under clause 11) which takes effect after the date of this Agreement.

Characteristic means in respect of any waste the type, classification, character, nature, content, quality, quantity, 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 (and in other respects it has its plain English meaning).

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit however arising, including under, arising out of, or in any way in connection with:

- (a) this Agreement, or the Services;
- (b) any other contract, deed or agreement; or
- either party's conduct under this Agreement whether before or after it came into force,

whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence) or for restitution.

Collection Vehicle has the meaning given to that term in the Services Specification.

Commencement Date means the date identified in Item 1 of Schedule 1...

Complaint means a complaint from a customer in connection with the Services.



**Compliance Company** means BNG Contractor Services Pty Ltd CAN 123 053 618 or such other company as is notified to the Contractor from time to time for the purposes of clause 17.11.

Consequential Loss means, in respect of a party, loss of profit, loss of revenue (other than revenue or profit from or contemplated by this contract), 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.

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 aspect of the land, structure or other matter (and Contaminant (of land) has a corresponding meaning).

**Contract Program** means the Contractor's program, to be prepared in accordance with clause 2.4, consistent with the contract program included as Schedule 6, for mobilisation and service implementation.

**Contract Wastes** means the content of Waste Containers, provided for collection and conveyance to the Nominated Disposal Facility and each Nominated Processing Facility, that comprises Waste, Recyclable Waste, Garden Waste, FOGO Waste or Bulky Waste.

Contractor means the person named in this Agreement as the Contractor.

Contractor's Facilities means the facilities used by the Contractor to undertake the Services.

Contractor's Plant means any plant, implements, appliances, vehicles and equipment used, or to be used, by the Contractor or its Subcontractors to undertake the Services.

**Contractor's Representative** has the meaning given in clause 3.2, as changed from time to time under clause 3.2.3, and includes any delegate of that person.

**Contractor's Staff** means each and every employee, agent or Subcontractor of the Contractor who is used by the Contractor (or a Subcontractor) to supply, provide, deliver or perform any part of the Services.

Corporations Act means the Corporations Act 2001 (Cth).

Council means Willoughby City Council (ABN 47 974 826 099).

**Council's Representative** means each of the representatives of Council referred to in clause 3.1, as applicable in the context, as changed from time to time by written notice from Council to the Contractor under clause 3.1.4, and includes any delegate of that person.

**Default Notice** means a notice issued under clause 21.1.1.

Depot means the land comprised by Lot 2 DP 25667.

**Depot Lease** means the lease executed under clause 14, or such further lease as is entered into under clause 26 of that lease, being a lease of the Depot for a term expiring on the Expiry Date in the form set out in Schedule 7.

**Directions** include an approval, authorisation, certification, decision, demand, determination, instruction, notice, order, permission, rejection, request or requirement.



**Disclosed Information** means all of the information disclosed to the Contractor by or on behalf of Council, whether before or after the date of this Agreement, and includes all of the information listed or referred to in this Agreement.

Disposal Material means Contract Waste comprising Waste.

Dispute is defined in clause 28.1.

**Disputed Service** means a Service the subject of a Monthly Statement that is disputed in a notice issued by Council in respect of that Monthly Statement under clause 12.4.

**Documentation** means any document, design, record, system, program, method of working or other material which the Contractor is required by this Agreement (including the Services Specification) to produce or contribute to in the provision of the Services or which is otherwise required in order to perform the Services.

**Emergency** means a circumstance where, in the opinion of Council or Council's Representative, there is a potential or immediate threat:

- (a) to public interest, health or safety;
- (b) of damage to property; or
- (c) of harm to the Environment.

**Endorse** means acknowledge – it does not mean approve or adopt. The consequences of Endorsement are set out in clause 1.3.

Enforcement Notice means a notice issued under clause 21.2.

**Environment** means land, air, water, organisms and ecosystems and includes the built and cultural environment.

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

- (a) the Environment; or
- (b) the interaction of any activity on land, or of land itself, with the Environment,

including the Protection of the Environment Operations Act 1997 (NSW).

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

Expiry Date means the date stated in Item 2 of Schedule 1.

**Fee** or **Fees** means the total payments or periodic payments payable by Council under clause 12, as calculated from the Agreement Prices.



FOGO has the meaning given to that term in the Services Specification.

FOGO Collection Service has the meaning given to that term in the Services Specification.

**FOGO Commencement Date** has the meaning given to that term in the Services Specification.

FOGO Waste has the meaning given to that term in the Services Specification.

**Force Majeure** means any of the following, except where caused or contributed to by the Contractor or any subcontractor to the Contractor (of any tier):

- lightning strike, severe storm, earthquake, natural disaster, landslide, bushfire, mudslide or tsunami:
- (b) sabotage, vandalism, malicious damage, riot or a 'terrorist act' as defined in the Terrorism Insurance Act 2003 (Cth);
- (c) explosion, flood or fire resulting from any of the events in paragraph (a) or (b);
- (d) war (declared or undeclared), civil war, insurrection, invasion, rebellion, revolution, military action or usurped power, martial law, act of public enemy or embargo;
- ionising radiation, radioactive contamination, nuclear contamination or toxic, chemical or biological contamination;
- (f) national or state-wide industrial action; or
- (g) governmental work stoppages, mandatory business, service or workplace closures, full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions, resulting from an epidemic, pandemic or public health emergency.

but only to the extent these render it impossible for the Contractor to perform the Services or any other of its other obligations under this Agreement.

Garden Organics has the same meaning as in the Services Specification.

Garden Organics Collection Service has the meaning given to that term in the Services Specification;

**Garden Waste** means material placed for collection in a Garden Organics Mobile Bin at a Service-Entitled Premises.

**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.

**Gross Negligence** means a negligent act or omission that arises as a result of a significant departure from the standard of care that would ordinarily be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances as the negligent person.

**GST Laws** means the GST law (as defined by *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) together with all associated legislation and any additional or substituted legislation.

Hazardous Waste has the same meaning as in the Services Specification.



#### Heavy Vehicle Law means:

- (a) Heavy Vehicle (Adoption of National Law) Act 2013 (NSW);
- (b) Heavy Vehicle (Adoption of National Law Regulation) 2013 (NSW); and
- (c) Heavy Vehicle National Law (NSW) No 42a,

and each Regulation made under the Heavy Vehicle National Law (NSW) No 42a.

Industrial Relations and Workforce Plan means the plan to be developed in accordance with the Services Specification and maintained by the Contractor as part of the Services Management Plans for the employment and management of Contractor's Staff.

**Information** may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the *Privacy and Personal Information Protection Act* 1998 (NSW) or information which tends to identify individuals.

Insolvency Event, in relation to a person, means any of the following events:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council;
- (d) the person is or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim that is the subject of a dispute in good faith), or stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (e) a receiver, receiver and manager, administrator, controller or similar officer of any
  of the assets or the whole or any part of the undertaking of the person is appointed;
- a resolution is passed by the person to appoint an administrator, or an administrator of the person is appointed;
- (g) an order is made to appoint a liquidator or a provisional liquidator of the person;
- (h) the person resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council, or is otherwise wound up or dissolved;
- (i) an order is made that the person be wound up;
- the person is, or makes a statement from which it may be reasonably inferred by Council that the person is, the subject of an event described in section 459C(2) of the Corporations Act;
- (k) the person assigns any of its property for the benefit of creditors or any class of them;



- an order is made or a resolution is passed for the person to enter into any arrangement, compromise or composition with, or assignment for the benefit of, its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council;
- (m) any Security Interest becomes enforceable or is enforced against that person;
- the person's interest in or under this Agreement or in the subject matter of this Agreement becomes attached or is taken, in execution or under any legal process;
- a distress, attachment or other execution is levied or enforced against that person in excess of \$10,000;
- (p) the person has a judgment or order given against it in an amount exceeding \$10,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given;
- any power of sale is exercised or steps are taken to take possession of any assets of the person subject to a Security Interest;
- (r) any step is taken to do anything listed in the above paragraphs; and
- (s) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

Intellectual Property Right means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

**Key Performance Indicator** means each of the measures of Contractor performance in the Performance Management System.

#### Law includes:

- (a) Commonwealth and State legislation including regulations, by laws or other subordinate legislation;
- (b) principles of common law and equity;
- (c) requirements of Authorities and Approvals; and
- (d) guidelines, policies and codes of the Commonwealth, State and local governments and Authorities with which the Contractor is legally required to comply.

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

Management Systems means the management systems for management of quality, safety and environmental outcomes in performance of the Services, as identified in Item 3 of Schedule 1, which are to be developed and maintained by the Contractor under clause 7. To avoid doubt, the Management Systems may take the form of a single integrated management system.

Missed Collection means in respect of the Services comprising the Waste Collection Service, Recyclables Collection Service, Garden Organics Collection Service, FOGO



Collection Service and Bulky Waste Collection Service, a circumstance where the following occurs:

- the Contractor fails to perform a required collection in respect of a Service-Entitled Premises; and
- (b) the Contractor fails to rectify that failure within the time required by this Agreement.

**Mobilisation Period** means the period commencing on the later of the Commencement Date and the date that is 10 Business Days after the date of this Agreement, and ending the day before the Services Commencement Date.

**Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

Modern Slavery Laws means, as applicable, the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth).

Modern Slavery Offence has the same meaning as in the Modern Slavery Act 2018 (NSW).

Modern Slavery Statement means a modern slavery statement as required or volunteered under the Modern Slavery Act 2018 (Cth).

Monthly Statement means a monthly statement submitted by the Contractor under clause 12.2.

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 Disposal Facility means the facility (or facilities) that will be made available or nominated by Council for the receipt and disposal of Disposal Material collected under this Agreement. From the Commencement Date until otherwise notified by Council's Representative, the location of the Nominated Disposal Facility is set out in Item 4 of Schedule 1.

**Nominated Disposal Facility Services** means the services performed by or on behalf of Council in relation to the receival, sorting, storage, processing, placement and containment of Disposal Material at the Nominated Disposal Facility, including any associated internal management arrangements.

#### Nominated Facility means:

- (a) in respect of the receipt and disposal of Waste collected under this Agreement, the Nominated Disposal Facility that is set out in Item 4 of Schedule 1;
- in respect of the receipt of Bulky Waste collected under this Agreement, the Nominated Processing Facility that is set out in Item 8 of Schedule 1;
- in respect of the receipt of Recyclables collected under this Agreement, the Nominated Processing Facility that is set out in Item 5 of Schedule 1;
- (d) in respect of the receipt of Garden Organics collected under this Agreement, the Nominated Processing Facility is set out in Item 6 of Schedule 1; and



(e) in respect of the receipt of FOGO collected under this Agreement, the Nominated Processing Facility is set out in Item 7 of Schedule 1.

Nominated Processing Facility means each facility (or facilities) that will be made available or nominated by Council for the receipt of Processable Material collected under this Agreement. From the Commencement Date until otherwise notified by Council's Representative, the location of each of the Nominated Processing Facilities is set out in Item 5, Item 6, Item 7 and Item 8 of Schedule 1.

**Nominated Processing Facility Services** means the services performed by or on behalf of Council in relation to the receival, sorting, storage and processing of Processable Material at a Nominated Processing Facility, including any associated internal management arrangements.

Operative Terms means clauses 1 to 29 of this Agreement.

**Performance Management System** means the system for measuring and benchmarking performance referred to in clause 8 and further described in Schedule 3.

**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.

Processable Material means the Contract Waste comprising:

- (a) Recyclable Waste;
- (b) Bulky Waste;
- (c) prior to the FOGO Commencement Date, Garden Waste; and
- (d) after the FOGO Commencement Date, FOGO Waste

Recyclables has the meaning given to that term in the Services Specification.

**Recyclables Collection Service** has the meaning given to that term in the Services Specification;

**Recyclable Waste** means material placed for collection in a Recyclables Mobile Bin at a Service-Entitled Premises.

**Related Offence Provisions** means those provisions of the *Crimes Act 1900* (NSW), the *Human Tissue Act 1983* (NSW) and the Commonwealth Criminal Code which create slavery and associated offences, as listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

Rent means the rent payable by the Contractor to Council under the Depot Lease.



**Reputable Insurer** means an insurance company operating in Australia, or London having a credit rating of not less than the Required Rating who are in the business of insuring the risks required to be covered under this Agreement.

Required Rating means A+ by Standard & Poor's (Australia) Pty Limited or A1 from Moody's Investors Service, Inc., or a ratings agency as otherwise approved by Council's Representative. If the description or nomenclature of a credit rating specified in this definition or the manner in which a credit rating is calculated or determined changes after the Commencement Date, then the reference to a credit rating in this definition is to be taken to be the credit rating which most closely corresponds to the credit rating so specified.

RFT means Request for Tender Number T04-2022.

**Security** means the performance security identified in clause 15.1, in the form required by clause 15.2.

#### Security Interest means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Service Area has the meaning given to that term in the Services Specification.

Service Area Maps means the maps included in Schedule 9.

Service-Entitled Premises has the same meaning as in the Services Specification.

Service Period means each of the following periods following the Services Commencement Date until the Expiry Date:

- initially, a one-year period commencing on the Services Commencement Date and ending on the day immediately prior to the first anniversary of the Services Commencement Date; and
- (b) each subsequent one-year period commencing on the day immediately following the end of the preceding one-year period.

**Service Period A** means, the period commencing on the Services Commencement Date and ending on:

- if Council makes an election under clause 1.2 of the FOGO Collection Specification to adopt the FOGO Collection Services, the day immediately preceding the FOGO Commencement Date; or
- (b) if Council does not make an election under clause 1.2 of the FOGO Collection Specification to adopt the FOGO Collection Services, the Expiry Date.

**Service Period B** means the period commencing on the FOGO Commencement Date and continuing until the Expiry Date.

**Services** means the whole of the tasks, activities and services to be provided or performed by the Contractor under this Agreement, as described in this Agreement (including the Services Specification) and as may be varied in accordance with this Agreement, including



any Documentation required to be created, provided or produced by the Contractor and any other services necessary to achieve the performance objectives of this Agreement, including:

- (a) the Waste Collection Services;
- (b) the Recyclables Collection Services;
- (c) the Bulky Waste Collection Services;
- (d) the Bulk Green Waste Collection Services:
- (e) the Garden Organics Collection Services;
- (f) following the FOGO Commencement Date, the FOGO Collection Services; and
- (g) anything incidental or ancillary thereto required to be performed under this Agreement,

and, during the term of the Depot Lease, the occupation and use of the Depot in accordance with the Depot Lease.

Services Commencement Date means the date identified in Item 9 of Schedule 1.

Services Management Plans means the plans for the direct management and performance of the Services, as identified in Item 10 of Schedule 1, which are to be developed and maintained by the Contractor under clause 7. To avoid doubt, the Services Management Plans may take the form of a single plan. A draft of the Services Management Plans is included in Schedule 6.

**Services Specification** means the specification for the provision of the Services by the Contractor under this Agreement, which is contained in Schedule 4, comprising:

- (a) the General Specification, included as Part 1 of the Services Specification;
- (b) the Waste Collection Specification, included as Part 2 of the Services Specification;
- the Recyclables Collection Specification, included as Part 3 of the Services Specification;
- (d) the Garden Organics Collection Specification, included as Part 4 of the Services Specification;
- the FOGO Collection Specification, included as Part 5 of the Services Specification; and
- (f) the Bulky Waste Collection Specification, included as Part 6 of the Services Specification.

**Services Term** means the period from the Services Commencement Date until the Expiry Date.

Services Termination Transition Plan means the plan, to be developed and maintained by the Contractor as part of the Services Management Plans, for the transition of the Services to Council or a replacement contractor at expiry of the Term or earlier termination of this Agreement.



**Subcontract** means an agreement between the Contractor and a Subcontractor, or a Subcontractor and another Subcontractor, under which a Subcontractor is engaged to deliver or perform any part of the Services.

**Subcontractor** means a contractor (or sub-contractor of any tier) that is used to supply, provide, deliver or perform any part of the Services.

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 means the Contractor's proposal submitted in respect of the RFT.

Tender Closing Date means 24 January 2023.

Tender Documents means the RFT and the Tender.

Term means the period from the Commencement Date until the Expiry Date.

Variation is defined in clause 11.1.

Waste has the meaning given to that term in the Services Specification.

Waste Collection Service has the meaning given to that term in the Services Specification.

Waste Container has the meaning given to that term in the Services Specification.

**Waste Levy** means the dollar amount levied under s 88 of the *Protection of the Environment Operations Act 1997* (NSW) or any other levy or charge payable under legislation for the storage, processing or disposal of waste.

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 2017 (NSW).

Wilful Default means a wanton or reckless act or omission which amounts to a wilful and utter disregard for the harmful and avoidable consequences of a person's action, but does not include errors of judgement, mistake, act or omission made in good faith.

**Work Health and Safety Management System** means the Contractor's work health and safety management system, maintained by the Contractor and Endorsed under clause 7 as part of the Management Systems.

#### 1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

#### 1.2.1 A reference to:

(a) legislation (including subordinate legislation) is to:



- legislation in the jurisdiction in which the Services are being performed; and
- that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) Parliament, is a reference to that term, as defined in the *Interpretation Act* 1987 (NSW);
- a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- a party to this Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- a clause, Schedule, Annexure or Attachment is a reference to a clause, Schedule, Annexure or Attachment in or to this Agreement;
- (g) 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars; and
- (h) any thing (including a right, obligation or concept) includes each part of it.
- 1.2.2 A singular word includes the plural, and vice versa.
- 1.2.3 A word which suggests one gender includes the other genders.
- 1.2.4 If a word is defined, another part of speech has a corresponding meaning.
- 1:2.5 The word 'includes' in any form is not a word of limitation.
- 1.2.6 The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- 1.2.7 The words **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.
- 1.2.8 Unless otherwise indicated, all financial amounts stated in this Agreement are exclusive of GST.
- 1.2.9 A reference to a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise.
- 1.2.10 A reference to a party is a reference to a party to this Agreement.
- 1.2.11 The terms and phrases used as definitions in clause 1.1 or in any other clause of this Agreement are used for convenience only, and do not affect the interpretation of the meaning given to those terms and phrases in this Agreement.
- 1.2.12 This Agreement or any part of it will not be interpreted against the interest of a party on the basis that the party drafted it or seeks to rely on it.
- 1.2.13 References to terms not defined in this clause 1 which are defined in the Services Specification have the meanings given to those terms in the Services Specification.



- 1.2.14 References in the Services Specification to terms not defined in the Services Specification but which are defined in this clause 1 have the meanings given to those terms in this clause 1.
- 1.2.15 Where the same term is defined in the Services Specification and also in the Operative Terms, the definition used in the Services Specification shall apply in the Services Specification and the definition used in the Operative Terms shall otherwise apply in this Agreement (including in the Operative Terms).
- 1.2.16 All Schedules, Attachments or Annexures in or to this Agreement are deemed to be part of this Agreement (except to the extent otherwise expressly provided in this Agreement).

#### 1.3 Endorsement

- 1.3.1 If a document, plan or system is "Endorsed" by Council:
  - (a) Council is merely acknowledging that that document, plan or system will be used by the Contractor under this Agreement;
  - (b) the Contractor must not amend the document, plan or system without further Endorsement from Council; and
  - (c) the parties may use the document, plan or system as Endorsed as one basis for auditing and monitoring performance by the Contractor under this Agreement subject to any other requirements of this Agreement and any conditions of the Endorsement.
- 1.3.2 Council has no liability for, arising from, or in connection with, the Endorsement of a document, plan or system and anything the Contractor does or does not do under or in accordance with that document, plan or system is entirely at the risk of the Contractor.
- 1.3.3 The Endorsement of a document:
  - is not a representation or admission that the document, plan or system is adequate, complete, correct, reliable or that it has any other characteristic;
  - does not impose or create any duty, liability or obligation on Council or Council's Representative;
  - does not waive, prejudice or limit Council's or Council's Representative's rights, powers or privileges; and
  - (d) does not affect, limit, after, release or reduce the obligations, duties, liabilities or responsibilities of the Contractor under this Agreement in any way.
- 1.3.4 An Endorsed document does not form part of this Agreement.
- 1.3.5 Council may:
  - (a) Endorse a document subject to conditions;
  - (b) refuse to Endorse a document; or
  - (c) vary or withdraw its Endorsement of a document.



#### 1.4 Business Days

If the day on or by which a person must do something under this Agreement is not a Business Day:

- 1.4.1 if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- 1.4.2 in any other case, the person must do it on or by the previous Business Day.

#### 1.5 Multiple parties

If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party:

- 1.5.1 an obligation of those persons is joint and several;
- 1.5.2 a right of those persons is held by each of them severally; and
- 1.5.3 any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

#### 1.6 Priority of documents

- 1.6.1 The documents forming this Agreement are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents an interpretation that imposes the higher standard, quality of service or level of performance shall prevail.
- 1.6.2 Subject to clause 1.6.1, any ambiguity, discrepancy or inconsistency between documents forming part of this Agreement shall be resolved by giving precedence to documents in the following order of priority:
  - (a) the Operative Terms;
  - (b) Schedule 1 and Schedule 2 to this Agreement;
  - (c) the Services Specification;
  - (d) each other Schedule to this Agreement; and
  - (e) the Annexures and Attachments to this Agreement.
- 1.6.3 This Agreement sets out the legal rights and obligations of the parties and prevails over Management Systems and Services Management Plans. In particular:
  - (a) if there is a conflict or inconsistency between Management Systems and Services Management Plans, an interpretation that gives effect to this Agreement shall be preferred;
  - (b) if a Management System or Services Management Plan specifies a less stringent or less complete requirement than the Services Specification or other requirement of this Agreement then the more stringent or complete requirement shall prevail;



- (c) the provisions and requirements of the Management Systems and Services Management Plans do not limit the role or power of Council or any Authority; and
- (d) once a Management System or Services Management Plan is Endorsed, then unless expressed to the contrary a reference to that Management System or Services Management Plan in this Agreement is to the Endorsed Management System or Endorsed Services Management Plan.

#### 2. Commencement and Term

#### 2.1 Commencement

Subject to the terms of this Agreement, the rights and obligations of the Contractor and Council under this Agreement begin on the Commencement Date and expire on the Expiry Date.

#### 2.2 Extended Term

- 2.2.1 Subject to clause 2.2.3, Council may, at its sole discretion, provide the Contractor with a written notice, no less than three months prior to the end of the Term, exercising its option to extend the Term by any period of up to one year.
- 2.2.2 If Council provides a notice to the Contractor under clause 2.2.1 then upon receipt by the Contractor of that notice, the Expiry Date shall be extended by the period of up to one year specified in the notice, on the same terms as this Agreement, unless the parties otherwise agree to variations to this Agreement that will apply during the extended period of the Term.
- 2.2.3 Council may not exercise its option under clause 2.2.1 more than three times.

#### 2.3 Pre-Start meeting

- 2.3.1 Prior to commencing the Services, the Contractor must attend a pre-start meeting to be held in Sydney at a time and date nominated by Council.
- 2.3.2 At the pre-start meeting the Contractor must present to Council's satisfaction:
  - (a) evidence of insurance cover in accordance with clause 17.7;
  - (b) the Security required to be provided in accordance with clause 15;
  - evidence of payment of any fees required under any Law in connection with the Services;
  - (d) evidence that the Contractor's Staff are duly accredited in accordance with clause 5.6.1;
  - (e) any other information requested by Council.
- 2.3.3 The meeting may also address the following matters:
  - (a) lines of communication and authority levels;
  - (b) frequency and venue of monthly and other meetings, including under clause 10.1;



- the requirements and particulars required in reports to be provided by the Contractor under this Agreement (including under clause 9);
- (d) invoicing procedures; and
- (e) any site induction/accreditation of the Contractor's personnel.
- 2.3.4 Until each of the issues in clause 2.3.2 has been satisfactorily addressed and resolved to Council's satisfaction, the Contractor will have no right to submit an invoice under clause 12 or otherwise to seek payment of the Fees and has no other Claim.

#### 2.4 Contract Program

Within 10 Business Days after the Commencement Date, the Contractor must prepare and submit to Council the Contract Program in accordance with clause 7 as if it was a Services Management Plan.

#### 2.5 Mobilisation Period

- 2.5.1 During the Mobilisation Period the Contractor must carry out:
  - all work required for mobilisation and service implementation in accordance with the Contract Program;
  - (b) all other work specifically required under this Agreement to be carried out prior to the Services Commencement Date; and
  - (c) all activities required by the Services Specification to be performed during the Mobilisation Period.
- 2.5.2 The Contractor must update the Contract Program at least monthly during the Mobilisation Period and must review the updated Contract Program with Council's Representative.

#### 3. Representatives

#### 3.1 Council's Representative

- 3.1.1 Council shall ensure that at all times there is a Council's Representative.
- 3.1.2 Council has appointed the person identified in Item 11 of Schedule 1 to perform the function of Council's Representative under this Agreement.
- 3.1.3 A person who is a Council's Representative is, in respect to the Services in relation to which they are appointed, and subject to the provisions in clause 11, authorised:
  - as the agent of Council to perform the functions of Council's Representative under this Agreement;
  - (b) to give and receive notices and make Directions under this Agreement; and
  - to monitor the performance of the Contractor and its compliance with the requirements of this Agreement,

provided always that the limits of the appointment of a Council's Representative are always to be construed as being limited to the powers and functions that can



- lawfully be delegated to a person in the position of a Council's Representative under the *Local Government Act 1993* (NSW).
- 3.1.4 Council may by written notice to the Contractor appoint a replacement Council's Representative.
- 3.1.5 Council's Representative may delegate some or all of the Council's 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.
- 3.1.6 Any instructions, decisions, consents, notices, documents or other communications given to Council's Representative are taken to have been given to Council, and if given verbally must be confirmed in writing as soon as practicable.
- 3.1.7 The Contractor must at its cost comply with all lawful Directions and reasonable instructions given by Council's Representative in respect of the performance of the Services. If the Contractor considers that a Direction has been made by Council or Council's Representative that constitutes a variation under clause 11 (where not expressly so stated), the Contractor must comply with clause 11.8.
- 3.1.8 If the Contractor considers that any action or Direction of Council's Representative is outside of the powers of the Council's Representative or is in breach of this Agreement or Law, the Contractor must within 5 Business Days inform Council's Representative in writing, giving details of the action or Direction and the reasons why the Contractor has formed that opinion. The Contractor must continue to perform in accordance with this Agreement.
- 3.1.9 The Contractor is not entitled to make any Claim against Council in respect of any Loss in connection with any action or Direction of Council's Representative that is outside of the powers of the Council's Representative or is in breach of this Agreement that has not been notified to Council's Representative under clause 3.1.8 and the Contractor releases Council from any such Claim and the Contractor releases Council and Council's Representative accordingly.

#### 3.2 Contractor's Representative

- 3.2.1 The Contractor must appoint a person to be the Contractor's Representative for the purposes of this Agreement.
- 3.2.2 The Contractor has appointed the Contractor's Representative as the agent of the Contractor who has authority to act for and on behalf of the Contractor in all matters relating to this Agreement. The Contractor's Representative is identified in Item 12 of Schedule 1.
- 3.2.3 The Contractor may appoint a replacement Contractor's Representative from time to time by prior written notice to Council.
- 3.2.4 Any instructions, decisions, consents, documents, notices or other communications given to the Contractor's Representative are taken to have been given to the Contractor, and if given verbally must be confirmed in writing as soon as practicable.
- 3.2.5 Matters within the Contractor's Representative's knowledge (including Directions received from Council's Representative) shall be deemed to be within the Contractor's knowledge.
- 3.2.6 The Contractor must ensure that the Contractor's Representative is contactable by Council at all times during business hours (including by telephone, mobile



telephone, email, pager or other suitable communication device) and must provide details of other representatives of the Contractor who are to be contactable by Council outside business hours.

#### 4. Services

#### 4.1 Performance of the Services

From the Services Commencement Date, the Contractor must:

- 4.1.1 perform the Services for Council in accordance with this Agreement;
- 4.1.2 perform the Services at all times during the Services Term;
- 4.1.3 ensure that the Services comply with the Services Specification;
- 4.1.4 ensure that there is no disruption to the Services except where expressly permitted by this Agreement;
- 4.1.5 transport all Disposal Material to a Nominated Disposal Facility; and
- 4.1.6 transport all Processable Material to a Nominated Processing Facility.

#### 4.2 Representation

The Contractor agrees and represents to Council that:

- 4.2.1 it has carefully reviewed the description of the Services prior to entering into this Agreement;
- 4.2.2 it has visited the Service Area and satisfied itself as to the roadways (including their location, geometry, grade and condition), legal access ways and headroom available to perform the required services under this Agreement; and
- 4.2.3 the Contractor is satisfied as to the adequacy of the Agreement Prices and Services Specification having cognisance of the matters referred to in clauses 4.2.1 and 4.2.2.

### 4.3 Standard of Services

- 4.3.1 The Contractor must ensure that the Services:
  - (a) are carried out in a proper and workmanlike manner with due skill, care and diligence;
  - (b) are carried out in a manner that does not offend reasonable members of the public, including ensuring that all Contractor's Staff do not behave in an offensive manner;
  - (c) are executed and completed in accordance with Law;
  - (d) are carried out in a safe, timely and efficient manner; and
  - strictly comply with Council's reasonable instructions and Directions relating to the Services.



- 4.3.2 The Contractor must do all things necessary to comply with and meet the requirements of the Services Specification and the Contractor's obligations under this Agreement.
- 4.3.3 Council is not required to make any payment whatsoever in connection with the Services except for the performance of the Services and then only in accordance with this Agreement.

#### 4.4 Acceptance of risks

Subject to this Agreement, the Contractor:

- 4.4.1 accepts all risks of and associated with the Services or Contract Waste including:
  - (a) the demand for or revenue generated from the Services being less than estimated:
  - (b) liability for Taxes and the creation or imposition of Taxes or imposts, whether
    or not existing at the date of this Agreement;
  - (c) in connection with any Law (as at the date of this Agreement or in the future) including any Change in Law or any new Law, including any requirement to obtain or modify any Approval or the conditions of, delay in obtaining, modifying or refusal of any Approval or the challenge to the validity of any Approval; and
  - in connection with the financing, design, construction, commissioning operation and maintenance of any Contractor's Plant;
- 4.4.2 is solely responsible for the cost and conduct of the Services and assumes the risk of all delay, increased costs and any Loss it suffers or incurs in relation to the Services;
- 4.4.3 acknowledges that the Disclosed Information may not be comprehensive. To the extent permitted by Law, the Contractor is not entitled to and must not make any Claim (including a Claim for an adjustment of part or all of the Agreement Prices) against Council (or any person acting on Council's behalf) arising out of or in connection with any actual or alleged error, omission, defect or incompleteness in any of the Disclosed Information; and
- 4.4.4 acknowledges that Council makes no warranty or representation as to whether any waste or Contract Waste has or does not have any or any particular Characteristic,

and is not entitled to and must not make any Claim under this Agreement (including a Claim for an adjustment of part of all of the Agreement Prices) against Council (or any person acting on Council's behalf) arising out of or in connection with any such risk, event, cost or expense having eventuated or been incurred in connection with the Services or this Agreement.

#### 4.5 Contractor supplied plant, equipment and infrastructure

- 4.5.1 The Contractor must at its cost provide all management systems, management and technical support services, supervision, employees, materials and equipment and other services, consumables and all other things whether of a temporary or permanent nature which are necessary to provide the Services, unless otherwise excluded under this Agreement.
- 4.5.2 The Contractor must at its cost provide and use, for the purpose of the provision of the Services, the plant, equipment and infrastructure described in Schedule 8,



unless the Contractor has obtained the prior written agreement of Council to provide or use different plant, equipment or infrastructure. Council is under no obligation to agree any changes to the plant, equipment and infrastructure described in Schedule 8 with the Contractor.

#### 5. Compliance

#### 5.1. Compliance with Law generally

- 5.1.1 The Contractor must at its cost at all times during the Term comply with:
  - (a) all Law (including any Change in Law) applicable from time to time to its obligations under this Agreement and its performance of the Services, including:
    - obtaining (if not already obtained) and maintaining all requisite Approvals other than the Approvals that are expressed under this Agreement to be obtained and maintained by Council;
    - giving all notices and pay all fees, charges and other amounts payable in respect of the carrying out of its obligations under this Agreement (including long service levies payable in respect of the Services under the Building and Construction Industry Long Service Payments Act 1986 (NSW)); and
    - iii contractors (or sub-contractors of any tier) are used to deliver or perform any part of the Services, ensure that the contractors (or subcontractors of any tier) have obtained all necessary Approvals to perform that part of the Services;
  - (b) relevant Australian standards; and
  - (c) applicable industry codes.
- 5.1.2 The Contractor must at its cost at all times while performing the Services ensure that when transporting materials and waste (including Contract Waste where applicable):
  - (a) the waste is transported in suitably licensed vehicles;
  - (b) comprehensive waste tracking methodology is used, including as required by Law; and
  - (c) accurate documentation is obtained and retained by the Contractor to verify that the materials and waste were received by facilities that were able to lawfully receive, and if applicable use, the materials and waste.
- 5.1.3 The Contractor warrants and represents that it shall schedule, pack, load, consign and transport the Contract Waste and accepts all risks of, and associated with the scheduling, packing, loading, consignment and transport of Contract Waste, from the time of collection of the Contract Waste into the Contractor's Collection Vehicle until the Contract Waste is accepted at a Nominated Disposal Facility or Nominated Processing Facility.
- 5.1.4 Without limiting, affecting or waiving any other obligation under this clause 5.1, in performing the Services, the Contractor must



- (a) comply with, and ensure that each of the Contractor's Staff comply with, the Heavy Vehicle Law, including by:
  - ensuring that any Contractor's Staff carrying out Transport Activities, ensures the safety of those Transport Activities;
  - (ii) doing all things which are Reasonably Practicable to:
    - (A) eliminate Public Risks and, to the extent it is not Reasonably Practicable to eliminate Public Risks, minimise the Public Risks; and
    - (B) ensure that the Contractor's conduct does not directly or indirectly cause or encourage the driver of a Heavy Vehicle or any other person to contravene the Heavy Vehicle Law;
    - ensure that the Contractor's conduct does not directly or indirectly cause or encourage the driver of a Heavy Vehicle to exceed a speed limit applying to the driver;
  - ensuring that Heavy Vehicles used comply with requirements in the Heavy Vehicle (Vehicle Standards) National Regulation and Australian Design Rules;
  - (iv) ensuring that Heavy Vehicles used fit within the mass and dimension limits prescribed by the Heavy Vehicle Law;
  - ensuring that drivers of Heavy Vehicles used comply with work and rest hours prescribed in the Heavy Vehicle (Fatigue Management) National Regulation; and
- (b) ensure that it carries out the Services in a manner which ensures that, and otherwise provide all required assistance to Council to ensure that, Council satisfies its obligations under the Heavy Vehicle Law in connection with the Services;
- (c) cooperate with any investigation carried out by the authorised officers of an Authority pursuant to the Heavy Vehicle Law including by:
  - allowing authorised officers to enter any of the Contractor's Facilities and allowing access to other places and vehicles used in the performance of the Services;
  - providing evidence and documents requested by the authorised officers; and
  - (iii) answering questions from authorised officers; and
- (d) indemnify Council against any Loss suffered or incurred by Council arising out of, or in any way in connection with:
  - a breach of the Heavy Vehicle Law by the Contractor or its Contractor's Staff;
  - (ii) a breach of the Contractor's obligations under this clause 5.1.4; or
  - (iii) any prosecution by an Authority for an offence under the Heavy Vehicle Law in connection with the Services.



5.1.5 In clause 5.1.4, the terms 'Heavy Vehicle', 'Transport Activities', 'Public Risk' and 'Reasonably Practicable' have the meaning given to them in the Heavy Vehicle Law.

#### 5.2 Approvals

Without limiting the generality of clause 5.1, the Contractor must at its cost in connection with the Services:

- 5.2.1 make (and use reasonable endeavours to progress) in sufficient time to comply with its obligations under this Agreement, every Application for every necessary Approval and ensure that each such Approval has been obtained, and is maintained and complied with and where necessary renewed;
- 5.2.2 pay all lodgement or other fees in relation to any Application;
- 5.2.3 promptly fully and accurately respond to any requests for further information made by any Authority in respect of any Application;
- 5.2.4 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 Approval;
- 5.2.5 upon written request by Council's Representative, give Council's Representative copies of all documents (including Approvals and other notices):
  - (a) an Authority issues to it; or
  - (b) it issues to an Authority;
- 5.2.6 comply with:
  - the lawful requirements of each Authority to enable proper consideration by the Authority of any Applications for Approvals made;
  - (b) the proper requirements of any relevant person (other than an Authority) to enable proper consideration by that person of Applications made;
  - (c) all lawful terms and conditions of the Approvals issued (whether or not obtained by and issued to the Contractor) and with all lawful Directions given by an Authority; and
  - (d) all applicable orders, decisions, findings or rulings made by a court, commission or tribunal.

#### 5.3 Environment

Without limiting clause 5.1 or 5.2, the Contractor must at its cost:

- 5.3.1 ensure that in carrying out the Services it complies with all Environmental Law, including in respect of Contamination (of land) or Pollution caused or contributed to by the Contractor or Contractor's Staff;
- 5.3.2 ensure that there is no risk of harm to the Environment arising out of, or in any way in connection with, the carrying out of Services;
- 5.3.3 not cause or permit any nuisance or hazard to any member of the public;



- 5.3.4 suppress odours to minimise impacts on people;
- 5.3.5 keep secure all Contract Waste during transport and storage;
- 5.3.6 remediate any Pollution, Contamination (of land) or damage to the Environment arising out of, or in any way in connection with, the carrying out of Services;
- 5.3.7 without limiting clauses 5.3.1 to 5.3.6, ensure that:
  - (a) it does not Pollute, cause Contamination (of land) or damage the Environment:
  - (b) there is no leakage, spillage or other escape of any waste, Pollution or Contaminant (of land) to the Environment;
  - its Subcontractors comply with the requirements of this clause 5.3 in respect of any Services; and
- 5.3.8 indemnify Council against any Loss suffered or incurred by Council arising out of, or in any way in connection with, any breach by the Contractor of its obligations under this clause 5.3.

#### 5.4 Cartage

Without limiting clause 5.1, 5.2 or 5.3, the Contractor must ensure that:

- 5.4.1 all cartage of any kind or actions of the Contractor's Staff 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 or rail;
- 5.4.2 the Contractor must ensure that trucks entering or leaving a Nominated Disposal Facility or Nominated Processing Facility carrying loads are covered at all times, except during loading and unloading;
- 5.4.3 when any vehicle carrying waste 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
- 5.4.4 no vehicle is, in the conduct of the Services, left standing or idling in such a manner as to cause offence or present a hazard or unreasonable inconvenience to a member of the public.

#### 5.5 Cooperation with other Council staff and other contractors

- 5.5.1 In the performance of this Agreement, the Contractor will need to interact frequently with Council's staff and contractors who provide the Nominated Disposal Facility Services and Nominated Processing Facility Services, the operation of transfer stations and any other waste management services. It is essential for the efficient operation of the entire integrated waste management service and effective and efficient provision of services to Council's customers that the Contractor cooperate with Council's staff and Council's other contractors.
- 5.5.2 The Contractor undertakes to make all reasonable endeavours to ensure cooperation at both operation and management levels with Council's staff and Council's other contractors, in relation to the performance of the Services.
- 5.5.3 Council undertakes to require similar cooperation of Council's other contractors.



- 5.5.4 The Contractor acknowledges that:
  - (a) Council, in ensuring the efficient operation of the entire integrated waste management service and effective and efficient provision of services to Council's customers, may intervene in resolving any inefficiency between Council's contractors, using its powers under this Agreement; but
  - (b) at all times the primary responsibility for ensuring cooperation between Council's contractors, including the Contractor, in the efficient operation of the entire integrated waste management service and effective and efficient provision of services to Council's customers, rests as between Council and the Contractor, with the Contractor.

#### 5.6 Contractor's Staff

- 5.6.1 The Contractor warrants and represents to Council that each Contractor's Staff engaged to perform any portion of the , works or other activities or obligations under this Agreement will:
  - (a) have the appropriate qualifications, skills and experience required to provide the Services in accordance with this Agreement;
  - (b) hold all necessary current Approvals, certificates and accreditations required by Law in order to provide the Services;
  - (c) have a standard of experience, workmanship and behaviour that is suitable for the performance of the Services and the requirements of this Agreement; and
  - (d) be paid in accordance with applicable Law.
- 5.6.2 The Contractor must ensure that each Contractor's Staff engaged to perform any portion of the Services, works or other activities or obligations under this Agreement does not:
  - (a) while performing the Services consume any:
    - (i) alcohol;
    - (ii) drug; or
    - (iii) medication that may affect their competency to perform the Services;
  - perform the Services whilst under the influence of any such alcohol, drug or medication.
- 5.6.3 The Contractor must only replace personnel or refill a position with replacement personnel who are properly qualified and competent.
- 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 fully responsible to Council for the provision of the Services and all other services, works or other activities or obligations under this Agreement irrespective of whether the Services or other works, activities or obligations under this Agreement are provided by the Contractor's Staff and must ensure that the Contractor's Staff fully



- comply with the Contractor's obligations under this Agreement and do not (by act or omission) cause the Contractor to be in breach of this Agreement.
- 5.6.5 Except where this Agreement otherwise provides, the Contractor shall be liable to Council for the acts, defaults, omissions and negligence of any employees of the Contractor, any employees of any of the Contractor's Subcontractors, and any agents of the Contractor's Staff as if they were those of the Contractor.
- 5.6.6 Where Council's Representative is of the opinion that a member of the Contractor's Staff, whether as a result of repeated Complaints or otherwise, fails to meet the requirements of this Agreement, Council's Representative may request the Contractor to commence warning, counselling and training in accordance, where applicable, with the Contractor's Industrial Relations and Workforce Plan. If the person's performance continues not to meet the requirements of this Agreement Council's Representative may request the removal of that person from the provision of the Services. Upon receipt of this request, the Contractor must immediately remove that person from the provision of the Services at no cost to Council and must replace that person with a suitably qualified person. This clause 5.6.6 does not limit Council's other rights under this Agreement, including under clause 21 and clause 23.

#### 5.7 Subcontracting

- 5.7.1 Subject to clause 5.7.3, the Contractor must not subcontract or delegate the performance of the whole or any part of its obligations under this Agreement without the prior written consent of Council which consent (if provided) may be given subject to such conditions as Council considers appropriate in its discretion. The conditions of approval may include the provision of collateral warranties and acknowledgments of Council's rights under this Agreement sufficient to ensure that Council's rights are in no way affected or limited by the proposed contracting arrangement, and may include a condition that there is a sufficient process in place for ensuring that the subcontractors are paid within a timeframe consistent with any applicable Law or applicable government policy.
- 5.7.2 The Contractor acknowledges that any consent given by Council under clause 5.7.1 does not release the Contractor from any of its obligations under this Agreement and that the Contractor will be liable to Council for the acts, defaults, negligence or omissions of its Subcontractors as if they were acts or omissions of the Contractor.
- 5.7.3 If the Contractor's Tender specified that a particular subcontractor would perform particular obligations under this Agreement, then Council's consent is deemed to have been provided under clause 5.7.1 for the performance of those particular obligations by that subcontractor.

#### 5.8 Access to Council premises and systems

- 5.8.1 The Contractor must fully comply with (and ensure the Contractor's Staff fully comply with) all requirements or Directions, as provided from time to time in writing by Council's Representative to the Contractor, relating to:
  - (a) access to, behaviour on or access from any buildings, land, structural assets and other facility owned, occupied, leased or controlled by or on behalf of Council at which Services are to be carried out (including, but not limited to, security and health and safety requirements in relation to such premises);
     and

- (b) where arranged and permitted by Council, access to and use of Council's computer systems, programs and/or any arrangement Council has in place to access the Internet.
- 5.8.2 The Contractor must advise Council's Representative of any unauthorised access and/or use.

#### 5.9 Making good damage

- 5.9.1 The Contractor must immediately remedy or make good all breakages of or damage to any building, structure, street or property of any description caused by or as a result of the neglect, default or misconduct of the Contractor or the Contractor's Staff whilst engaged in the performance of the Services.
- 5.9.2 If the Contractor fails to remedy or make good the breakage or damage immediately, Council's Representative may direct the Contractor to do such things as Council's Representative considers necessary to remedy or make good the breakage or damage.
- 5.9.3 The provisions of clause 18 will apply to any Claim incurred or suffered by Council in relation to:
  - (a) such breakage or damage; and/or
  - (b) any action taken by the Contractor to remedy or make good such breakage or damage irrespective of whether such action was taken at the direction of Council's Representative.
- 5.9.4 If the Contractor fails to comply with Council's Representative's Direction, Council's Representative may have the breakage or damage rectified and the cost of rectification will be a debt due to Council from the Contractor.

#### 5.10 Urgent action

If urgent action is necessary to perform the Services or, in relation to the Services, to protect people, property or the Environment, Council may take the necessary action but will, when reasonably possible, direct the Contractor to take the necessary action. If the action taken by Council was action that the Contractor should have taken at the Contractor's cost, the cost incurred by Council will be a debt due to Council from the Contractor. A direction under this clause 5.10 will not constitute a Variation.

#### 5.11 Work health and safety

The Contractor must:

- 5.11.1 at all times identify and exercise, and must ensure that the Contractor's Staff at all times identify and exercise, all necessary precautions for work health and safety of all persons who may be affected by the Services;
- 5.11.2 ensure that the Work Health and Safety Management System at a minimum demonstrates compliance with all duties of an employer under the WHS Law;
- 5.11.3 comply with any Direction, manuals, policies or rules formulated from time to time by Council relating to work health and safety insofar as they relate to the Services and are notified to the Contractor. Council is not liable to the Contractor for the completeness, adequacy or correctness of any such Direction, manual, policy or rule and the Contractor releases Council accordingly from any liability therefrom;



- 5.11.4 perform the Services and carry out all its obligations under this Agreement in compliance with WHS Law;
- 5.11.5 ensure that each of the Contractor's Staff comply with all WHS Law in connection with the Services, Contractor's Plant, Contractor's Facilities and Collection Vehicles:
- 5.11.6 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;
- 5.11.7 ensure that it carries out the Services in a manner which ensures that, and otherwise provide all required assistance to Council to ensure that, Council satisfies its obligations under the WHS Law in connection with the Services, Contractor's Plant, Contractor's Facilities and Collection Vehicles;
- 5.11.8 ensure that there is no unreasonable risk to health, safety and welfare of any persons employed in connection with the Services, Contractor's Plant, Contractor's Facilities or Collection Vehicles (whether by the Contractor, any of the Contractor's Staff or otherwise);
- 5.11.9 manage risks associated with the carrying out of the Services in accordance with Part 3.1 of the WHS Regulation:
- 5.11.10 ensure that if any Law requires that:
  - (a) a person:
    - 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
  - 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;
- 5.11.11 not direct or allow a person to carry out or use plant or substances at a workplace unless the requirements of clause 5.11.10 are met (including any requirement to be authorised, licensed, qualified or supervised);
- 5.11.12 if requested by Council's Representative or required by the WHS Law, produce evidence of any Approvals, registration, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of Council's Representative;
- 5.11.13 report any serious bodily injuries or dangerous events to the relevant Authority within the time frame required by Law. In addition, the Contractor must immediately notify Council's Representative in writing of:
  - any accident or injury which occurs during the performance of the Services;
     or

- (b) any act, fact or circumstances associated with the Services, Contractor's Plant, Contractor's Facilities or Collection Vehicles relevant to the ability of the Contractor to comply with the requirements of this clause 5.11 and 5.12;
   and
- 5.11.14 immediately notify all lost time incidents in relation to the Services to Council. The Contractor must within three days of any such incident provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the future prevention of such incidents.

#### 5.12 Principal Contractor

In respect of any works commissioned by, or carried out by or on behalf of, the Contractor in connection with the Services or Contractor's Facilities, without limiting or otherwise affecting the obligations of the Contractor under any other provision of this Agreement, Council and the Contractor agree that, if the works are a construction project to which Chapter 6 of the WHS Regulation applies:

- 5.12.1 the Contractor must carry out such works in accordance with the requirements of the WHS Law;
- 5.12.2 Council engages the Contractor as principal contractor in respect of such works;
- 5.12.3 Council authorises the Contractor to:
  - (a) have management and control of such works; and
  - (b) discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the WHS Regulation in connection with such works;
- 5.12.4 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;
- 5.12.5 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;
- 5.12.6 the Contractor is aware of its obligations as principal contractor, or its obligations that may otherwise arise under clause 5.12.5; and
- 5.12.7 the Contractor shall comply with the WHS Law, including to the extent that the Contractor is a person conducting a business or undertaking (including to whom any of sections 22, 23, 24, 25 or 26 of the WHS Act applies).

#### 5.13 WHS Law definitions

Except as otherwise provided in clause 1.1, all terms used in clauses 5.11 and 5.12 have the meanings given to them in the WHS Act and the WHS Regulation.



#### 5.14 Incidents

Without limiting clause 5.11.13 or 5.11.14, the Contractor must:

- 5.14.1 immediately notify Council's Representative:
  - (a) of any Contamination (of land) or Pollution which is caused; or
  - (b) 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, and do everything necessary to minimise harm to humans and the Environment in connection with the Contamination (of land), Pollution, accident, notifiable incident, injury or property damage;

- 5.14.2 within 24 hours of any such matter notified under clause 5.14.1, provide a written report to Council's 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; and
- 5.14.3 notify Council's Representative as soon as reasonably practicable after becoming aware of:
  - (a) a breach of the Environmental Management Plan;
  - (b) an Authority having issued a fine, notice or order to, or having commenced a prosecution against, the Contractor or a Subcontractor in relation to an alleged breach of Law relating to the Environment,

in connection with the Services.

### 5.15 Transition of existing workforce, plant, equipment and property

The Contractor must comply with the obligations (if any) set out in Schedule 10.

- 6. Contractor's plant, facilities and vehicles
- 6.1 Use of Contractor's Plant, Contractor's Facilities and Collection Vehicles
  - 6.1.1 The Contractor must ensure that at the Services Commencement Date and throughout the Services Term each of the Contractor's Plant, Contractor's Facilities and Collection Vehicles:
    - (a) is in safe working condition;
    - (b) complies with all applicable Law;
    - (c) is suitable for the purpose for which it is to be used; and
    - (d) is maintained:
      - (i) in accordance with this Agreement;
      - (ii) in a proper, safe and efficient condition; and
      - (iii) to comply with Law in respect of harm to the Environment.



- 6.1.2 The Contractor must prepare, sign and deliver to Council's Representative at its request an inventory of the Contractor's Plant, Contractor's Facilities and Collection Vehicles and a certification as to the matters set out in clause 6.1.1:
  - (a) on or before the Commencement Date; and
  - (b) within 5 Business Days after each anniversary of the Commencement Date during the Term.
- 6.1.3 In using any Contractor's Facility or Contractor's Plant, the Contractor must at its cost ensure that:
  - the Contractor's Facility and Contractor's Plant are operated in a proper and efficient manner, by competent operators, in accordance with all necessary Approvals;
  - the Contractor's Facility and Contractor's Plant are, and are demonstrated to be, lawful, suitable and safe for the proposed use; and
  - any waste is safely and lawfully handled, stored and transported to the Nominated Disposal Facility or Nominated Processing Facility.
- 6.1.4 The Contractor assumes the risk of all delay, increased costs and any liability or Loss it suffers or incurs in relation to the conditions and characteristics of Collection Vehicles, Contractor's Plant or any Contractor's Facilities.
- 6.1.5 The Contractor must at the Contractor's cost make arrangements for access to and use of all Contractor Vehicles, Contractor Plant or any Contractor Facilities and obtain and comply with all necessary Approvals to use Contractor Vehicles, Contractor Plant or any Contractor Facilities.

# 7. Management Systems and Services Management Plans

# 7.1 Contractor's Management Systems

- 7.1.1 The Contractor must prepare, implement and comply with the Management Systems in relation to provision of the Services.
- 7.1.2 Each Management System must:
  - (a) comply with the requirements of the relevant ISO or Australian Standard;
  - (b) demonstrate how the Contractor will comply with all Laws;
  - adopt a planned and systematic approach to minimise risks created in the performance of the Services;
  - (d) comply with the requirements set out in the Services Specification; and
  - (e) contain at least the following components:
    - a method of identifying and recording risks or processes related to the provision of the Services and subsequent procedures to manage those risks;
    - (ii) a documented review process;



- (iii) a process of continual improvement;
- (iv) a process to identify and monitor relevant Law as it relates to this Agreement;
- (v) identified targets and objectives to be achieved;
- (vi) the keeping of relevant records and monitoring of the system;
- (vii) periodic auditing of the system; and
- (viii) any other items required by Council.
- 7.1.3 For the Management Systems pertaining to quality, environment and safety; the Contractor must be and remain accredited for compliance with the relevant ISO or Australian Standard for the duration of the Term.

## 7.2 Contractor's Services Management Plans

- 7.2.1 For the purposes of this clause 7 (other than clause 7.1), a reference to a Services Management Plan is taken to include the Contract Program.
- 7.2.2 The Contractor must prepare, implement and comply with its Services Management Plans for the provision of the Services.
- 7.2.3 The Services Management Plans must at least address the matters required by the Services Specification.
- 7.2.4 The Contractor must throughout the Term in the performance of the Services implement continuous improvements, adopt systems, invest in technology and introduce efficiency measures consistent with good industry practice, to at least the standard common to providers of similar services in Australia.

# 7.3 Endorsement of Management Systems and Services Management Plans

- 7.3.1 Prior to the Services Commencement Date, and within such other timeframe as is specified in the Services Specification (if any) or this Agreement, the Contractor must prepare (if not already in existence) and submit to Council copies of the Management Systems and Services Management Plans.
- 7.3.2 Council must either:
  - (a) give written notice to the Contractor Endorsing the Management Systems and Services Management Plans submitted to it under clause 7.3.1; or
  - (b) if Council reasonably considers that any of the Management Systems or Services Management Plans do not comply with the requirements of this Agreement, give notice to the Contractor within 15 Business Days of receipt of the relevant Management System or Services Management Plan specifying the areas of non-compliance.
- 7.3.3 If Council gives a notice under clause 7.3.2(b), the Contractor must:
  - amend the relevant Management System or Services Management Plan to address the matters identified in that notice; and
  - (b) within 10 Business Days of the notice re-submit the amended Management System or Services Management Plan to Council.



7.3.4 The provisions of clauses 7.3.2 and 7.3.3 will apply to any re-submitted Management Systems or Services Management Plans as if they were the Management Systems or Services Management Plans originally submitted under clause 7.3.1.

# 7.4 Updating Management Systems and Services Management Plans

- 7.4.1 The Contractor must review and, if necessary, update the Management Systems and Services Management Plans at least every second year during the Term (or at such greater frequency as is specified for a particular Management System or Services Management Plan in the Services Specifications) to take into account:
  - (a) changes in Law;
  - (b) deficiencies or omissions in the Management Systems or Services
    Management Plans of which the Contractor or Council becomes aware;
  - improvements in the Management Systems or Services Management Plans; and
  - (d) Permitted Variations under clause 11.
- 7.4.2 The Contractor must submit a copy of the updated Management Systems and Services Management Plans to Council for Endorsement in accordance with clause 7.3. The Contractor must submit a copy of each Endorsed updated Management System and Services Management Plan to Council by 30 November each year or within 20 Business Days from Endorsement, whichever is the earlier.

# 7.5 Application and Audit

- 7.5.1 The Contractor must comply with each Endorsed Management System and Services Management Plan from the Services Commencement Date until the Expiry Date.
- 7.5.2 The Contractor acknowledges and agrees that its compliance with the Management Systems and Services Management Plans will not release or discharge it from compliance with its obligations under this Agreement.
- 7.5.3 The Contractor must provide all reasonable assistance to Council and its nominees to enable Council to monitor and audit the Contractor's compliance with its obligations under this Agreement, including by, at all times during the Term, allowing Council and its nominees reasonable access to the Contractor's systems and records used by the Contractor (including the Contractor's Staff) in the provision of the Services.
- 7.5.4 The provision of comments or Endorsement by Council or Council's Representative, or any of those persons not providing comments or refusing to provide Endorsement in relation to:
  - (a) a Management System or Services Management Plan under clause 7.3 or the Contract Program under clause 2.4; or
  - (b) an update to an Endorsed Management System or an Endorsed Services Management Plan under clause 7.4 or the Contract Program under clause 2.5.2,

does not limit the obligations or potential liability of the Contractor or rights of Council or Council's Representative.



## 8. Performance Management System

## 8.1 Key Performance Indicators

The Performance Management System set out in Schedule 3 comprises a range of Key Performance Indicators to measure the Contractor's performance throughout the Services Term. The intent of the Performance Management System is to have a fair and equitable manner of measuring performance and encouraging continuous improvement of the Services under this Agreement.

## 8.2 Change to Key Performance Indicators

Council's Representative and the Contractor's Representative will periodically review the Key Performance Indicators, and may by written agreement subsequently amend them in any way, including creating new Key Performance Indicators. In reviewing the Key Performance Indicators, the parties must consider to what extent the Key Performance Indicators will be used to encourage performance by:

- 8.2.1 taking account of the disbenefit to Council of declining performances through:
  - (a) Fee adjustments under clause 12.8; or
  - requiring the Contractor to address particular areas of non-performance within a stated time frame; and
- 8.2.2 where required by Council, defining consistently poor performance over an extended time frame as constituting a default for the purposes of clause 21.

# 8.3 Measuring performance

Council will review the performance of the Contractor against the agreed Key Performance Indicators and determine the Contractor's performance against the benchmark. Where applicable, the Fees payable under clause 12.1 may be adjusted in accordance with clause 12.8.

## 8.4 Performance improvement plan

- 8.4.1 If there is a non-performance or poor performance as measured through the Performance Management System, then:
  - (a) Council's Representative may, instead of or in addition to exercising Council's rights under clause 8.3 or clause 11.8, give the Contractor a notice which:
    - must state that it is a performance improvement notice under this clause 8.4; and
    - (ii) requires that the Contractor submit a performance improvement plan to the reasonable satisfaction of Council's 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 ensure that the non-performance will not be repeated; and
  - (b) if Council's Representative gives the Contractor a performance improvement notice then the Contractor must comply with it.



- 8.4.2 If Council's Representative notifies the Contractor that it is satisfied with the performance improvement plan submitted under clause 8.4.1 then the Contractor must fully implement and comply with that performance improvement plan.
- 8.4.3 If Council's Representative notifies the Contractor that it is not satisfied with the performance improvement plan submitted under clause 8.4.1 then the Contractor must promptly and in accordance with any directions of Council's Representative, review and correct the performance improvement plan and resubmit it to Council's Representative and clauses 8.4.2 and this clause 8.4.3 shall reapply.

#### 8.5 Council's rights not affected

The application of the Performance Management System, including any adjustment to Fees payable under clause 12.8 or the requirement for the preparation and implementation of a performance improvement plan under clause 8.4, in relation to poor performance or nonperformance by the Contractor will not limit or waive Council's rights under clause 21 or any other provisions of this Agreement in relation to such poor performance or non-performance.

#### 8.6 Acknowledgement

The parties acknowledge and agree that:

- 8.6.1 the amount of each reduction in the Fee specified in Schedule 3 is an agreed, genuine pre-estimate of the minimum damages of Council if the circumstances described in respect of each Fee reduction occur, and is not a penalty; and
- 8.6.2 if this clause 8 or Schedule 3 (or any part of this clause 8 or Schedule 3) is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle Council from recovering the reduction in the Fee specified in Schedule 3 for the Contractor's failure to comply with the corresponding Key Performance Indicator. Council will be entitled to recover damages from the Contractor for such failure under general law.

#### 9. Complaints and Disputed Services

#### 9.1 General

The Contractor acknowledges that it is an objective of Council to minimise complaints from customers of its waste management systems and agrees to use all reasonable endeavours to achieve continuous improvement in the delivery of the Services.

#### 9.2 Failure to rectify complaint

- 9.2.1 If a customer makes a Complaint, the Contractor must:
  - rectify the complaint in accordance with the Services Specification; and (a)
  - (b) review and update the Management Systems and Services Management Plans in accordance with clause 7.4.1(b).
- 9.2.2 If the Contractor fails to rectify a Complaint in accordance with this Agreement and the Services Specification, Council reserves the right, after giving written notice to the Contractor of its intention to do so, to rectify the Complaint. The cost of rectification will be a debt due to Council from the Contractor.



### 9.3 Disputed Services

Without limiting any other right of Council, Council's Representative may in its absolute discretion elect to serve a written notice to the Contractor:

- 9.3.1 asserting that a Service has not been properly performed in accordance with this Agreement;
- 9.3.2 directing that the Service be re-delivered or re-performed in accordance with this Agreement; and
- 9.3.3 specifying a reasonable period for compliance with that direction,

and the Contractor must comply with that notice.

# 10. Meetings, record keeping, reporting and verification

## 10.1 Meetings

Council and the Contractor must meet at the frequency specified in the Services Specification or as otherwise reasonably required by Council to discuss:

- 10.1.1 the performance of the Services; and
- 10.1.2 any other matters which Council may wish to raise at a meeting concerning the Services and this Agreement.

#### 10.2 Reporting

- 10.2.1 The Contractor must, at the times and in the format specified in the Services Specification or as otherwise reasonably requested by Council, provide Council with detailed written reports on the performance of the Services in sufficient detail to allow Council to ascertain whether the Services are being performed in accordance with this Agreement.
- 10.2.2 In addition to the reports required under this Agreement including clause 10.2.1, the Contractor must during the Term at its cost deliver to Council's Representative, when requested, a written report on any aspect of this Agreement when requested.
- 10.2.3 If required by Council's Representative from time to time, a report under this clause 9 must be certified by way of a statutory declaration by a person authorised to make that declaration on behalf of the Contractor.

## 10.3 Accounts

The Contractor must maintain all those financial and financial planning records that would be expected of a prudent, efficient contractor performing services the nature of the Services.

## 10.4 Records

- 10.4.1 The Contractor must maintain true, up to date and complete records as required by the Services Specification and otherwise as relates to the resources engaged and assets utilised in the performance of the Services.
- 10.4.2 At any time during the Services Term Council's Representative may, for the purposes of this Agreement, request that the Contractor provide it with, or make available for inspection, any or all of:



- (a) any information described in clause 10.4.1; and
- (b) other information in respect of the conduct of the Services, which Council reasonably requires,

and the Contractor must promptly comply with that request.

10.4.3 All records required to be maintained in accordance with clause 10.4.1 must be held by the Contractor until twelve months after the expiry or termination of this Agreement.

## 10.5 Compatibility of information systems

Any information, data and records required to be provided to Council under this Agreement must be provided, if so requested by Council, in a form which is compatible with Council's electronic data and records systems as modified and notified from time to time.

#### 11. Variations

### 11.1 Definitions

In this clause 11:

- 11.1.1 **'Permitted Variation'** means any of the following kinds of variations to this agreement:
  - (a) a Council directed Variation as described in clause 11.2;
  - (b) an agreed Variation as described in clause 11.3; or
  - a lump sum payment or adjustment to the Agreement Prices to account for a Qualifying Increase in Costs arising as a direct result of a Qualifying Change as described in clause 11.4;

## 11.1.2 'Qualifying Change' means:

- a change in an Act of Parliament or Regulation made under an Act of Parliament that directly regulates the manner of performing the Services, which change:
  - directly and naturally results in an increase in the Contractor's operating costs in performing the Services over and above the Contractor's operating costs in performing the Services immediately prior to the change;
  - (ii) was not reasonably able to be foreseen by a competent contractor in the position of the Contractor on or before the Commencement Date;
  - (iii) was not in fact foreseen by the Contractor on or before the Commencement Date; and
  - (iv) was not caused or contributed to by the conduct of the Contractor after the Commencement Date; or
- (b) 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,

which occurs or comes into effect during the Term, and which is not a Force Majeure Event;

- 11.1.3 'Qualifying Increase in Costs' means an actual increase in the Contractor's operating costs reasonably incurred by the Contractor in performing the Services, over and above the greater of the operating costs that applied at the Commencement Date and the date immediately before the Qualifying Change, which increase in costs:
  - (a) is the direct and natural consequence of a Qualifying Change;
  - (b) was not reasonably able to be foreseen by a competent contractor in the position of the Contractor at the Commencement Date;
  - (c) was not in fact foreseen or allowed for by the Contractor on or before the Commencement Date; and
  - 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. To avoid doubt, a Qualifying Increase in Costs excludes any increase in costs associated with any capital works; and

11.1.4 'Variation' may include additions, omissions, substitutions, alterations, changes in quality or character, kind or position and changes in specific sequence, method, timing or technology; and

'Variation Amount' means an amount of money assessed, agreed or determined as payable for a Permitted Variation in accordance with this clause 11;

## 11.2 Variation directed by Council

- 11.2.1 Prior to the Expiry Date, Council may at any time, after consulting with the Contractor, by written notice:
  - order any Variation to any part of the Services that may reasonably be necessary for the performance of the Services; or
  - (b) order any Variation considered by Council's Representative to be desirable for the satisfactory performance and function of the Services.
- 11.2.2 The consultation referred to in clause 11.2.1 must include consultation in relation to:
  - (a) the scope of the 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 the proposed Variation on any of the Contractor's obligations under this Agreement.



### 11.3 Agreed Variation

- 11.3.1 The parties may by exchange of letters signed by Council's Representative and the Contractor's Representative, agree:
  - (a) a Permitted Variation;
  - (b) the Variation Amount for that Permitted Variation; and
  - (c) a period of time for implementation and operation of the Permitted Variation.
- 11.3.2 At any time during the Term, Council may issue a notice to the Contractor regarding the implementation of an improvement, enhancement 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 any objectives specified in this Agreement and upon receipt of such notice the Contractor and Council agree to negotiate in good faith regarding agreed variations to this Agreement to implement the improvements, enhancements or innovations.

## 11.4 Qualifying Change

- 11.4.1 The Contractor may, subject to and in accordance with this clause 11.4, claim a variation to the Agreement Prices to account for a Qualifying Increase in Costs arising as a direct result of a Qualifying Change.
- 11.4.2 Within 30 Business Days after the occurrence of the Qualifying Change, the Contractor must give to Council's Representative a written notice setting out:
  - sufficient evidence to demonstrate to the reasonable satisfaction of Council's Representative that a Qualifying Change occurred;
  - (b) the amount the Contractor proposes as payable by Council to the Contractor by way of Qualifying Increase in Costs, with details of:
    - (i) how such amount has been calculated and why the various components of that amount are in each case a Qualifying Increase in Costs, in sufficient detail (and supported by sufficient evidence) to enable Council's Representative to substantiate that amount and the extent to which its various components are in each case a Qualifying Increase in Costs; and
    - the proportion of such amounts that the Contractor would expect to be paid (whether by Council to the Contractor, or by the Contractor to Council) by way of an adjustment to the Agreement Prices;
  - (c) in respect of amounts referred to in paragraph 11.4.2(b)(ii):
    - (i) whether the Contractor proposes that such amounts be payable (whether by Council to the Contractor, or by the Contractor to Council) as a lump sum or as an adjustment to the Agreement Prices (or combination of those); and
    - (ii) 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;



- 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 the amount referred to in paragraph 11.4.2(b), and details of those cost savings, reductions in costs or increases in efficiency;
- a certification that the Contractor has taken all reasonable and feasible steps to mitigate the impact of the Qualifying Change and details of those steps taken; and
- (g) a certification that there are not at that time any further Claims for any Qualifying Change (or if there are, specifying these).
- 11.4.3 The Contractor must provide such additional or supplementary information as Council may require to enable Council's Representative to assess the validity of the claim made.
- 11.4.4 The Contractor must take all reasonable and feasible steps to mitigate the impact of the Qualifying Change and to reduce any associated Qualifying Increase in Costs.
- 11.4.5 Subject to clause 11.4.8, within 60 Business Days of receipt of all of the information required under clauses 11.4.2 and 11.4.3, Council's Representative may by written notice to the Contractor notify the Contractor that Council:
  - (a) accepts that there has been a Qualifying Change, and agrees with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b), in which case the amount set out in the Contractor's notice under clause 11.4.2(b) shall be the Variation Amount; or
  - (b) accepts in whole or in part that there has been a Qualifying Change (identifying the extent to which it accepts that there has been a Qualifying Change), but does not agree with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b) (but identifying the extent to which such value is agreed, and is not agreed) in which case:
    - (i) to the extent Council accepts there has been a Qualifying Change:
      - (A) to the extent Council also agrees with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b), the amount set out in the Contractor's notice under clause 11.4.2(b) shall be the Variation Amount;
      - (B) to the extent Council does not agree with the value of the Qualifying Increase in Costs set out in the Contractor's notice under clause 11.4.2(b), either party may refer the matter for dispute resolution under clause 28 to determine the value of the relevant Qualifying Increase in Costs for the purposes of determining the Variation Amount;
    - (ii) Council is taken to reject any other aspect of the claim that there has been a Qualifying Change or that there has been, or will be, a Qualifying Increase in Costs – in which case either party may refer the matter for resolution under clause 28 in relation to whether or not



there has been a Qualifying Change or to determine the value of the relevant Qualifying Increase in Costs for the purposes of determining the Variation Amount; or

- (c) accepts that there has been a Qualifying Change, but rejects that there has been, or will be, any Qualifying Increase in Costs, in which case either party may refer the matter for resolution under clause 28; or
- (d) rejects that there has been a Qualifying Change and Qualifying Increase in Costs, in which case either party may refer the matter for resolution under clause 28 in relation to whether or not there has been a Qualifying Change or to determine the value of the relevant Qualifying Increase in Costs for the purposes of determining the Variation Amount.
- 11.4.6 If the Contractor gives Council's Representative a notice under clause 11.4.2, Council's Representative may within 60 Business Days of receipt of all information required under clauses 11.4.2 and 11.4.3 elect on behalf of Council to terminate this Agreement, if:
  - (a) either:
    - that notice claims or purports to claim an increase in the Agreement Prices and the increase is in the opinion of Council's Representative acting reasonably having regard to the current market information available to Council's Representative, likely to impose a cost that Council regards as excessive;
    - (ii) that notice claims or purports to claim an increase in the Agreement Prices, and the sum of:
      - (A) that increase; and
      - (B) any other increase to the Agreement Prices that occurred following a notice from Council under clause 11.4.5(a) or 11.4.5(b) in the 12 months prior to the date of that notice,

would equate to an increase in the Fees payable in any 12-month period following the date of that notice until the end of the Term, of more than or equal to 25% above the Fees payable in the 12-month period prior to the date of that notice disregarding any fees payable in that period that were directly attributable to any increase referred to in clause 11.4.6(a)(ii)(B) that occurred within that period; or

- (iii) there are alternative contractors able to deliver substantially the same level of service available in the market at a lower cost (to the cost that would apply under the notice given under clause 11.4.2); and
- (b) that notice is not withdrawn by the Contractor within 5 Business Days of receiving notice from Council's Representative of Council's intention to terminate this Agreement under this clause 11.4.6.
- 11.4.7 If Council elects to terminate this Agreement under clause 11.4.6 then clause 21 shall apply and Council's Representative must serve an Enforcement Notice under clause 21.2.
- 11.4.8 A notice from Council under clause 11.4.5 must be evidenced by written certification by or on behalf of Council's Representative.



## 11.5 Payment of Variation Amount

- 11.5.1 If there is a Permitted Variation to this Agreement, then the Variation Amount, will be paid as one or both of:
  - (a) a payment in accordance with clause 11.5.4; and
  - (b) an adjustment to the Agreement Prices in accordance with clause 11.5.5,

as agreed between the parties or, failing agreement, as determined by Council's Representative.

- 11.5.2 A variation under this clause 11 will only be valid and a variation to this Agreement will only take effect if the variation is a Permitted Variation and a notice directing or certifying the Permitted Variation is provided to the Contractor in writing and signed by or on behalf of Council's Representative, following:
  - (a) for a Variation directed under clause 11.2, a determination or agreement of the Variation Amount under clause 11.6 or 11.7;
  - (b) exchange of letters under clause 11.3; or
  - (c) a notice from Council under clause 11.4.5(a) or 11.4.5(b)(i)(A).
- 11.5.3 The notice referred to in clause 11.5.2 must include:
  - (a) a description of the Permitted Variation;
  - (b) a certification of the Variation Amount (if any) assessed by Council's Representative as payable, comprising one or more of:
    - (i) any adjustment to the Agreement Prices;
    - (ii) any additional payment based on the Agreement Prices; and
    - (iii) any payment calculated otherwise than by reference to the Agreement Prices.
- 11.5.4 Where, and to the extent that, the notice referred to in clause 11.5.2 includes a certificate in accordance with clause 11.5.3 that the Variation Amount comprises a payment calculated otherwise than by reference to the Agreement Prices or is an additional payment based on the Agreement Prices, then the Contractor may issue Council's Representative with a claim for that amount as part of the next Monthly Statement, when that payment is payable, for that amount in accordance with clause 12.
- 11.5.5 Where, and to the extent that, the notice referred to in clause 11.5.2 includes a certificate in accordance with clause 11.5.3 that all or part of the Variation Amount is to be paid by way of an adjustment to the Agreement Prices then the adjustment amount is to be included in the applicable Agreement Prices on the next date that the applicable Agreement Prices are adjusted in accordance with part 3 of Schedule 2.
- 11.5.6 A notice issued by Council under clause 11.4.5(a) or 11.4.5(b)(i)(A) may include a requirement that at a date specified in the notice:
  - (a) the Contractor must provide to Council's Representative evidence demonstrating the actual Qualifying Increase in Costs incurred by the



Contractor at that date in respect of the Qualifying Change, along with such additional information as Council's Representative may reasonably require to validate and reconcile that amount against the Variation Amount; and

(b) Council's Representative is to validate and reconcile the actual Qualifying Increase in Costs incurred at that date by the Contractor against the Variation Amount,

and the parties must comply with that requirement.

- 11.5.7 If Council's Representative determines under clause 11.5.6(b) that the Variation Amount is greater than the actual Qualifying Increase in Costs incurred by the Contractor at the reconciliation date, then:
  - (a) Council's Representative may issue a written notice to the Contractor specifying the difference between the two amounts and including a tax invoice for that amount; and
  - (b) the Contractor must pay Council that amount within 20 Business Days of its receipt of that notice.
- 11.5.8 If Council's Representative determines under clause 11.5.6(b) that the Variation Amount is less than the actual Qualifying Increase in Costs incurred by the Contractor at the reconciliation date, then:
  - (a) Council's Representative may issue a written notice to the Contractor specifying the difference between the two amounts; and
  - (b) Council must pay the Contractor that amount within 20 Business Days of its receipt of a tax invoice for that amount.

# 11.6 Variation Amount for directed Variation - covered by specified rates

- Where a variation has been directed under clause 11.2 in respect of any services for which a unit rate is contained within Schedule 2, the Contractor is bound to provide those Services that are the subject of the variation at the Agreement Prices, and the process in clause 11.7 will not apply, provided that the total sum payable under this Agreement in the Service Period following the direction remains within the range of 80% to 150% of the originally estimated total contract value after allowing any adjustment for rise and fall.
- 11.6.2 For the purposes of clause 11.6.1, the total sum payable under this Agreement following the variation, and the original estimated total contract value is to be:
  - determined by Council's Representative and notified in writing to the Contractor; and
  - (b) if the Contractor disagrees with that determination, resolved in accordance with clause 28 as a Dispute.

# 11.7 Variation Amount for directed Variation - not covered by specified rates

Where a variation has been directed under clause 11.2 and the variation:

11.7.1 is in respect of any services for which a rate is not contained within Schedule 2; or



11.7.2 would result in the total sum payable under this Agreement in the Service Period following the direction being outside the range of 80% to 150% of the originally estimated total contract value after allowing any adjustment for rise and fall,

#### then:

- 11.7.3 Council's Representative may request a detailed quotation for the Contractor to perform varied services as a Variation;
- 11.7.4 the Contractor must provide the quotation requested and advise the effect the Variation will have on the provision and/or delivery of the Services under this Agreement. Council will pay a reasonable amount for the provision of the quotation;
- 11.7.5 the parties agree to make all reasonable attempts to agree a price for the Variation;
- 11.7.6 the parties agree that an independent person, agreed upon by the parties, who is expert in the waste services that are the subject of the variation, may be used to provide an opinion as to the reasonableness of the Variation Amount;
- 11.7.7 Council's Representative may instruct the Contractor in accordance with clause 11.2 and 11.5.2 to perform the Variation following agreement of the price of the Variation;
- 11.7.8 Council's Representative may instruct the Contractor in accordance with clause 11.2 and 11.5.2 to perform the Variation without agreement on the price;
- 11.7.9 the Contractor must perform the Variation if so instructed; and
- 11.7.10 if agreement on the price for the Variation is not reached, then the matter is to be resolved in accordance with clause 28 as a Dispute.

#### 11.8 Contractor claim of a directed variation

- 11.8.1 If the Contractor considers that a Direction has been made by Council or Council's Representative that constitutes a variation under this clause 11 (where not expressly so stated):
  - (a) the Contractor must give written notice to Council's Representative to that effect immediately upon receipt of the Direction and again prior to the start of the work or activity which is the subject of the Direction; and
  - (b) despite any other provision in this Agreement, the giving of the notices under clause 11.8.1(a) by the Contractor 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 11.
- 11.8.2 For the avoidance of doubt, this clause 11.8 does not permit a variation independently of the procedures in clause 11.



## 11.9 Limited application of clause

- 11.9.1 For the avoidance of doubt, an entitlement to additional payment under this clause 11 only applies to:
  - variations directed by Council's 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 11.4

and which are a Permitted Variation.

### 11.9.2 For the avoidance of doubt:

- (a) a requirement of Council or Council's Representative or a comment or a Direction of Council or Council's Representative:
  - to require compliance with this Agreement, the requirements of the EPA or of any Law applicable from time to time; or
  - (ii) which Council or Council's Representative is otherwise entitled to make under this Agreement or any other document (other than a Direction expressed to be a Variation directed by Council under clause 11.2);
- any error, omission, defect or incompleteness in any Disclosed Information;
   or
- (c) a requirement of any Authority,

will not be or permit a variation under this clause 11 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.

- 11.9.3 For the avoidance of doubt the Contractor will only be entitled to payment for a Permitted Variation:
  - for which a notice has been issued by or on behalf of Council's Representative in accordance with clause 11.5; and
  - (b) that has been carried out in accordance with that notice.

#### 11.10 Beneficial variations

## 11.10.1 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; or
- (b) the Contractor or Council identifies an option for improvement or innovation in relation to the performance of the Services that would reduce the cost of the Services,



Council's Representative may by written notice to the Contractor, request that the parties negotiate in good faith to determine and agree a reduction in the Agreement Prices 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 by negotiating in good faith in an attempt to determine and agree a reduction in the Agreement Prices to equitably and reasonably share between the parties that offset, reduction or benefit.

- 11.10.2 If agreement on a reduction in the Agreement Prices to equitably and reasonably share an offset, reduction or benefit referred to in clause 11.10.1 cannot be or has not been reached within 30 Business Days after a notice is served on the Contractor under clause 11.10.1, then clause 28 will apply to the questions of:
  - (a) if a reduction; and
  - (b) if so, what reduction,

in the Agreement Prices should apply to equitably and reasonably share between the parties the offset, reduction or benefit.

#### 11.11 Fee exclusive of Carbon Price

- 11.11.1 The Contractor warrants that all rates and prices specified in this Agreement are exclusive of:
  - (a) any Carbon Price applicable directly or indirectly to the Services or any input costs of the Services such that in paying the Fee, Council is not making any payment whatsoever that is attributable to any Carbon Price; and
  - (b) any benefit (including a credit or income) under the Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth) or under any other Carbon Credit Scheme.
- 11.11.2 Council's Representative may at any time during the Term request that the Contractor repeat the warranty provided at clause 11.11.1 remains true, and the Contractor must comply with that request.

## 12. Prices and Payment

#### 12.1 Fees

- 12.1.1 Subject to clause 11, for a Service performed under this Agreement:
  - (a) the Contractor is only entitled to be paid the Fee duly claimed and calculated in accordance with this clause 12; and
  - (b) the Contractor is not entitled to and must not claim, any amounts other than in accordance with this clause 12.
- 12.1.2 All claims for payment of the Fee must be made in accordance with this clause 12 and Council has no liability to pay a Fee unless:
  - the preconditions for payment under this clause 12 and Schedule 2 have been satisfied;
  - a valid Monthly Statement has been issued to Council together with all supporting documentation required by this Agreement;



- (c) an invoice properly prepared and rendered in accordance with clause 12.3 has been served on Council;
- (d) the Monthly Statement has not been disputed, provided that payment of the Fee claimed in a Monthly Statement will be made by or on behalf of Council in accordance with this clause 12 to the extent it is not disputed; and
- (e) the amount claimed has been properly calculated in accordance with this Agreement.
- 12.1.3 The Fee payable in respect of any Services must be calculated in accordance with Schedule 2 and to avoid doubt the Contractor cannot charge Council and Council is under no obligation whatsoever to pay any amounts calculated using any change to the formulae, amounts, factors, indices or other matters specified in Schedule 2 unless the Contractor has obtained Council's written consent to such change prior to the Contractor providing the Services to which the change relates.

# 12.2 Monthly Statement

- 12.2.1 Within 10 Business Days after the end of each calendar month the Contractor must submit to Council's Representative a written statement, in a form approved by Council's Representative from time to time (Monthly Statement) for Services performed in that month, detailing the Fees to be claimed for each such Service.
- 12.2.2 Each Monthly Statement must:
  - (a) comply with any requirements specified in the Services Specification;
  - (b) for each Service provided in the month and for which a Fee is claimed, set out the full detailed calculation in accordance with Schedule 2 of the Fee for each Service and in total:
  - (c) include deductions, set offs and rebates as calculated in accordance with clause 12.7, 12.8, 12.9 or 12.10; and
  - include any amount that was previously disputed and for which the dispute has been resolved in accordance with clause 12.6.2; and
  - (e) include a summary report clearly setting out:
    - the calendar month to which the Monthly Statement relates;
    - (ii) each of the Services to which the Monthly Statement relates;
    - (iii) any Agreement Prices applicable to each of those Services;
    - (iv) the calculation of the amount claimed for each Service the subject of the Monthly Statement;
    - (v) the total amount claimed or payable by the Contractor;
    - (vi) GST; and
    - (vii) such other information as is required by clause 12;
  - (f) provide such additional details as Council's Representative may require (which may include, for example, detail of the provided Services, and the



attachment of receipts or the number of hours involved in particular work for additional services);

and must be accompanied by:

- (g) all necessary information to demonstrate the calculated amounts; and
- (h) a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW)) which is a written statement:
  - under section 175B of the Workers Compensation Act 1987 (NSW) in the form and providing the detail required by that legislation;
  - (ii) under Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) in the form and providing the detail required by that legislation; and
  - (iii) under section 127 of the Industrial Relations Act 1996 (NSW) in the form and providing the detail required by that legislation.
- 12.2.3 On submitting a Monthly Statement for any payment under this Agreement, the Contractor must certify in writing to Council's Representative that:
  - it has paid all wages and allowances due and owing to any of its workers
     (including employees and contractors) in respect of the Services claimed for;
  - (b) it has paid all amounts due and owing to any person, including any relevant government taxes, levies or charges, in respect of the Services 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's Plant, Contractor's Facilities and Collection Vehicles used to undertake the Services, up to the end of the period to which the Monthly Statement applies;
  - it has made all superannuation contributions in respect of individuals for whom it has responsibility to make superannuation contributions; and
  - it has made all other payments due and owing for costs which were expended in delivering services under this Agreement.
- 12.2.4 Council's Representative may require that any certification under clause 12.2.3 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.

#### 12.3 Provision of tax invoice

- 12.3.1 If the Monthly Statement shows that the net amount is an amount that Council must pay to the Contractor, the Monthly Statement must be accompanied by a tax invoice in compliance with the GST Laws showing the Fee for each Service and in total for all Services for the relevant month in the amounts specified in the Monthly Statement as the net amount payable. The tax invoice must:
  - specify the title of this Agreement, the contract number of this Agreement (or any other reference number as Council's Representative may, from time to



- time, specify in writing to the Contractor as being required to be inserted on any invoice to which this Agreement relates); and
- (b) be addressed to <a href="mailto:payables@willoughby.nsw.gov.au">payables@willoughby.nsw.gov.au</a> for the attention of Council's Representative.
- 12.3.2 If the Monthly Statement shows that the net amount is an amount that the Contractor must pay to Council then Council must, within 10 Business Days after receiving the Monthly Statement give the Contractor a tax invoice in compliance with the GST Law showing the amounts specified in the Monthly Statement as the net amount payable.

## 12.4 Payment dispute notice

- 12.4.1 If Council's Representative disputes an amount or a Service the subject of a Monthly Statement, Council may within 10 Business Days of receipt of a properly rendered Monthly Statement, notify the Contractor of the dispute. The notice must identify the Monthly Statement to which it relates and state:
  - (a) the amount assessed by Council's Representative as payable:
    - (i) by Council to the Contractor; or
    - (ii) by the Contractor to Council,
  - (b) any amount or Service disputed and the reasons for the dispute;
  - (c) if the amount assessed differs from the amount set out in the Monthly Statement, the reasons for the difference; and
  - (d) the net amount payable either to Council or the Contractor.
- 12.4.2 A Service may be disputed because:
  - (a) Council's Representative considers that a Service has not been properly performed in accordance with this Agreement; or
  - (b) Council's records of the performance of the Service or the number of Services performed disagrees with the Contractor's Monthly Statement.
- 12.4.3 Council's Representative may issue a notice under clause 12.4.1 at any time (and may issue multiple such notices in one calendar month) even if the Contractor has not lodged a properly rendered Monthly Statement. Council's Representative is not obliged to exercise its discretion under this clause for the benefit of the Contractor.
- 12.4.4 At any time, Council's Representative may by a further notice under clause 12.4.1 correct any error which has been discovered in any previous Monthly Statement.

# 12.5 Payment – where Monthly Statement not disputed

12.5.1 If Council has not issued a notice to the Contractor under clause 12.4, a party must pay the other party the amount specified in the Monthly Statement no later than 30 Business Days following receipt of a tax invoice in accordance with clause 12.3. For payments made by Council to the Contractor, payment will be made by electronic funds transfer to an account nominated by the Contractor.



12.5.2 The Contractor acknowledges that payments made by Council to the Contractor under this Agreement are on account only and are not evidence that the Contractor's obligations under this Agreement have been performed satisfactorily.

### 12.6 Payment – where Monthly Statement disputed

If Council has issued a notice to the Contractor under clause 12.4:

- 12.6.1 any amount in the Monthly Statement that is not disputed must be paid in accordance with clause 12.5;
- 12.6.2 Council will only be required to pay the Fee for any amount disputed or Disputed Services if:
  - (a) Council's Representative is satisfied that the Disputed Service has been satisfactorily performed (or re-delivered or re-performed in accordance with clause 9.3) to meet the requirements of this Agreement; or
  - in accordance with the resolution of the Dispute under clause 28 in accordance with that resolution;
- 12.6.3 the disputed amount in the Monthly Statement that is payable to Council must be paid in accordance with clause 12.5, but must be reimbursed by Council to the extent that Council was not entitled to that amount if it is so resolved under clause 28: and
- 12.6.4 the Contractor will not be entitled to any interest or charge for extending credit or allowing time for the payment of the Fee.

#### 12.7 Set-off

- 12.7.1 Without limiting Council's rights under any other part of this Agreement or at law, Council may deduct from any moneys due to the Contractor, any sum which is agreed to be payable or which is determined by Council or pursuant to clause 28 to have become payable by the Contractor to Council whether or not Council's right to payment arises pursuant to an indemnity or by way of damages, debt, restitution or otherwise including:
  - any costs or expenses incurred by Council in the rectification of breakage or damage in accordance with clause 5.9.4;
  - (b) any costs or expenses incurred by Council in taking action in accordance with clause 5.10;
  - (c) any costs or expenses incurred by Council in the rectification of Complaints in accordance with clause 9.2;
  - (d) any costs or expenses incurred by Council in taking action under clause 16;
  - (e) any costs or expenses incurred by Council in performing the obligations of the Contractor or obtaining the services of a third party pursuant to clause 21.1 or clause 21.9; or
  - (f) any costs or expenses incurred by Council as a result of or arising from any breach of this Agreement by the Contractor.
- 12.7.2 Nothing in this clause will affect Council's right to recover from the Contractor the whole of such moneys, or any balance that remains owing, by other means.



### 12.8 Fee adjustment

- 12.8.1 The Contractor's entitlement to payment of the Fees under clause 12.1 is subject to the Contractor's continuing compliance with the requirements of the Services Specification.
- 12.8.2 In each monthly report required to be prepared by the Contractor and submitted to Council's Representative under the Services Specification, the Contractor must specify:
  - each non-performance (if any) as measured through the Performance Management System, that occurred in the calendar month that is the subject of the report;
  - in reasonable detail the cause and calculation of the applicable Fee reduction, having regard to the calculations referred to in Schedule 3; and
  - (c) if applicable, any extenuating circumstances that led to the nonperformance, including information to substantiate the extenuating circumstances.

The requirements of this clause do not limit any other reporting requirements under this Agreement.

- 12.8.3 For each non-performance as measured through the Performance Management System that occurs in a calendar month:
  - (a) in Council's discretion, either:
    - the Fees payable to the Contractor for that calendar month under clause 12 must be reduced in accordance with Schedule 3 to reflect the non-performance; or
    - (ii) the amounts payable by the Contractor to Council for that calendar month under this clause 12 must be increased in accordance with Schedule 3 to reflect the non-performance; and
  - (b) any Monthly Statement or invoice submitted by the Contractor for Fees or Council for payment amounts in respect of the calendar month in which the non-performance occurred must reflect the adjusted Fee or payment amount.
- 12.8.4 The Contractor acknowledges and agrees that:
  - (a) the reductions or increases provided for in this clause 12.8 and Schedule 3 reflect a genuine pre-estimate by the parties of part of Council's overheads and administrative costs arising from, and part of Council's costs of responding to, the non-performance of the requirements of or obligations under this Agreement; and
  - (b) nothing in this clause 12.8 and Schedule 3 waives, limits or alters any other right of Council or obligation, requirement or liability of the Contractor under or in connection with this Agreement, except to the extent of the amount actually paid to Council or deducted from the Fees in accordance with this clause 12.8.
- 12.8.5 In any calendar month in which a non-performance as measured through the Performance Management System occurs, Council may in its absolute discretion by written notice to the Contractor prior to the issue by the Contractor of an invoice



for that calendar month under clause 12.3, waive its entitlement to a Fee reduction or payment increase for the non-performance.

## 12.9 Failure to provide Services

If at any time during the Services Term, the Contractor fails to provide any or all of the Services in accordance with this Agreement for any reason whatsoever, (including due to Force Majeure) without the approval of Council's Representative, Council will not be liable (either at law or in equity) to pay any amount for the Services not delivered.

#### 12.10 Reconciliation amount

- 12.10.1 At any time between 20 and 40 Business Days after the end of each Service Period, Council's Representative will carry out a reconciliation of the Fees and other amounts paid against the Services provided and the Agreement Prices.
- 12.10.2 If Council's Representative determines that adjustment of the Fee or other payment amount is necessary following a reconciliation under this clause 12.10, Council's Representative must notify the Contractor and if the reconciliation amount indicates that:
  - the Contractor has been overpaid, the Contractor must pay the reconciliation amount to Council; and
  - (b) the Contractor has been underpaid, Council must pay the reconciliation amount to the Contractor.

within 30 Business Days following receipt of a tax invoice for the reconciliation amount.

## 12.11 Rent

The Contractor must pay Council the Rent and each other amount payable under the Depot Lease, in accordance with the Depot Lease.

## GST

### 13.1 Definitions

Words in this Agreement have the same meaning as in the GST Laws unless the context makes it clear that a different meaning is intended.

## 13.2 Interpretation

If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

### 13.3 Payment of GST

A recipient of a taxable supply under or in connection with this Agreement:

13.3.1 must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply; and



13.3.2 must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

#### 13.4 Reimbursements

Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another party under this Agreement, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient under clause 13.3.

#### 13.5 Indemnities and Claims

- 13.5.1 If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- A party may recover payment under an indemnity before it makes the payment in 13.5.2 respect of which the indemnity is given.
- 13.5.3 If a party has a Claim under or in connection with this Agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

#### 13.6 Other Taxes

- Unless otherwise required by Law, the parties agree that Council is not liable to 13.6.1 compensate the Contractor in respect of any other Taxes levied in connection with the provision of Services under this Agreement or any payment by Council under this Agreement.
- 13.6.2 Without limiting clause 13.6.1, as between Council and the Contractor, the Contractor must pay all:
  - council rates and all water, sewerage and drainage fees and charges; (a)
  - (b) electricity and other utilities consumption charges;
  - (c) waste disposal charges and levies (including the Waste Levy);
  - (d) charges for the connection, management or use of utilities; and
  - (e) all other Taxes, if payable or outgoings,

levied in connection with the Services, or any Contractor's Plant, Contractor's Facilities or Collection Vehicles.

#### 14. Grant of Depot Lease

#### 14.1 **Execution of Lease**

14.1.1 On or before the Commencement Date, the Contractor must give Council two original copies of the lease in the form contained in Schedule 7, executed by the Contractor.



- 14.1.2 As soon as reasonably practicable after receiving the Depot Lease, Council must execute the Depot Lease.
- 14.1.3 The Contractor authorises Council to complete the Depot Lease by inserting:
  - (a) on the front page, the 'Commencing Date', 'Terminating Date' and 'Lessee';
  - (b) on the first page of Annexure A, the Lessee's name, ACN and address;
  - (c) in the Reference Schedule, the 'Commencing Date' and the 'Terminating Date': and
  - (d) on the last page of Annexure A, the Lessee's name.

# 14.2 Depot Lease binding on the parties

- 14.2.1 On the Services Commencement Date:
  - (a) the Depot Lease will commence and the terms of the Depot Lease will be binding as if the Depot Lease had been completed and executed by all parties to it, even if the Depot Lease is not registered or is not fully executed;
  - (b) each party must comply with the Depot Lease as a condition of this Agreement; and
  - (c) a failure by a party to comply with a provision of the Depot Lease will be a breach of this Agreement.
- 14.2.2 If any provision of the Depot Lease cannot take effect until a detail referred to in clause 14.1.3 is determined and inserted, the provision becomes effective retrospectively when that detail is inserted.

## 14.3 No warranty as to suitability for the Services

Despite any other provision of this Agreement and the Depot Lease, the Contractor:

- 14.3.1 acknowledges and agrees that no representation or warranty either express or implied is, has been or will be made by Council; and
- 14.3.2 releases Council from any Loss, Claim, obligation or duty to the Contractor whatsoever,

in relation to the suitability or adequacy of the Depot for any use, including its suitability or adequacy:

- 14.3.3 for the performance of all or any part of the Services; or
- 14.3.4 as the Contractor's Depot (as that term is defined in the Services Specification).

### 14.4 Depot availability

If during the Services Term:

- 14.4.1 the Depot is, for any reason, not available or operational to perform the Services to the standard required by this Agreement; or
- 14.4.2 the Depot Lease is terminated and the Agreement remains in force,



then:

- 14.4.3 the Contractor must make alternative arrangements and ensure that there is no interruption to or suspension of any of the Services;
- 14.4.4 Council's total maximum liability to the Contractor for all Loss sustained or incurred by the Contractor in connection with the Depot being not available or operational to perform the Services to the standard required by this Agreement, is capped at
  - (a) \$50,000; and
  - (b) any rent relief to which the Contractor is entitled under the Depot Lease,

for all Claims in aggregate; and

14.4.5 if clause 14.4.1 applies, the alternative arrangements that the Contractor is required to make under clause 14.4.3 shall be treated as a Permitted Variation under clause 11.3.

## 15. Security

#### 15.1 General

Within 15 Business Days after the Commencement Date, the Contractor must provide to Council security in the amount set out in Item 13 of Schedule 1 (**Security**), for the purpose of ensuring the due and proper performance of the Contractor's obligations under this Agreement and the Depot Lease, including an obligation to pay money.

## 15.2 Form of Security

The Security must be:

- 15.2.1 an irrevocable and unconditional undertaking to pay on demand on terms approved in writing by Council (for the purposes of which the parties acknowledge and agree that the form set out in Schedule 5 is approved) with no expiry date; and
- 15.2.2 provided by the Willoughby or Sydney office of an Australian bank or financial institution approved in writing by Council.

## 15.3 Failure to lodge Security

Failure by the Contractor to lodge the Security in accordance with clause 15.1 will entitle Council to terminate this Agreement under clause 21.2.

#### 15.4 Recourse to Security

- 15.4.1 Council may through Council's Representative call on, or otherwise have recourse to, any or all of the Security at any time, without notice to the Contractor, including in respect of any money for which the Contractor is or may be liable to Council whether under this Agreement, the Depot Lease or otherwise.
- 15.4.2 The Contractor is not entitled to, and must not seek, an injunction against either Council or the issuer of any Security (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.



15.4.3 The exercise by Council of any of its powers and rights under this clause will not prejudice or affect any other right or entitlement which Council is entitled to claim under this Agreement or at law.

## 15.5 Reinstatement of Security

If Council demands and has recourse to the Security, then no later than 10 Business Days after Council gives the Contractor a notice asking for it, the Contractor must deliver to Council a replacement or additional security so that the total held by Council equals the amount stated in Item 13 of Schedule 1.

#### 15.6 Release of Security

- 15.6.1 Within 60 Business Days after the Expiry Date or earlier termination of this Agreement, and provided the Contractor has duly and punctually performed all of its obligations under this Agreement and the Depot Lease, Council will release any unused portion of the Security to the Contractor, provided that where this Agreement or Depot Lease has been terminated, Council is not required to release any part of the Security under this clause until payment has been made under clause 21.7.
- 15.6.2 To avoid doubt, if the Depot Lease has been terminated but the Agreement remains in force, the unused portion of the Security will not be released under clause 15.6.1 until after the Expiry Date or earlier termination of this Agreement.

#### 15.7 Trusts and interest

Council:

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

# 15.8 Survival

This clause 15 survives the termination or expiry of this Agreement.

## Emergency

## 16.1 Exercise of powers

The powers given to Council and its authorised representatives under this clause 16 may be exercised:

- 16.1.1 at any time where Council in its discretion determines that an Emergency exists; or
- 16.1.2 if the Contractor requests Council to exercise the powers under this clause.



#### 16.2 **Emergency**

In an Emergency, or any situation which poses a real risk of an Emergency, the Contractor must:

- 16.2.1 take immediate action to stop or prevent the Emergency in accordance with any applicable emergency management plan; and
- 16.2.2 immediately advise Council of the Emergency or potential Emergency.

#### 16.3 Provision of Services in an Emergency and step-in rights

In an Emergency or potential Emergency, if Council considers that the Contractor is not adequately providing a response to the Emergency:

- 16.3.1 Council may, in its unfettered discretion, step in and provide the Services or procure the performance of the Services by a third party;
- 16.3.2 if Council exercises its rights under clause 16.3.1, the Contractor must:
  - cooperate with Council and its authorised representatives; and (a)
  - not interfere with or impede Council or its authorised representatives in the (b) provision of the Services.

#### 16.4 Contractor's obligations

- 16.4.1 The Contractor must cooperate with Council and its authorised representatives during an Emergency, including ensuring compliance by the Contractor's Staff with all reasonable Directions given by Council and its authorised representatives.
- 16.4.2 The Contractor must do all things necessary to enable Council to exercise its rights under clause 16.3 including:
  - (a) providing necessary access;
  - (b) vacating relevant parts of the land;
  - providing drawings, plans and other information; and (c)
  - (d) complying with the directions of Council.
- 16.4.3 The Contractor must not do anything to impede or prevent Council from exercising any of its rights under clause 16.3.

#### 16.5 Suspension of obligations

- 16.5.1 If at any time during this Agreement Council exercises its powers under this clause 16, the obligations of the Contractor are suspended to the extent that the Contractor's ability to perform those obligations is adversely affected by the assumption of control and delivery of the Services by Council or its authorised representatives.
- 16.5.2 Nothing in this clause 16 prevents Council from exercising any rights and remedies available to it in respect of:
  - any breach or default by the Contractor which occurs before the exercise of the powers under this clause 16; or



- (b) any breach or default by the Contractor while the powers under this clause 16 are being exercised, to the extent that the Contractor's obligations are not suspended.
- 16.5.3 The Contractor will continue to be paid under this Agreement in accordance with clause 12 and Schedule 2 to the extent that the Contractor continues to provide the Services in accordance with this Agreement, but will not be paid to the extent that the Services are performed by or on behalf of Council exercising its rights under this clause 16.

#### 16.6 Council's Loss

The Contractor must pay to Council the amount of any Loss Council reasonably suffers or incurs in taking the action contemplated in clause 16.3 or as a result of the Contractor's failure to take that actions required by clause 16.2, and that Loss will be due and payable to Council by the Contractor as a debt, and Council may:

- 16.6.1 deduct that Loss from amounts payable to the Contractor; or
- 16.6.2 recover that Loss against any Security held by Council.

## 16.7 Council's obligations

- 16.7.1 Nothing in this clause 16 obliges Council to exercise the powers given under this clause or to remedy the Emergency.
- 16.7.2 Nothing in this clause 16 makes Council or its authorised representatives liable for any accident, damage or defect to or in the Contractor's Facilities or the Contractor's Plant during an Emergency, which was unavoidable as a result of the actions required to address the Emergency.

## 17. Risk and Insurance

## 17.1 Care of assets

- 17.1.1 The Contractor is responsible for the care of all assets used in provision of the Services, from the Services Commencement Date until the Expiry Date, and must, subject to any instructions from Council's Representative, make good any loss or damage that may occur to those assets from any cause whatsoever prior to the Expiry Date.
- 17.1.2 The Contractor must make every effort to mitigate the effects of any loss or damage occurring to the assets from any cause whatsoever.
- 17.1.3 The Contractor is responsible for any loss of or damage to any equipment or other property of the Contractor used or intended to be used for the purposes of providing the Services.

### 17.2 Obligation to maintain insurances

Without limiting the respective obligations or liabilities of the parties, the Contractor must, at its cost, effect and maintain the insurances referred to in this clause 17 with Reputable Insurers from the Commencement Date until, unless expressly stated otherwise, the Expiry Date.



## 17.3 Public and products liability insurance

The Contractor must maintain broadform public and products liability insurance:

- 17.3.1 for not less than the amount stated in Item 14 of Schedule 1 for any one occurrence and unlimited in the annual aggregate;
- 17.3.2 which specifies Council as a named insured;
- 17.3.3 which indemnifies the Contractor and Council in respect of any liability for:
  - (a) loss of, or damage to or loss of use of, any real or personal property; and
  - (b) personal injury to, disease or illness or death of, any person;

arising out of or in connection with the performance of the Services:

- 17.3.4 which contains in respect of the Services:
  - a clause to the effect that a breach of a policy condition or requirement by one party does not affect the rights and ability of other insured parties to claim under the policy;
  - a provision under which the insurer waives all or any rights of recovery which may be exercised against the named insureds by way of subrogation; and
  - a cross-liability provision that indemnifies each insured in relation to liability to any other named insured;
- 17.3.5 which covers the Contractor for its liabilities under this Agreement and its liabilities to third parties; and
- 17.3.6 which, without limiting clause 17.3.3, indemnifies Council in respect of Council's liability to any person arising out of any act, error or omission of the Contractor in the performance of Services.

### 17.4 Workers' Compensation Insurance

The Contractor must maintain workers' compensation insurance in accordance with the relevant Laws in respect of any person deemed to be an employee of the Contractor for not less than the amount stated in Item 15 of Schedule 1.

### 17.5 Plant and equipment insurance

The Contractor must maintain, and must ensure that any Subcontractor that supplies plant and equipment for the Services maintains, insurance in respect of all plant and equipment used for or in connection with the Services for not less than the amount stated in Item 16 of Schedule 1.

# 17.6 Motor Vehicle Insurance

The Contractor must maintain:

- 17.6.1 compulsory motor vehicle third party insurance (bodily injury) in accordance with the relevant Laws; and
- 17.6.2 motor vehicle third party property insurance for any motor vehicle or any plant or mechanically propelled vehicle (registered or unregistered) to be used by the



Contractor in the performance of the Services, for not less than the amount stated in Item 17 of Schedule 1.

### 17.7 Evidence of insurance

- 17.7.1 The Contractor must, in respect of each of the insurances that are required to be maintained by the Contractor under this clause 17, give the Compliance Company:
  - acceptable proof of currency of the insurance on or before the Services
     Commencement Date and on each anniversary of the Services
     Commencement Date during the Term, which proof of currency includes details of the period and cover effected;
  - (b) (on or before the Services Commencement Date, receipts and any other evidence required by Council, showing that the premiums for each insurance have been paid for not less than six months prior to the Services Commencement Date; and
  - (c) on request, other evidence of the insurance, including currency, which Council's Representative reasonably requires.

### 17.8 Management of insurances

- 17.8.1 In relation to the insurances to be maintained by the Contractor under this clause 17 the Contractor must:
  - pay each premium on or before the due date or under agreed terms with the relevant insurance brokers and, when asked by Council, produce proof of payment;
  - immediately rectify anything which might prejudice any insurance and reinstate the insurance if it lapses;
  - notify Council immediately when an event occurs in relation to the Services which could prejudice a policy of insurance; and
  - (d) notify Council immediately if any policy of insurance is or is proposed to be cancelled, amended, not renewed or renewed on terms different to those in force at the Commencement Date or previously advised to Council, or of any proposed change in insurer.
- 17.8.2 The Contractor must, subject to confidentiality obligations to insurers, within ten Business Days of the occurrence of a relevant incident in relation to the Services, give notice to Council of each insurance claim and of the circumstances surrounding the incident giving rise to the insurance claim.
- 17.8.3 The dollar amounts of coverage for insurances required under this clause 17 must be increased by the Contractor if the limits should be increased in accordance with Best Industry Practice.

### 17.9 No cancellation or avoidance

Council and the Contractor must not do anything that would entitle the insurer under any of the insurances effected in compliance with this clause 17 to cancel or avoid the policy of insurance, or reduce the amount payable on a claim under the policy.



## 17.10 Subcontractors

Without limiting the respective obligations or liabilities of the parties, the Contractor must ensure that its Subcontractors take out and maintain insurance policies similar to those required to be effected by the Contractor under this clause 17 for the Subcontractor's services as appropriate (in the opinion of Council's Representative acting reasonably) given the nature of the work to be performed by the Subcontractor.

# 17.11 Registration with Compliance Company

- 17.11.1 The Contractor must from the Commencement Date until the expiry of the Term, at its cost:
  - (a) be registered with the Compliance Company, accredited with the Compliance Company as an 'approved contractor', and assigned by the Compliance Company to Council's 'approved contractor list';
  - (b) pay all required licensing fees to the Compliance Company to comply with the requirements in paragraph (a);
  - provide all requested information to the Compliance Company in relation to this Agreement within the timeframe required by the Compliance Company; and
  - (d) ensure that any information provided by the Contractor to the Compliance Company remains correct and up to date.
- 17.11.2 The contact details of the Compliance Company as at the date of this Agreement are as follows

Email: conserve@bngconsulting.com.au

Tel: (02) 8883 1501 Fax: (02) 8883 1502 www.bngconserve.com.au

17.11.3 If Council's Representative notifies the Contractor that a new Compliance Company has been appointed, Council's Representative must provide the new contact details for that new Compliance Company.

# 18. Indemnity and release of Council

## 18.1 Indemnity of Council

- 18.1.1 The Contractor indemnifies Council, Council's Representative and Council's employees from and against any Claim, Loss, obligation or duty brought against, suffered or incurred by Council, Council's Representative or Council's employees arising out of, or in any way in connection with:
  - (a) any:
    - (i) harm to the Environment
    - (ii) loss of, or damage to, or loss of use of, any real or personal property;
    - (iii) personal injury to, disease or illness (including mental illness) to, or death of, any person; or



 (iv) fines, cost orders, orders requiring the performance of work, orders requiring the posting of a bond or other form of security or similar sanctions.

arising out of, or in any way in connection with, the performance of, or any act or omission of the Contractor or of any of the Contractor's Staff in connection with the Services;

- (b) Wilful Default of the Contractor or the Contractor's Staff;
- any infringement or alleged infringement of any Intellectual Property Right in respect of the performance of the Services or anything used or supplied by the Contractor in connection with the Services;
- (d) any breach of the Contractor's duty of confidentiality under clause 25;
- (e) any breach by the Contractor or the Contractor's Staff of the Heavy Vehicle National Law;
- (f) fraudulent or criminal conduct by the Contractor or the Contractor's Staff;
- abandonment of the performance of the Services or repudiation of this Agreement; or
- (h) liability which cannot be limited at Law or arises out of or in connection with a breach of a statutory duty by the Contractor or the Contractor's Staff.
- 18.1.2 To the fullest extent permitted at law, the indemnity in this clause 18.1 includes indemnification of Council, Council's Representative and Council's employees from any of the following:
  - (a) fines;
  - (b) cost orders;
  - (c) orders requiring the performance of work; or
  - (d) orders requiring the posting of a bond or other form of security.
- 18.1.3 The Contractor's liability to indemnify Council, Council's Representative and Council's employees under this clause 18.1 will be proportionately reduced to the extent that the Claim, Loss, obligation or duty:
  - (a) was caused or contributed to by the default or negligence of Council, Council's Representative or Council's employees; or
  - (b) is the imposition of a monetary penalty under WHS Law.

### 18.2 Release of Council

- 18.2.1 Subject to this Agreement (including clause 18.2.2 and Council's obligations under clauses 11 and 12), the Contractor releases Council and Council's Representative and their respective officers, employees and agents, from any Loss, Claim, obligation or duty to the Contractor whatsoever in respect of or in connection with any or all of:
  - (a) the Services, their design or conduct;

- the condition, suitability, location, adequacy, availability or capacity or any other aspect of the Contractor's Plant, Contractor's Facilities or Collection Vehicles;
- (c) 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;
- (d) any error, misdescription or omission in any of the Disclosed Information;
   and
- (e) any other risk accepted by the Contractor under clause 4.4.
- 18.2.2 For the avoidance of doubt, without limiting clause 18.2.1, the release applies to any Loss, Claim, obligation or duty in respect of the negligence or other conduct or omission of any person (including Council or Council's Representative) in respect of the matters the subject of the release prior to or following the date of this Agreement.

# 18.3 Survives termination and preservation of Contractor's obligations

- 18.3.1 The indemnity in clause 18.1 survives termination of this Agreement.
- 18.3.2 The release in clause 18.2 survives termination of this Agreement.
- 18.3.3 The Contractor's obligations and releases in this clause 18 are absolute, unconditional and irrevocable.
- 18.3.4 The liability of the Contractor under this Agreement is not affected by any circumstance, act or omission which, but for this clause 18.3, might otherwise affect them at Law or in equity

# 18.4 Place, manner and time of payment

Payments by the Contractor under this clause 18 must be made:

- 18.4.1 at a place and by a method reasonably required by Council's Representative;
- 18.4.2 by 3.00pm local time in the place where payment is to be made;
- 18.4.3 unconditionally;
- 18.4.4 in immediately available funds and without set-offs, counter claims, abatements or, unless required by law, deductions or withholdings; and
- 18.4.5 in Australian dollars.

## 18.5 Benefit of indemnity

- 18.5.1 Council holds the benefit of clause 18.1 on trust for, and may enforce clause 18.1 directly against the Contractor, on behalf of Council's Representative, officers and employees.
- 18.5.2 Clause 18.5.1 applies even though Council's Representative, officers and employees are not party to this Agreement.
- 18.5.3 The consent of any or all of Council's Representative, officers and employees is not required for any amendment to or waiver of rights under this Agreement.

## 19. Limitations on liability

## 19.1 Exclusions and limitations do not apply in certain circumstances

The exclusions and limitations on a party's liability in this Agreement, including this clause 19 do not apply in the case of:

- 19.1.1 fraud, fraudulent concealment or dishonesty;
- 19.1.2 malicious or criminal conduct;
- 19.1.3 death or personal injury, including under the indemnity in clause 18.1.1(a)(iii);
- 19.1.4 damage to tangible property (real and personal), including under the indemnity in clause 18.1.1(a)(ii);
- 19.1.5 Gross Negligence;
- 19.1.6 the indemnities given under clause 18.1.1(c) and clause 24;
- 19.1.7 Wilful Default;
- 19.1.8 any Fee reduction or increase under the Performance Management System;
- 19.1.9 any liability to the extent that the same may not be excluded or limited as a matter of applicable Law or that arises out of a breach of a requirement prescribed by Law (including any fine or penalty);
- 19.1.10 any liability of the Contractor to the extent:
  - (a) such liability is recoverable under a policy of insurance effected or maintained (or required to be effected or maintained) under this Agreement; or
  - (b) such liability would have been recoverable under a policy of insurance effected or maintained (or required to be effected or maintained) under this Agreement if the Contractor had:
    - promptly claimed, and diligently pursued such claim, under the policy of insurance; and
    - (ii) complied with the terms and conditions of that policy of insurance and its obligations under this Agreement or otherwise at Law in respect of that policy of insurance; or
- 19.1.11 any liability of Council to the extent:
  - (a) such liability is recoverable under a policy of insurance held by Council; or
  - (b) such liability would have been recoverable under a policy of insurance held by Council if Council had:
    - promptly claimed, and diligently pursued such claim, under the policy of insurance; and
    - (ii) complied with the terms and conditions of that policy of insurance and its obligations under this Agreement.



#### 19.2 Exclusion of Consequential Loss

- 19.2.1 Subject to clause 19.2.2, and to the extent permitted by Law, neither party will be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this Agreement for any Consequential Loss.
- 19.2.2 Without limiting any other right of Council, the Contractor acknowledges and agrees that clause 19.2.1 does not operate to prevent Council from being entitled to recover any direct loss or damage and any:
  - (a) costs of procuring replacement Services from a third party;
  - (b) administrative costs and expenses, including for management and staff time;
  - (c) consultant's fees;
  - (d) mitigation costs and expenses; and
  - (e) out-of-pocket costs and expenses.

sustained, incurred or suffered by Council.

19.2.3 Without limiting any other right of the Contractor, Council acknowledges and agrees that clause 19.2.1 does not operate to prevent the Contractor from being entitled to recover any amount in respect of a valid Monthly Statement under this Agreement.

## 19.3 Obligation to mitigate

Each party must use reasonable efforts, to the extent within its control and consistent with each party's obligations under this Agreement, to promptly mitigate any Loss likely to be or actually sustained, incurred or suffered by it under or in connection with this Agreement

## 20. Force Majeure

# 20.1 Contractor must not suspend

The Contractor must not interrupt or suspend the Services for any reason whatsoever other than under and in accordance with clause 20.

## 20.2 Notice of Force Majeure

- 20.2.1 If there is an event of Force Majeure then the Contractor must immediately notify Council in writing of the occurrence of that event including:
  - (a) full particulars of the event of Force Majeure;
  - (b) an estimate of its likely duration;
  - the obligations affected by it and the extent of its effect on those obligations;
     and
  - (d) the steps taken to avoid, plan for, minimise the impact of and rectify it.



- 20.2.2 If a Force Majeure event that is notified in accordance with clause 20.2.1 renders it impossible for the Contractor to perform any or all of the Services for a period greater than 2 Business Days:
  - the parties must promptly meet to determine what action is necessary to ensure the continuation of the Services;
  - (b) the Contractor's obligations under this Agreement are suspended to the extent to which they are rendered impossible to be performed by the relevant Force Majeure event for as long as the Force Majeure event continues; and
  - (c) the Contractor may not make any Claim against Council in connection with the event of Force Majeure or its effect on the performance of the Contractor's obligations under this Agreement.

# 20.3 Mitigation

If any of the Contractor's obligations are rendered impossible to be performed by the Force Majeure event notified in accordance with clause 20.2.1:

- 20.3.1 the Contractor must use its best endeavours to remove, overcome or minimise the effects of the Force Majeure event as quickly as possible, including the reasonable expenditure of funds; and
- 20.3.2 the Contractor must:
  - (a) promptly identify alternative viable means of performing the obligations affected and to mitigate the effect of the Force Majeure event; and
  - (b) do everything necessary to ensure that as far as possible the Services are not interrupted.

### 20.4 Alternate arrangements

- 20.4.1 Subject to clause 20.4.2, during any period in which the Contractor is not performing obligations because of a claimed Force Majeure event, Council may (but need not) make alternative arrangements for the performance of any such obligation, whether by another person or otherwise. Those alternate arrangements may extend beyond the duration of the Force Majeure event to the extent required to allow for completion of obligations reasonably entered into during the occurrence of the Force Majeure event. If Council makes alternative arrangements as contemplated by this clause 20.4 Council must notify the Contractor of those arrangements.
- 20.4.2 If the Services are suspended or interrupted by a Force Majeure event:
  - (a) the Contractor may elect to appoint a subcontractor in accordance with clause 5.7 to perform so much of the Services as the Contractor has suspended, provided that there is no additional cost to Council in doing so; and
  - (b) if despite clause 20.4.2(a) Services continue to be suspended or interrupted so that Contract Waste is or is likely to remain uncollected by the Contractor, Council may (without limiting any other right Council may have) either itself or through an 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 Council to the Contractor had the Services not been suspended or interrupted, must be paid by the Contractor.



### 20.5 Continued payment

The Contractor is only entitled to be paid the Fees during a Force Majeure event to the extent that the Services continue to be supplied, and otherwise in accordance with clause 12.

# 20.6 End of period of Force Majeure

Subject to the clause 20.8, the suspension of the Contractor's obligations due to a Force Majeure event ends when the Contractor is no longer prevented from being able to recommence fulfilment of the obligation by the Force Majeure event. At which time the Contractor must issue a written notice to Council to that effect and immediately recommence the performance of the obligation.

### 20.7 Recommencement Plan

- 20.7.1 If a Force Majeure event (or a series of Force Majeure events):
  - (a) continues for a period of at least 20 Business Days affecting the provision of the Services in a material way; or
  - (b) causes substantial interference to the Services, and Council's Representative considers that:
    - in the interests of the community, including the health and amenity of the community, the Services that have been interfered with must be performed; and
    - those Services could be performed by another entity other than the Contractor,

Council's Representative may by written notice require that the Contractor submit a recommencement plan (**Recommencement Plan**) to the reasonable satisfaction of Council's Representative, within such reasonable period of time as is specified in the notice, which plan:

- (c) contains a detailed description of the steps already taken, and that will be taken, by the Contractor in order to comply with clause 20.3 and in order to ensure that the Services impacted by the Force Majeure event (or series of Force Majeure events) are able to be performed in accordance with this Agreement as quickly as possible; and
- (d) confirms whether or not the Services impacted by the Force Majeure event (or series of Force Majeure events) are able to be performed in accordance with this Agreement by a subcontractor appointed by the Contractor in accordance with clause 5.7 and, if so, commits to doing so; and
- (e) contains a detailed program detailing the dates by which each of the steps outlined in the plan will be performed or achieved, and nominating the date by which the Services impacted by the Force Majeure event (or series of Force Majeure events) will be performed in accordance with this Agreement.
- 20.7.2 A notice given under clause 20.7.1 must include an explanation as to:
  - (a) the basis upon which the notice is being given; and
  - (b) if the notice is being given under clause 20.7.1(b)(i), the interests of the community that are being impacted by the failure to deliver the Services.



- 20.7.3 If Council's Representative gives the Contractor a notice under clause 20.7.1 then the Contractor must comply with it.
- 20.7.4 If Council's Representative notifies the Contractor that it is satisfied with the Recommencement Plan submitted under clause 20.7.1, or resubmitted under clause 20.7.5, then the Contractor must fully implement and comply with that Recommencement Plan.
- 20.7.5 If Council's Representative notifies the Contractor that it is not satisfied with the Recommencement Plan submitted under clause 20.7.1 on the basis that either or both of:
  - (a) the Recommencement Plan does not satisfy the requirements for a Recommencement Plan under clause 20.7.1; or
  - (b) the Recommencement Plan will not, if implemented, ensure the recommencement of the affected Services:
    - (i) within 3 months following the date of the notice given by Council under clause 20.7.1; or
    - in the opinion of Council's Representative acting reasonably, within a timeframe that would adequately mitigate the impacts of the suspended Services on the affected community interests identified in the notice under clause 20.7.1,

then the Contractor must promptly and in accordance with any directions of Council's Representative, review and correct the Recommencement Plan and resubmit it to Council's Representative and clause 20.7.4 and this clause 20.7.5 shall reapply

- 20.7.6 Council's Representative may make more than one such election under clause 20.7.1 and may make elections sequentially as it sees fit.
- 20.7.7 In clause 20.7.1 and in clause 20.8, a substantial interference includes but is not limited to suspension for a period of one week.

### 20.8 Termination due to Force Majeure

Despite clause 20.7, if:

- 20.8.1 a notice has been given to the Contractor under clause 20.7.1 in relation to a Force Majeure event (or a series of Force Majeure events); and
- 20.8.2 the Force Majeure event (or series of Force Majeure events) to which the notice related causes substantial interference to the Services for a period of at least 4 calendar months following the issue of the notice.

then Council's Representative may elect to terminate this Agreement immediately by giving written notice to the Contractor under this clause (in which case clause 21 shall apply).

### 21. Contractor's default and termination

### 21.1 Default Notice

- 21.1.1 If the Contractor is in default under this Agreement through its failure to perform or observe any obligation or undertaking under this Agreement, Council may give the Contractor a written notice (Default Notice):
  - specifying which provision of this Agreement has been breached; and
  - (b) if the default is capable of being remedied, directing the Contractor to remedy that default to Council's reasonable satisfaction within the period specified in the Default Notice (which is to be not less than 10 Business Days after receipt of the Default Notice by the Contractor).
- 21.1.2 If Council gives the Contractor a Default Notice directing the Contractor to remedy the default, then the Contractor must comply with that Default Notice.
- 21.1.3 If the default is capable of being remedied and the Contractor fails to remedy the default within the time period specified, Council may (but is not obliged to) itself or by a third party employed or engaged by Council perform the obligation. The Contractor must pay all costs and expenses incurred by Council in doing so. All costs and expenses incurred by Council in performing the obligation or engaging any such third party may be recovered or set-off by Council in accordance with clause 12.7.
- 21.1.4 Council must cease to exercise its rights under clause 21.1.2 as soon as reasonably practicable after the default has been remedied.
- 21.1.5 If Council has issued a Default Notice and the Contractor has not rectified that default within the time period specified, Council may exercise its rights under clause 21.2.

## 21.2 Enforcement Notice

- 21.2.1 At any time during the Term, Council's Representative may serve an enforcement notice (Enforcement Notice) on the Contractor if:
  - (a) the Contractor is subject to an Insolvency Event;
  - the Contractor (or any member of the Contractor's Staff) has breached any Laws applicable to the provision of the Services or has infringed the Intellectual Property Rights of any third party;
  - the Contractor has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of Council;
  - (d) the Contractor has failed to perform as required by clause 9.2 or 9.3;
  - (e) the Contractor has failed to comply with the requirements of clause 5.1;
  - (f) the Contractor has failed to comply with the requirements of clause 5.2:
  - (g) the Contractor has failed to comply with the requirements of clause 15.1;
  - (h) the Contractor has failed to comply with the requirements of clause 29:



- the Contractor has failed to comply with the requirements of clause 20.7.3 or 20.7.4;
- the circumstances in clause 20.8 arise and a notice has been served by Council's Representative on the Contractor under that clause electing to terminate this Agreement;
- the Contractor has failed to rectify a default within the time period specified in a Default Notice;
- the Contractor is in default of a material obligation under this Agreement that is not capable of being remedied;
- (m) during the Term there is serious fraud, or intentional and dishonest, collusive, misleading or deceptive conduct affecting Council on the part of the Contractor in the performance of the Services or any part of them; or
- (n) the Contractor is found to have offered or given any gratuity, bonus, discount or bribe of any sort to any member of or any officer, Councillor, employee or agent of Council.
- 21.2.2 Without limiting or waiving any right of Council or any duty, liability or obligation of the Contractor, an Enforcement Notice can, in order to facilitate the:
  - (a) orderly termination of this Agreement;
  - (b) the orderly resolution and correction of any default or circumstance that has led to the service of the Enforcement Notice; or
  - (c) both of the above,

specify at the discretion of Council (any or all of):

- that information or documents in relation to the Services must be delivered by the Contractor to Council or Council's Representative;
- the works or other actions required to be undertaken by the Contractor including:
  - (i) for the orderly cessation of the Services;
  - (ii) to make any Contractor's Plant safe;
  - (iii) to prevent any nuisance;
  - (iv) to comply with any Approval; and
  - (v) anything referred to in clause 16;
- (f) that payment under this Agreement be suspended;
- (g) that all or some of the Services be suspended under clause 23;
- (h) where the Contractor is subject to an Insolvency Event, that all or part of the obligations or Services be performed by Council or a third party contractor employed or engaged by Council; or



- at the election of Council's Representative that this Agreement is terminated and the time at which such termination will take effect.
- 21.2.3 The cost of Council and Council's Representative preparing and serving and the Contractor's compliance with an Enforcement Notice must be borne by the Contractor and the Contractor indemnifies Council and Council's Representative against such costs.
- 21.2.4 If an Enforcement Notice is served, the Contractor must promptly comply with it in accordance with its terms.
- 21.2.5 Council's Representative may serve more than one Enforcement Notice (and may do so in respect of the same events) 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.
- 21.2.6 Clause 28 does not apply to a dispute or difference between the Contractor and Council as to whether Council has validly terminated this Agreement under this clause 21.2.

# 21.3 Contractor's obligations upon receipt of termination notice

- 21.3.1 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 Council's Representative.
- 21.3.2 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.
- 21.3.3 Upon receipt of an Enforcement Notice that specifies that this Agreement is terminated, the Contractor must:
  - (a) stop work as specified in the Enforcement Notice;
  - (b) take all available steps to minimise Loss resulting from that termination; and
  - (c) continue to provide any other Services not affected by the Enforcement Notice.

# 21.4 Council's liability on termination

- 21.4.1 Upon the termination of this Agreement under clause 21.2 the Contractor will not be entitled to any compensation for loss of savings or prospective profits, as the case may be, and Council's liability to the Contractor (if any) will be limited to payments for the Services (or any part) performed in accordance with this Agreement before the date of termination.
- 21.4.2 Upon service of an Enforcement Notice on the Contractor under clause 21.2.2(h), the Contractor will not be entitled to any compensation for loss of prospective profits or any other payment in relation to the Services or obligations that are the subject of that notice, and Council's liability to the Contractor (if any) will be limited to payments for the Services (or any part) performed in accordance with this Agreement before the date of service of that Enforcement Notice.



### 21.5 No prejudice to accrued rights

The service of an Enforcement Notice or the termination of this Agreement under this clause 21 is without prejudice to the accrued rights of either party at the time of such Enforcement Notice or termination including rights as to indemnification, payment or set off.

### 21.6 Rights limited

- 21.6.1 Notwithstanding any rule of Law or equity to the contrary, neither party may terminate, rescind or treat as repudiated this Agreement or any rights under this Agreement other than as expressly provided for in this Agreement.
- 21.6.2 The rights of Council under this clause 21 are not limited by anything in clause 16 and in particular Council may serve notices under clause 21.1 or 21.2 whether or not any notice has been served or action taken under clause 16 or 20.4.2.

# 21.7 Reconciliation of payments following termination

- 21.7.1 Within six months of Council exercising any right of termination under this clause 21:
  - (a) Council will pay to the Contractor; or
  - (b) the Contractor will pay to Council,

(as the case requires) the difference between all sums accrued and unpaid in favour of the Contractor under this Agreement and all Claims of Council for damages, loss, cost or expense or other sums owing by the Contractor to Council.

- 21.7.2 Determination of the sums and Claims referred to in clause 21.7.1 will be made by Council's Representative, who will certify:
  - (a) by whom payment (if any) will be made; and
  - (b) the amount payable.
- 21.7.3 Certification in accordance with clause 21.7.2 must be undertaken either:
  - (a) prior to the expiration of six months from Council's exercise of any right of termination under this clause 21; or
  - (b) within 14 days of a written request so to do made by either party, which request may not be made until the expiration of the six (6) month period.
- 21.7.4 Council's Representative must forward a copy of the certificate to both parties and the amount payable will be due and payable within 14 days of the date of the receipt of the copy of the certificate by the party required to make the payment referred to in that certificate.
- 21.7.5 The parties acknowledge and agree that until payment is due in accordance with this clause 21.7, Council will not be obliged to make any further payment to the Contractor.

# 21.8 Consideration for Services performed and no Claim

Except as provided in this clause 21, if a valid Enforcement Notice terminating this Agreement is served on the Contractor, the Contractor shall have no Claim against Council or Council's 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 this Agreement.

# 21.9 Right to carry out Services

- 21.9.1 If Council terminates this Agreement under clause 21, Council may respectively itself or by a third party employed or engaged by Council carry out the Services until Council appoints a replacement contractor.
- 21.9.2 The Contractor must pay on demand all reasonable costs and expenses incurred by Council in engaging any such third party. All costs and expenses incurred by Council in engaging any such third party may be recovered or set-off by Council in accordance with clause 12.7.

# 21.10 Assignment of agreements

- 21.10.1 If Council terminates this Agreement under clause 21:
  - (a) the Contractor must, if so required by written notice from Council, take all steps necessary to assign to Council the benefit of any agreement for the provision of services including sub-contract services or for the supply of all plant, equipment and materials necessary for the provision of the Services under this Agreement:
    - (i) within 20 days of the date of Council giving written notice in accordance with this clause 21.10; and
    - (ii) without any obligation (whether legal or equitable) for Council to make any payment to the Contractor (whether by means of compensation, consideration or any other form of reimbursement or payment) for that assignment; and
  - (b) Council may pay any provider for any services, materials or plans used for the purposes of this Agreement insofar as the prices, fees and/or charges for those services, materials or plans have not already been paid by the Contractor. Any such payments by Council will be a debt due and payable to Council from the Contractor.
- 21.10.2 The parties acknowledge and agree that nothing in this clause 21.10:
  - (a) releases the Contractor from; or
  - (b) assigns to Council;

any cost, losses, damages or any liability of any kind whatsoever that the Contractor owed to any person as at the time of assignment of the agreement to Council (or which subsequently becomes due and owing as a result of actions or inactions of the Contractor prior to the assignment).

21.10.3 For the purpose of effecting the assignment of any agreement under this clause 21.10, the Contractor hereby irrevocably appoints Council to be the attorney and agent of the Contractor with full power and authority to execute any such assignment on behalf of the Contractor and to bind the Contractor accordingly.

# 21.11 No limitation of Council's rights under the Depot Lease

The termination of this Agreement and the rights of Council under this Agreement upon termination do not limit the rights of Council under the Depot Lease.



## 21.12 Interdependent documents

- 21.12.1 This Agreement and the Depot Lease are interdependent.
- 21.12.2 If this Agreement terminates for any reason then this Agreement and the Depot Lease automatically terminate at the same time.
- 21.12.3 If the Depot Lease terminates:
  - (a) as a result of the Contractor's default, then Council may by written notice to the Contractor terminate this Agreement with effect from the date specified in that notice; or
  - (b) for any other reason, then this Agreement will survive the termination of the Depot Lease unless the parties otherwise elect by written agreement to terminate this Agreement.

# 22. Contractor's obligations on expiration or termination

### 22.1 Services Termination Transition Plan

The Contractor must develop and maintain a Services Termination Transition Plan in accordance with the requirements of the Services Specifications and clause 7 as part of the Services Management Plans.

### 22.2 Contractor's obligations

On the expiry of this Agreement or termination of this Agreement the Contractor must:

- 22.2.1 implement the Services Termination Transition Plan;
- 22.2.2 comply with any Directions by Council to bring about an immediate or prompt (as the case may be) winding down and cessation of the Services, including:
  - (a) giving to Council all records relating to the Services;
  - giving to Council the originals of any documents which were provided to the Contractor by Council; and
  - doing all other acts and things reasonably requested by Council which are necessary to effect an orderly handover of the Services with minimum disruption to Council; and
- 22.2.3 at the date of termination cease performing all Services.

### 22.3 Removal of plant and equipment

- 22.3.1 Following termination or expiry of this Agreement, the Contractor must, when directed by Council in writing (and not before) and within the time specified in Council's direction remove from Council's premises any Contractor's Plant, vehicles, plant, equipment, temporary buildings and goods owned or leased by the Contractor.
- 22.3.2 If the Contractor fails to comply with Council's direction under clause 22.3.1 within the time specified for compliance, Council may in addition to any other rights it has under this Agreement remove or sell any such property of the Contractor (without being responsible for any loss or damage).



- 22.3.3 Where the Contractor does not owe any money to Council, Council will retain to the credit of the Contractor the proceeds of sale less all reasonable costs incurred.
- 22.3.4 Where the Contractor does owe money to Council, the proceeds of sale less all reasonable costs incurred may be set off against amounts due and owing to Council in accordance with clause 12.7.

# 22.4 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.

# 23. Suspension directed by an Enforcement Notice

# 23.1 Suspension notice

- 23.1.1 An Enforcement Notice issued under clause 21.2.2(g):
  - (a) may direct the Contractor to suspend all or some of the Services until such time as Council thinks fit; and
  - (b) must specify each of the Services to be suspended and the effective date of suspension of each of those Services.
- While any Service is suspended, this Agreement will continue to apply, with necessary adjustments, to the Services that are not suspended.

### 23.2 Suspension of Services

Upon receipt of a suspension notice under clause 23.1.1, the Contractor must:

- 23.2.1 suspend performance of each relevant Service as specified in the suspension notice until directed in writing by Council to resume performance;
- 23.2.2 take all available steps to minimise Loss resulting from the suspension; and
- 23.2.3 continue to provide all other Services.

# 23.3 Payment on suspension

- 23.3.1 For each Service that is suspended pursuant to an Enforcement Notice under clause 23.1.1:
  - (a) the Contractor shall not after the date of suspension be entitled to make any Claim in connection with the provision of the Service that has been suspended during the period of the suspension provided always that the Contractor may claim payments for the Services (or any part) performed in accordance with this Agreement before the effective date of suspension; and
  - (b) the Contractor shall not be entitled to any payment, and must not make any Claim, whatsoever in connection with the suspension.



# 23.4 Recommencement of Services

- 23.4.1 After issuing an Enforcement Notice under clause 23.1.1, Council may by written notice to the Contractor, direct the Contractor to either:
  - (a) recommence performance of the suspended Services; or
  - (b) submit a recommencement plan to the satisfaction of Council's Representative, within such period of time as is specified in the notice, which plan contains a description of the steps that the Contractor will take to rectify the circumstances that prompted the service of an Enforcement Notice and ensure that those circumstances do not reoccur.
- 23.4.2 If Council's Representative gives the Contractor a notice under clause 23.4.1 then the Contractor must comply with it.
- 23.4.3 If Council's Representative notifies the Contractor that it is satisfied with the recommencement plan submitted under clause 23.4.1(b) then the Contractor must fully implement and comply with that recommencement plan.
- 23.4.4 If Council's Representative notifies the Contractor that it is not satisfied with the recommencement plan submitted under clause 23.4.1(b) then the Contractor must promptly and in accordance with any directions of Council's Representative, review and correct the recommencement plan and resubmit it to Council's Representative and clause 23.4.3 and this clause 23.4.4 shall reapply.
- 23.4.5 If Services recommence pursuant to a notice given under clause 23.4.1, the Contractor shall be entitled to claim payment for those Services, in accordance with this Agreement, performed after the date of that notice.

# 24. Intellectual Property

# 24.1 Warranty

- 24.1.1 The Contractor warrants that:
  - (a) the Contractor has or will have a right to use all Documentation 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 Documentation produced by or on behalf of the Contractor for the purpose of the Services will not infringe any Intellectual Property Rights.
- 24.1.2 The Contractor indemnifies Council from and against any Claim, Loss or liability brought against, suffered or incurred by Council arising out of, or in any way in connection with, any breach by the Contractor of the warranties under this clause 24.1.

# 24.2 Intellectual Property Rights

24.2.1 Council retains the Intellectual Property Rights in all documentation supplied by Council to the Contractor in relation to the Services or this Agreement. Council grants the Contractor a non-exclusive, royalty free, non-transferable licence to reproduce and use that documentation as necessary for the purpose of this Agreement. The Contractor must not reproduce, use or otherwise deal with that



documentation, or allow any other person to do the same, for any other purpose. Council has the right to revoke this licence at any time by notice in writing to the Contractor.

- 24.2.2 Where the provision of the Services requires the Contractor to create any Documentation for Council (either solely or in conjunction with others) the Intellectual Property Rights in that Documentation vest in Council upon creation and the Contractor must do all things necessary to perfect such vesting.
- 24.2.3 The Contractor grants to Council a permanent, irrevocable, royalty free, non-exclusive licence (including the right to sub-licence) to use, produce, adapt or exploit the Intellectual Property Rights owned by the Contractor or any third party and which are associated with any Documentation that is not created for the purposes of the Services but is provided to Council under this Agreement, provided that Council does not on-sell or on-licence such Intellectual Property Rights to third parties and the Documentation is used only for the purposes associated with this Agreement.
- 24.2.4 The obligations in this clause 24 continue after the expiry or termination of this Agreement.

# 24.3 Moral rights

The Contractor:

- 24.3.1 must ensure that it does not, and its contractors and subcontractors do not, infringe any Moral Right in carrying out the Services:
- 24.3.2 without limiting clause 24.3.1, must hold, or obtain, consents from all authors of any material created by or on behalf of the Contractor for the purpose of the whole or any part of the Services, including documents, software and data stored by any means, to use and adaptation by the Contractor, and Council, without restriction and without any requirement to attribute such material to its authors; and
- 24.3.3 indemnifies Council from and against any Claim or Loss brought against, suffered or incurred by Council arising out of, or in any way in connection with, any breach by the Contractor of its obligations under clause 24.3.1 or 24.3.2.

# 25. Confidentiality

# 25.1 Contractor's obligations

The Contractor must treat as confidential all information provided by Council, and must not use that information for any purpose other than for the purposes of this Agreement, or disclose or make public that information or any information in relation to the Services, except where:

- 25.1.1 Council has given consent, which consent may be given or withheld in Council's absolute discretion;
- 25.1.2 the Contractor is required to do so by Law or by a stock exchange;
- 25.1.3 the Contractor is required to do so in connection with legal proceedings relating to this Agreement;
- 25.1.4 it is for the purpose of obtaining professional advice in respect of the Services and the Contractor obtains an appropriate confidentiality undertaking; or



25.1.5 the information is already in the public domain other than through a breach of this Agreement.

# 25.2 Contractor's acknowledgement

The Contractor acknowledges that:

- 25.2.1 the terms of this Agreement are not confidential; and
- 25.2.2 the provisions of this clause 25 survive the termination or expiry of this Agreement.

# 26. Assignment and Change In Control

# 26.1 Assignment by Contractor

The Contractor must not assign or transfer any or all of its rights or obligations under this Agreement without the prior written consent of Council.

# 26.2 Change in Control

A Change in Control of the Contractor without the prior written consent of Council will be treated as an assignment or transfer of the Contractor's rights in breach of clause 26.1.

### Notices

### 27.1 Delivery of notice

- 27.1.1 A notice or other communication given to a party under this Agreement must be in writing and in English, and must be delivered to the party by:
  - (a) delivering it personally to the party;
  - (b) leaving it at the party's address set out in the notice details;
  - posting it by prepaid post to the party at the party's address set out in the notice details; or
  - (d) email to the party's email address set out in the notice details.
- 27.1.2 If the person to be served is a company, the notice or other communication may be served at the company's registered office.

### 27.2 Particulars for delivery

- 27.2.1 The notice details of each party are set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties according to this clause).
- 27.2.2 Any party may change its address or email address by giving notice to the other parties.

### 27.3 Time of service

27.3.1 A notice or other communication is taken to be delivered:



- (a) if delivered personally or left at the person's address, upon delivery;
- (b) if posted within Australia to an Australian address:
  - (i) using express post, 2 Business Days after posting; and
  - (ii) using any other prepaid post, 6 Business Days after posting;
- if posted to an address in a different country, 10 Business Days after posting; and
- (d) if delivered by email, at the time the email left the sender's email system, unless the sender receives notification that the email was not received by the recipient.
- 27.3.2 Despite clause 27.3.1, a notice or other communication which is received after 5.00pm or on a non-business day (each in the place of receipt), is taken to be delivered at 9.00am on the next business day in the place of receipt.

# 28. Disputes

# 28.1 Dispute resolution

### 28.1.1 In this clause:

- claimant means, in respect of a Dispute, a party serving a Dispute Notice in respect of that Dispute;
- (b) Dispute means a dispute or difference between the Contractor and Council arising out of or in connection with this Agreement, including any situation for which this Agreement provides that this clause 28 applies, but excluding a dispute or difference between the Contractor and Council as to whether Council has validly terminated this Agreement under clause 21.2:
- (c) Dispute Notice means a notice served under clause 28.1.2;
- (d) Expert and Expert Notice have the meanings given to those terms in clause 28.3.2;
- (e) Mediation Notice means a notice under clause 28.2.1;
- (f) Nominated Dispute means a Dispute in respect of:
  - a determination of the value of the Qualifying Increase in Costs in respect of a Qualifying Change under clause 11.4;
  - the determination of a Variation Amount under clause 11.5, 11.6 or 11.7;
  - (iii) a dispute regarding the Fee payable for a Disputed Service under clause 12.6; and
  - (iv) in respect of a Dispute referred to in paragraphs 28.1.1(f)(i) or 28.1.1(f)(ii), the determination of how the Variation Amount so determined, shall be paid,



- or any other Dispute in respect of which Council's Representative has notified the Contractor in writing that the Dispute is to be deemed a Nominated Dispute for the purposes of this clause 28; and
- (g) respondent means, in respect of a Dispute, a party receiving a Dispute Notice in respect of that Dispute.
- 28.1.2 If a party considers that a Dispute exists they must promptly serve a written notice (Dispute Notice) on the other party, including or accompanied by full and proper particulars of the Dispute and the resolution of the Dispute suggested or required by the claimant.
- 28.1.3 The respondent:
  - (a) may request reasonable further particulars regarding the Dispute the subject of the Dispute Notice; and
  - (b) must, within 5 Business Days of the service of the Dispute Notice, provide a written response to the matters in the Dispute Notice.
- 28.1.4 If the parties have been unable to resolve the Dispute within 10 Business Days of the service of the Dispute Notice, the Dispute must be referred to the Chief Executive Officer of Council and the chief executive officer or equivalent of the Contractor (Senior Executives) who must in good faith seek to resolve the Dispute within 20 Business Days of the date that the Dispute Notice was served.
- 28.1.5 Any resolution of the Dispute by the Senior Executives must:
  - take into account the material provided to each party in accordance with clause 28.1.1; and
  - (b) be undertaken within 20 Business Days of the service of the Dispute Notice.

### 28.2 Mediation

- 28.2.1 If a Dispute that is the subject of a Dispute Notice is not resolved under clause 28.1 within the timeframe referred to in clause 28.1.5(b), either party may by written notice served on the other party within 40 Business Days of the service of the relevant Dispute Notice require that the Dispute be dealt with by mediation.
- 28.2.2 If a Mediation Notice is served on a party in respect of a Dispute:
  - the parties must, within 5 Business Days after service of the Mediation Notice, agree on a mediator for the purposes of this clause;
  - (b) 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 Chair of the Resolution Institute (ACN 008 651 232), or any other person authorised by the Chair to make the appointment, on the application of either party; [Note: at the Tender Closing Date: the contact details of the Resolution Institute are: Suite 602, Level 6 Tower B, Zenith Centre 821–843 Pacific Highway Chatswood NSW 2067; telephone: 02 9251 3366, email: infoaus@resolution.institute)]
  - (c) within 15 Business Days (or such other period agreed in writing between the parties) after the agreement or nomination of the mediator under paragraph 28.2.2(b), the parties must:



- arrange for the appointment of the mediator (on terms satisfactory to the mediator) for the purposes of this clause; and
- (ii) attend in person a preliminary conference before the mediator.
- 28.2.3 The parties acknowledge and agree that:
  - the mediator must conduct a mediation in relation to the Dispute in accordance with Resolution Institute 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, unless the parties otherwise agree:
- 28.2.4 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).
- 28.2.5 Any mediation under this clause 28.2 will be conducted on a without prejudice basis.

# 28.3 Expert determination of Nominated Disputes

- 28.3.1 This clause 28.3 only applies in respect of a Nominated Dispute that:
  - (a) is the subject of a Dispute Notice; and
  - (b) is not resolved within 20 Business Days of the service of the Dispute Notice.
- 28.3.2 Notwithstanding that a Mediation Notice may have been served in accordance with clause 28.2, a party may by written notice (Expert Notice) served on the other party require the Dispute to be the subject of a determination by an expert (Expert) in accordance with this clause 28.3.
- 28.3.3 An Expert Notice may not be served in respect of a Dispute after the date that is 40 Business Days after the service of a Dispute Notice in respect of that Dispute.
- 28.3.4 The Expert must:
  - (a) be agreed between and jointly appointed by Council and the Contractor or in the absence of agreement, appointed by the Chair of the Resolution Institute;
  - (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 Council 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;
- 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;
- 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);
- (j) provide written reasons for its decision; and
- (k) act with expedition.
- 28.3.5 Council 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 Council and the Contractor.
- 28.3.6 The decision of the Expert is final and binding if:
  - (a) the parties so agree;
  - the amount claimed in the Dispute is less than \$250,000 in total (exclusive of GST and exclusive of legal costs and interest);
  - (c) within 10 Business Days after the Expert notifies the parties of its decision, neither party served a written notice on the other party objecting to the decision of the Expert and proposing to commence litigation and the Dispute remains unresolved; or
  - (d) a party has within 10 Business Days after the Expert notifies the parties of its decision, served a written notice on the other party objecting to the decision of the Expert and proposing to commence litigation, the party serving that notice has not commenced proceedings within 30 Business Days of the date of that notice and the Dispute remains unresolved.

## 28.4 Proceedings

- 28.4.1 If a Dispute is not resolved under clause 28.2 or 28.3, either party may commence proceedings for the resolution of that Dispute, provided that no proceedings may be commenced:
  - (a) in the period within 40 Business Days of the service of the relevant Dispute Notice; or
  - (b) if a Mediation Notice has been served in accordance with clause 28.2, within the period of 30 Business Days following the service of the Mediation Notice.
- 28.4.2 Nothing in this clause 28 will otherwise affect the right of a party to institute proceedings to enforce payment due under this Agreement or otherwise in respect of a Dispute.



#### 28.5 Give effect to certain documents

Any mediation under clause 28.2 or expert determination under clause 28.3:

- 28.5.1 must as far as is reasonably practical give effect to this Agreement;
- 28.5.2 where the Dispute is in relation to the Services, have regard to the impact on the timing, feasibility and cost of the Services; and
- 28.5.3 may not determine to vary any Services in a manner that will not comply with any Approval or other Law, or in a manner that would not be a Permitted Variation under clause 11.

#### 28.6 **Urgent relief**

Nothing in this clause 28 prejudices the right of a party to seek urgent injunctive or declaratory relief for any matter in connection with this Agreement.

#### 28.7 Performance

- 28.7.1 Despite the existence of a Dispute, each party must continue to perform its obligations under this Agreement.
- 28.7.2 The existence of a Dispute will not prejudice either party's right to terminate this Agreement for any reason.

#### 29. Modern Slavery

#### 29.1 Compliance

- 29.1.1 The Contractor warrants that, as at the date of its execution of this Agreement:
  - any Information it has provided to Council in relation to Modern Slavery is, to the best of its knowledge, complete and accurate;
  - (b) neither the Contractor, any entity that it owns or controls or, to the best of its knowledge, any Subcontractor of the Contractor, has been convicted of a Modern Slavery Offence; and
  - the Contractor is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- 29.1.2 The Contractor must comply, and take reasonable steps to ensure that any entity that it owns or controls complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

#### 29.2 Information

#### 29.2.1 The Contractor must:

subject to any restrictions under any applicable laws by which it is bound, (a) provide to Council, within 30 days of a request by Council, any Information and other assistance, as reasonably requested by Council, to enable Council to meet its obligations under the Modern Slavery Act 2018 (NSW) and associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including



cooperating in any Modern Slavery audit undertaken by Council (including by a third party on behalf of Council) or the NSW Audit Office and providing reasonable access to Council's/Audit Office's auditors to interview the Contractor's staff and, so far as these matters are known to the Contractor, disclosing the source, place and country of origin of goods and services being supplied;

- (b) within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to Council; and
- (c) notify Council in writing as soon as it becomes aware of either or both of the following:
  - (i) a material change to any of the Information it has provided to Council in relation to Modern Slavery; and
  - (ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- 29.2.2 Without limiting clause 29.2.1(c), in providing Information to Council as to any actual or suspected occurrence of Modern Slavery in the Contractor's operations or supply chains (or in those of any entity that it owns or controls), the Contractor must provide sufficient Information:
  - to identify where the occurrence has arisen in those operations or supply chains and its scale and severity; and
  - (b) to enable Council to be satisfied, acting reasonably, that the Contractor is taking reasonable steps to respond to and address that occurrence in accordance with any internal Modern Slavery policy and procedures of the Contractor and any relevant code of practice/conduct or other guidance issued by the Anti-slavery Commissioner or (if Council notifies the Contractor that it requires the Contractor to comply with the relevant NSW Procurement Board code/guidance) by the NSW Procurement Board.
- 29.2.3 In providing any requested Information to Council, the Contractor must:
  - make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response; and
  - (b) communicate openly about the extent to which the Information it provides is complete and accurate (including a statement as to the limitations of the Information provided).
- 29.2.4 The Contractor may provide any Information or report requested by Council in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer Council to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by Council.
- 29.2.5 The Contractor must, during the term of this Agreement and for a further period of seven (7) years:
  - (a) maintain; and
  - (b) upon Council's reasonable request, give Council access to, and/or copies of,



a complete set of records in the possession or control of the Contractor to trace, so far as practicable, the supply chain of all goods and services provided under this Agreement and to enable Council to assess the Contractor's compliance with this clause 29.

### 29.3 Modern Slavery due diligence

The Contractor must take reasonable steps to ensure that:

- 29.3.1 Modern Slavery is not occurring in the operations and supply chains of the Contractor and any entity that it owns or controls; and
- 29.3.2 it does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery.

### 29.4 Subcontractors

The Contractor must take reasonable steps to ensure that all Subcontracts of the whole or part of this Agreement contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 29, having regard to the nature of the procurement.

## 29.5 Response to Modern Slavery incident

- 29.5.1 If the Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Contractor must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant code of practice/conduct or other guidance issued by the Anti-slavery Commissioner or (if Council notifies the Contractor that it requires the Contractor to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.
- 29.5.2 Any action taken by the Contractor under clause 29.5.1 will not affect any rights of Council under this Agreement.

### General

### 30.1 Law and jurisdiction

This Agreement will be governed by and construed according to the law in force for the time being in the State of NSW, Australia, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of NSW and any courts entitled to hear appeals from those courts.

# 30.2 Giving effect to this Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

# 30.3 Waiver of Rights

A right may only be waived in writing, signed by the party giving the waiver, and:

30.3.1 no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;



- 30.3.2 a waiver of a right on one or more occasion does not operate as a waiver of that right if it arises again; and
- 30.3.3 the exercise of a right does not prevent any further exercise of that right or of any other right.

### 30.4 Consents

Where in this Agreement Council is required to give agreement or consent then, except where otherwise expressly provided, Council's consent may be given or withheld or given with conditions in Council's unfettered discretion.

# 30.5 Operation of this Agreement

- 30.5.1 This Agreement contains the entire agreement between the parties about its subject matter and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- 30.5.2 If this Agreement is inconsistent with any other document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.
- 30.5.3 Unless expressly stated to the contrary, any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- 30.5.4 Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

### 30.6 Operation of indemnities

- 30.6.1 Each indemnity in this Agreement survives the expiry or termination of this Agreement.
- 30.6.2 A party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.
- 30.6.3 No indemnity given in this Agreement will derogate from a party's rights under this Agreement or at common law.

### 30.7 Relationship of the parties

- 30.7.1 In carrying out its obligations under this Agreement, the Contractor is and at all times will be an independent contractor and no relationship of employment or partnership arises between the parties or between Council and any employee, agent or consultant of the Contractor, as a consequence of this Agreement.
- 30.7.2 The Contractor is not an agent and does not have any authority to and must not purport to bind Council to any agreement or otherwise hold itself out as an agent of Council
- 30.7.3 The Contractor agrees that it is solely liable for all remuneration, claims and other entitlements payable to the Contractor's Staff.



### 30.8 Costs, expenses and stamp duty

30.8.1 Subject to clause 30.8.3, 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.

### 30.8.2 The Contractor must:

- (a) 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; and
- (b) 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.
- 30.8.3 The Contractor must indemnify Council 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.
- 30.8.4 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 Council 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 Council for any such costs, losses or expenses;
  - the Contractor releases Council 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 Council or Council's Representative.

### 30.9 Amendment

This Agreement may only be amended, supplemented or varied by another document signed by the parties.

# 30.10 Survival of termination

All clauses which are by their nature intended to operate or continue to operate after the termination or expiration of this Agreement will survive the termination or expiration of this Agreement including clauses 1, 4.4, 5.9, 5.10, 6.1.4, 8, 13, 15, 16.6, 17, 18, 19, 21, 22, 24, 25, 29 and 30.

# 30.11 Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.



### 30.12 No fetter of discretion

Nothing in this Agreement fetters or limits the statutory capacities or statutory discretions of Council acting as an Authority.

# 30.13 Acknowledgment

The Contractor acknowledges and agrees that:

- 30.13.1 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 Council or Council's Representative does not:
  - impose or create any duty, liability or obligation on Council or Council's Representative;
  - release, limit, reduce, alter or affect the Contractor's duties, liabilities, obligations or responsibilities in any way; or
  - (c) waive, prejudice or limit Council or Council's Representative's rights;
- 30.13.2 none of Council or Council's Representative 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;
- 30.13.3 no Direction of Council or Council's Representative will operate to relieve the Contractor of its other obligations or liability under this Agreement or modify the Contractor's status as an independent contractor;
- 30.13.4 the liabilities, duties and obligations of the Contractor are not reduced because of any delay by any Authority;
- 30.13.5 Council is not liable, nor responsible, for the conduct of any Authority including any delay by an Authority; and
- 30.13.6 to avoid doubt, where this Agreement provides for Council or Council's Representative to issue a certification or an Endorsement, the issue of the certificate or Endorsement is not proof of performance.

# 30.14 Acknowledgments - representations

- 30.14.1 The Contractor acknowledges that except as expressly stated in this Agreement Council makes no warranty or representation as to whether any waste, including Contract 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.
- 30.14.2 The Contractor acknowledges and agrees that:
  - no representation or warranty either express or implied is, has been or will be made by Council under or in respect of the Tender Documents;



- (b) statements by Council, 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:
  - (i) are not binding on Council;
  - do not commit Council to any action or position in respect of any matter; and
  - (iii) do not waive, fetter, limit or otherwise affect any right, discretion, power or privilege of Council;
- any representation, communication and prior agreement in relation to the subject matter of the Tender Documents are merged in and superseded by this Agreement; and
- (d) 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 Council.

### 30.15 Disclosed Information

- 30.15.1 This clause 30.15 only applies to Disclosed Information that was disclosed prior to the date of this Agreement.
- 30.15.2 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:
    - carefully examined the terms of this Agreement and all Disclosed Information;
    - (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 or operator 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
    - (iii) examined any land made available by Council for the performance of the Services, and its surroundings;
  - (b) no representation, guarantee or warranty (either express or implied) is, has been or will be made by Council 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 Council that the Disclosed Information:
    - is reliable, complete, current, accurate, suitable, comprehensive, adequate or correct;
    - (ii) represents the opinion of Council or any other person at any time;
    - (iii) contains all information held by or available to Council 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 Council in respect of any Disclosed Information;

- (d) Council has not and is not obliged to:
  - verify the currency, reliability, adequacy, accuracy, correctness, suitability, comprehensiveness or completeness of the Disclosed Information;
  - 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 this 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.

### 30.15.3 The Contractor warrants and represents that:

- it has understood the limitations of the Disclosed Information and in particular acknowledges its understanding that:
  - 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 (including Contract Waste) in the Willoughby local government area; and
  - (ii) any assessment of or statement about any Characteristic of any waste (including Contract Waste) may or may not be correct and is not a representation or warranty made by Council;
- (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 Contract Waste and the suitability of land that is made available by Council for the Services for any particular use;



- (c) it has satisfied itself as to:
  - (i) the Characteristics of the Contract Waste; and
  - the nature, extent, cost and timeframes for carrying out any part of the Services by it and or any other person; 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 Contract 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.
- 30.15.4 The Contractor releases Council from, and indemnifies Council against:
  - (a) any Claim (whether at law or in equity) by the Contractor; or
  - (b) any obligation, duty or liability to the Contractor in respect of any Loss or Claim whatsoever suffered or incurred by the Contractor,

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

- (c) 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 Council to provide any information, data or documents to the Contractor;
- (d) any negligence by or on behalf of Council (the Contractor specifically acknowledges and agrees that any duty of care that Council may otherwise have owed to the Contractor is specifically excluded and released);
- (e) any misrepresentation, misleading conduct, omission, inaccuracy, incompleteness or other defect in any Disclosed Information; or
- (f) 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.

# 30.16 GIPA

30.16.1 Notwithstanding any other provisions of this Agreement, the Contractor acknowledges and agrees that under the Government Information (Public Access) Act 2009 (NSW) Council may be required to publicly disclose information about this



Agreement. As at the date of this Agreement, none of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of a contract;
- (b) any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the Government Information (Public Access) Act 2009 (NSW).
- 30.16.2 The Contractor may at any time nominate any items that it considers are confidential and why, so as to assist Council in determining what items to disclose.
- 30.16.3 Without limiting or affecting any of the other rights that Council may have to receive information from the Contractor under this Agreement, pursuant to section 121 of the Government Information (Public Access) Act 2009 (NSW), the Contractor must within 5 Business Days of receiving a written request from Council, provide Council with immediate access to the following information contained in records held by the Contractor:
  - (a) information that relates directly to the performance of the Services;
  - (b) information received by the Contractor from Council to enable it to provide the Services.
- 30.16.4 For the purposes of clause 30.16.3, information does not include:
  - information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margins;
  - information that the Contractor is prohibited from disclosing to Council by provision made by or under any Act; or
  - (c) information that, if disclosed to Council, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to Council, whether at present or in the future.

# 30.17 Civil Liability Act

- 30.17.1 It is agreed that, to the extent permitted by law, the operation of any legislative proportionate liability regime (including 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.
- 30.17.2 The Contractor further agrees that:
  - (a) in each Subcontract into which it enters, it will include provisions that, to the extent permitted by law, effectively exclude the operation of any legislative proportionate liability regime (including 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
  - 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 any legislative proportionate liability regime (including 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.

# 30.18 Warranty regarding solvency

- 30.18.1 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.
- 30.18.2 The representation and warranty in this clause will be deemed to be repeated by the Contractor and Council on each day from the date of this Agreement until the earlier of:
  - (a) the end of the Term; and
  - (b) the expiration or earlier termination of this Agreement,

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

# 30.19 Counterparts

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

2023

# **Signing Page**

Executed as an agreement.

**SIGNED** for **Willoughby City Council** (ABN 47 974 826 099), by its duly authorised officer in the presence of:

Signature of witness

Andrea Bornstein

Name

EXECUTED by J.J. Richards & Sons Pty Ltd (ACN 000 805 425), in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:

nn Richards

Signature of director

Name

Signature of director/company secretary

Signature of officer

Name

Name TEKNEY

# Schedule 1 Agreement particulars

Item	Clause		Particulars
1.	1.1	Commencement Date	The date of this Agreement
2.	1.1, 2.2	Expiry Date	The date that is 7 years after the Services Commencement Date, or as extended under clause 2.2 of this Agreement.
3.	1.1	Management Systems	<ul> <li>AS/NZS/ISO 45001 Occupational health and safety management system - requirements with guidance for use</li> <li>Chain of Responsibility System</li> <li>Work Health and Safety Management System</li> </ul>
4.	1.1	Nominated Disposal Facility	Either of the following facilities as directed from time to time by the Council's Representative:  Nominated Disposal Facility 1: Veolia's Banksmeadow Facility at 14 Beauchamp Rd, Banksmeadow NSW 2019; or  Nominated Disposal 2: Veolia's Clyde Transfer Station located in Clyde NSW 2142,
			or such other facility as is nominated by Council from time to time.
5.	1.1	Nominated Processing Facility for Recyclables	Kimbriki Resource Recovery Centre at Kimbriki Rd, Ingleside NSW 2084, or such other facility as is nominated by Council from time to time.
6.	1.1	Nominated Processing Facility for Garden Organics	Cleanaway Pty Ltd (Cleanaway) at 145 Wicks Road in North Ryde, NSW 2113, or such other facility as is nominated by Council from time to time.
7.	1.1	Nominated Processing Facility for FOGO	As nominated by Council under clause 1.2 of the FOGO Collection Specification, and as may be subsequently changed by Council from time to time.
8.	1.1	Nominated Facility for Bulky Waste and Bulk Green Waste	In respect of Bulky Waste that is not Bulk Green Waste, Veolia – Greenacre Transfer Station, 75 Anzac Road, Chullora NSW 2190,



Item	Clause		Particulars
			or such other facility as is nominated by Council from time to time.
			In respect of Bulk Green Waste, Cleanaway Pty Ltd (Cleanaway) at 145 Wicks Road in North Ryde, NSW 2113 or such other facility as is nominated by Council from time to time.
9.	1.1	Services Commencement Date	4 March 2024
10.	1.1	Services Management Plans	<ul> <li>Services Management Plan</li> <li>Emergency Plan</li> <li>Services Termination Transition Plan</li> <li>Quality Plan</li> <li>Business Continuity and Resilience Plan</li> <li>Environmental Management Plan</li> <li>Industrial Relations and Workforce Plan</li> <li>Annual Education Plan</li> <li>Contamination Management Strategy and Procedures Program</li> <li>(Note: There is no requirement to have a separate plan for each of the above).</li> </ul>
11.	3.1.2	Council's Representative	The person described as Council's 'Contact' on page 1 of this Agreement under the heading 'Parties'.
12.	3.2	Contractor's Representative	The person described as the Contractor's 'Contact' on page 1 of this Agreement under the heading 'Parties'.
13.	15.1	Security	\$750,000
14.	17.3	Public and products liability insurance	\$20,000,000 for any one occurrence and unlimited in the annual aggregate
15.	17.4	Workers' compensation insurance	As required by Law
16.	17.5	Plant and equipment insurance	Full market value
17.	17.6.2	Motor vehicle third party property insurance	\$20,000,000

# Schedule 2 Agreement Prices

### Part 1 - General

### 1. GST

All monetary amounts in this Schedule 2 are exclusive of GST.

### 2. Definitions

In this Schedule 2:

- 2.1.1 Table is a reference to a table in this Schedule 2; and
- 2.1.2 defined terms have the meanings given to them in clause 3 of the General Specification (being Part 1 of the Services Specification) and clause 1.1 of the Operative Terms.

## 3. Price assumptions

The Agreement Prices are subject to the following assumptions:

- 3.1.1 that for the purposes of the rates specified in Table 2 ('Provision of Recyclables Collection Service'), Council will nominate whether the Contractor is to undertake a weekly or fortnightly Recyclables collection service on or before the Commencement Date;
- 3.1.2 that for the purposes of the rates specified in Table 7 ('Provision of Waste Collection Services (Service Period B)'), Council will nominate whether the Contractor is to undertake a weekly or fortnightly Waste collection service on or before the commencement of Service Period B;
- 3.1.3 a reference in this Schedule 2 to the Fee being inclusive of the supply and replacement of Mobile Bins, refers to the supply or replacement of mobile bins which have been lost, stolen, damaged or destroyed but does not include payment for a large scale change in Mobile Bin size;
- 3.1.4 the Fee for the provision by the Contractor of the booked Bulky Waste Collection Services described as 'Option 1' in Table 4 ('Provision of Bulky Waste Collection Services (Option 1: Booked Bulky Waste Collection Service') is based on a minimum of 400 services per week, and this will be the minimum number of services charged per week;
- 3.1.5 the unit rates included for the provision of Collection Services for special events are each based on delivery Monday to Friday, with servicing available Monday to Saturday;
- 3.1.6 in respect of Collection Services for mattresses, the Contractor is only required to collect mattresses when directed by Council to provide a Collection Services for Dumped Waste;
- 3.1.7 the Monthly Depot Charge specified in Table 14 ('Monthly Depot Charge') will be adjusted to reflect any change in the Rent, including any adjustments to the Rent under the Lease (to the extent that the adjustment is not otherwise reflected by the adjustment required under clause 16 of this Schedule 2;



- 3.1.8 the provision of notifications to residents including those relating to changes in frequency and all educational information, plus stickers for new FOGO bin lids will be paid for by the education contributions made by the Contractor under this Agreement;
- 3.1.9 if Council directs the Contractor to provide additional Kitchen Caddies or Kitchen Caddy liners to multi-occupancy premises that are provided with Collection Services on a shared arrangement under clauses 2.2 or 2.3 of the Services Specification, the supply of the additional Kitchen Caddies and Kitchen Caddy liners will be charged at the rates provided in Tables 10 and 11;
- 3.1.10 in respect of the supply of new, additional and repair and replacement Mobile Bins it is assumed that the Mobile Bins can be stored offsite at Council's premises;
- 3.1.11 any changes to the location of a Nominated Facility will be made in consideration of existing capital; and
- 3.1.12 given the OHS issues around the metal winch bins, it is assumed that Council will make phasing these bins out of service a priority to ensure the health and safety of drivers.



### Part 2 - Agreement Prices

- 4. Provision of Waste Collection Service (Service Period A)
- 4.1 This clause 4 of this Schedule 2 is applicable during Service Period A.
- 4.2 The Fee payable for the provision by the Contractor of the Waste Collection Services, including the cost for the collection and transportation of Waste from red lid Mobile Bins to the Nominated Facility for Waste, and all activities associated with the provision of the collection services for Waste including:
  - 4.2.1 the supply of additional red lid Mobile Bins;
  - 4.2.2 the replacement of red lid Mobile Bins; and
  - 4.2.3 the maintenance of red lid Mobile Bins,

during the Services Term, must be calculated using the unit rates set out in Table 1 below, as adjusted in accordance with Part 3 of this Schedule 2.

- 4.3 In Table 1 below, under the Unit Rate column:
  - 4.3.1 Nominated Facility 1, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Veolia's Banksmeadow Facility at 14 Beauchamp Rd, Banksmeadow NSW 2019;
  - 4.3.2 Nominated Facility 2, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Veolia's Clyde Transfer Station located in Clyde NSW 2142;
  - 4.3.3 Zone 1, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to 145 Wicks Road in North Ryde, NSW 2113;
  - 4.3.4 Zone 2, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Kimbriki Resource Recovery Centre at Kimbriki Rd, Ingleside NSW 2084;
  - 4.3.5 Zone 3, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Lucas Heights; and
  - 4.3.6 Zone 4 refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to 1725 Elizabeth Drive, Kemps Creek NSW 2178.
- 4.4 The unit rates specified under the Unit Rate column 'Nominated Facility' includes all tolls.
- 4.5 The unit rates specified for Zone 1, Zone 2, Zone 3 and Zone 4 are exclusive of any tolls paid by Collection Vehicles while transporting Waste from red lid Mobile Bins and static waste compactors direct to a Nominated Disposal Facility.

Table 1 Provision of Waste Collection Services (Service Period A)

Item	Service Description	Unit	Unit Rate (\$)					
			Nominated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4
Stand	lard Waste Collection	n Service to all	Single Un	it Dwellin	gs			
1.	Weekly Waste collection service from 140L red lid Mobile Bins	per scheduled service (\$/bin/service)						
2.	Weekly Waste collection service from 240L red lid Mobile Bins	per scheduled service (\$/bin/service)						
3.	Weekly infirm Waste collection service from 140L red lid Mobile Bins	per scheduled service (\$/bin/service)						
4.	Weekly infirm Waste collection service from 240L red lid Mobile Bins	per scheduled service (\$/bin/service)						
Stand	dard Waste Collection	n Service to all	Multi Unit	Dwelling	s (includ	es all resid	lential)	
5.	Waste collection service from 240L red lid Mobile Bins	per scheduled service (\$/bin/service)						
6.	Waste collection service from 660L red lid Mobile Bins	per scheduled service (\$/bin/service)						
7.	Waste collection service from 1100L red lid Mobile Bins	per scheduled service (\$/bin/service)						
8.	Waste collection service from 1500L non- compacted Mobile Bins	per scheduled service (\$/bin/service)						
9.	Waste collection service from 1500L compacted Mobile Bins	per scheduled service (\$/bin/service)						

Item	Service Description	Unit	Unit Rate (\$)						
			Nominated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4	
10.	Waste collection service from 2000L non-compacted Mobile Bins	per scheduled service (\$/bin/service)							

# Other Waste Collection Service (includes commercial waste)

11.	Dog waste collection service from 140L Mobile Bins at nominated parks	per scheduled service (\$/bin/service)	
12.	Dog waste collection service from 240L Mobile Bins at nominated parks	per scheduled service (\$/bin/service)	
13.	The Concourse – Waste Collection Service from 140L MGBs	per scheduled service (\$/bin/service)	
14.	The Concourse – Waste Collection Service from 240 litre MGBs	per scheduled service (\$/bin/service)	
15.	Council facilities Waste Collection from 240L Mobile Bins	per scheduled service (\$/bin/service)	
16.	Council facilities Waste Collection from 600L Mobile Bins	per scheduled service (\$/bin/service)	
17.	Council facilities Waste Collection from 1100L Mobile Bins	per scheduled service (\$/bin/service)	
18.	Council facilities Waste Collection from 1500L bulk bin	per scheduled – service (\$/bin/service)	
19.	Commercial small business premises Waste Collection from 240L Mobile Bins	per scheduled service (\$/bin/service)	
20.	Council parks and reserves Waste Collection from 140L Mobile Bins	per scheduled service (\$/bin/service)	



Item	Service Description	Unit	Unit Rate (\$)						
			Nominated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4	
21.	Council parks and reserves Waste Collection from 240L Mobile Bins	per scheduled service (\$/bin/service)				V - 1 - 1			

22.	Waste Collection Service from 240L Mobile Bins at a small event (supply of 1 to 5, 240L red lid Mobile Bins)	per scheduled service (\$/bin/service)
23.	Waste Collection Service from 240L Mobile Bins at a medium event (supply of 6 to 10, 240L red lid Mobile Bins)	per scheduled service (\$/bin/service)
24.	Waste Collection Service from 240L Mobile Bins at a large event (supply of more than 11,	per scheduled service (\$/bin/service)

240L red lid Mobile

Bins)



#### 5. **Provision of Recyclables Collection Services**

- This clause 5 of this Schedule 2 is applicable during the Services Term. 5.1
- The Fee payable for the provision by the Contractor of the Recyclables Collection Services, 5.2 including the cost for the collection and transportation of Recyclables from yellow lid Mobile Bins to the Nominated Processing Facility for Recyclables, and all activities associated with the provision of the collection services for Recyclable Waste including:
  - 5.2.1 supply of additional yellow lid Mobile Bins,
  - replacement of yellow lid Mobile Bins and 5.2.2
  - maintenance of yellow lid Mobile Bins, 5.2.3

during the Services Term, must be calculated using the unit rates set out in Table 2 below, as adjusted in accordance with Part 3 of this Schedule 2.

- 5.3 In Table 2 below, under the Unit Rate column:
  - Nominated Facility, refers to the unit rate payable for the transportation of 5.3.1 Recyclables from yellow lid Mobile Bins to Kimbriki Resource Recovery Centre at Kimbriki Rd, Ingleside NSW 2084;



- 5.3.2 Zone 1, refers to the unit rate payable for the transportation of Recyclables from yellow lid Mobile Bins to 145 Wicks Road in North Ryde, NSW 2113;
- 5.3.3 Zone 2, refers to the unit rate payable for the transportation of Recyclables from yellow lid Mobile Bins to Madeline Street, Strathfield South;
- Zone 3, refers to the unit rate payable for the transportation of Recyclables from 5.3.4 yellow lid Mobile Bins to 6 Herbert PI, Smithfield NSW 2164; and
- 5.3.5 Zone 4, refers to the unit rate payable for the transportation of Recyclables from yellow lid Mobile Bins to Richardson Road, Spring Farm.
- 5.4 The unit rates specified under the Unit Rate column 'Nominated Facility' includes all tolls.
- 5.5 The unit rates specified for Zone 1, Zone 2, Zone 3 and Zone 4 are exclusive of any tolls paid by Collection Vehicles while transporting Recyclables from yellow lid Mobile Bins direct to the Nominated Processing Facility for Recyclables.

Table 2 Provision of Recyclables Collection Services

Item	Service Description	Unit	Unit Rate (\$)						
			Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4		

### Standard Recyclables Collection Service to all Single Unit Dwellings

Marie Control		
1.	Weekly Recyclables collection service from 240L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)
2.	Weekly infirm Recycl ables collection service from 240L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)
3.	Weekly Recyclables collection service from 360L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)
4.	Weekly infirm Recycl ables	per scheduled service

collection

service from

(\$/bin/ser

vice)





Item	Service Description	Unit	Unit Rate (\$)						
			Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4		
	360L yellow lid Mobile Bins								
Optio	on - Fortnightly	Recyclables	Collection S	ervice to a	II Single Un	it Dwellings			
1A.	Fortnightly Recyclables collection service from 240L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)							
2A.	Fortnightly infirm Recycl ables collection service from 240L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)							
3A.	Fortnightly Recyclables collection service from 360L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)							
4A.	Fortnightly infirm Recycl ables collection service from 360L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)							
Stanc	lard Recyclable	s Collection	Service to al	Multi Uni	t Dwelling (i	ncludes all re	esidential)		
5.	Recyclables collection service from 240L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)							
6.	Recyclables collection service from	per scheduled service							



ltem	Service Description	Unit	Unit Rate (\$)				
			Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4
	360L yellow lid Mobile Bins	(\$/bin/ser vice)					
7.	Recyclables collection service from 660L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)					
8.	Recyclables collection service from 1100L yellow lid Mobile Bins	per scheduled service (\$/bin/ser vice)					
9.	Recyclables collection service from 1500L Mobile Bins	per scheduled service (\$/bin/ser vice)					
10.	Recyclables collection service from 2000L Mobile Bins	per scheduled service (\$/bin/ser vice)					

### Other Recyclables Collection Service (includes commercial waste)

The Concourse – Scheduled Service (\$/bin/ser Vice)  12. Council facilities – Service from 240L Mobile Bins  13. Council facilities – Service (\$/bin/ser Vice)  14. Council facilities – Service (\$/bin/ser Vice)  15. Council facilities – Service (\$/bin/ser Vice)  16. Council facilities – Service (\$/bin/ser Vice)  17. Council facilities – Service (\$/bin/ser Vice)  18. Council facilities – Service From Service (\$/bin/ser Vice)  19. Council facilities – Service (\$/bin/ser Vice)	III DOLLARS				
facilities — scheduled Recyclables collection (\$/bin/ser Service from 240L Mobile Bins  13. Council per facilities — scheduled Recyclables service Collection (\$/bin/ser	11.	Concourse – Recyclables Collection Service from 240 litre	scheduled service (\$/bin/ser		
facilities – scheduled Recyclables service Collection (\$/bin/ser	12.	facilities – Recyclables Collection Service from 240L Mobile	scheduled service (\$/bin/ser		
	13.	facilities – Recyclables Collection	scheduled service (\$/bin/ser		



Item	Service Description	Unit	Unit Rate (\$)						
			Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4		
	360L Mobile Bins								
14.	Council facilities – Recyclables Collection Service from 660L Mobile Bins	per scheduled service (\$/bin/ser vice)	4						
15.	Council facilities Waste Collection from 1100L Mobile Bins	per scheduled service (\$/bin/ser vice)							
16.	Council facilities Waste Collection from 1500L bulk bin	per scheduled service (\$/bin/ser vice)							
17.	Commercial small business premises Recyclables Collection from 240L Mobile Bins	per scheduled service (\$/bin/ser vice)							
18.	Commercial small business premises Recyclables Collection from 360L Mobile Bins	per scheduled service (\$/bin/ser vice)							
Recyc Bins)	clables Collecti	on Service f	or Special Ev	ents (inclu	ding supply o	of yellow lid	Mobile		
19.	Recyclables Collection Service from 240L Mobile Bins at a small event (supply of 1	per scheduled service (\$/bin/ser vice)							

Item	Service Description	Unit	Unit Rate (\$)				× 1
			Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4
	to 5, 240L yellow lid Mobile Bins)		v				
20.	Recyclables Collection Service from 240L Mobile Bins at a medium event (supply of 6 to 10, 240L yellow lid Mobile Bins)	per scheduled service (\$/bin/ser vice)		,	€		
21.	Recyclables Collection Service from 240L Mobile Bins at a large event (supply of more than 11, 240L yellow lid Mobile Bins)	per scheduled service (\$/bin/ser vice)					n 4

- 6. Provision of Garden Organics Collection Services (Service Period A)
- 6.1 This clause 6 of this Schedule 2 is applicable during Service Period A.
- 6.2 The Fee payable for the provision by the Contractor of the Garden Organics Collection Services, including the cost for the collection and transportation of Garden Organics from green lid Mobile Bins to the Nominated Processing Facility for Garden Organics, and all activities associated with the provision of the collection services for Garden Organics including:
  - 6.2.1 supply of additional green lid Mobile Bins,
  - 6.2.2 replacement of green lid Mobile Bins and
  - 6.2.3 maintenance of green lid Mobile Bins,

during the Services Term, must be calculated using the unit rates set out in Table 3 below, as adjusted in accordance with Part 3 of this Schedule 2.

- 6.3 In Table 3 below, under the Unit Rate column:
  - 6.3.1 Nominated Facility, refers to the unit rate payable for the transportation of Garden Waste from green lid Mobile Bins to Cleanaway Pty Ltd (Cleanaway) at 145 Wicks Road in North Ryde, NSW 2113;



- 6.3.2 **Zone 1**, refers to the unit rate payable for the transportation of Garden Organics from green lid Mobile Bins to Artarmon;
- 6.3.3 **Zone 2**, refers to the unit rate payable for the transportation of Garden Organics from green lid Mobile Bins to Anzac Street, Chullora;
- 6.3.4 Zone 3, refers to the unit rate payable for the transportation of Garden Organics from green lid Mobile Bins to Wallgrove Rd, Eastern Creek NSW 2766; and
- **Zone 4**, refers to the unit rate payable for the transportation of Garden Organics from green lid Mobile Bins to 1725 Elizabeth Drive, Kemps Creek NSW 2178.
- 6.4 The unit rates specified under the Unit Rate column 'Nominated Facility' includes all tolls.
- The unit rates specified for Zone 1, Zone 2, Zone 3 and Zone 4 are exclusive of any tolls paid by Collection Vehicles while transporting Garden Organics from green lid Mobile Bins direct to the Nominated Processing Facility for Garden Organics.

Table 3 Provision of Garden Organics Collection Services

Item	Service Description	Unit	Unit Rate (\$)				
	S. E.		Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4
Standa	ard Garden Organics (	Collection Service	e to all Single	Unit Dwe	lling		
1.	Weekly Garden Organics collection service from 240L green lid Mobile Bins	per scheduled service (\$/bin/service)					
2.	Weekly infirm Garden Organics collection service from 240L green lid Mobile Bins	per scheduled service (\$/bin/service)					
Standa	ard Garden Organics (	Collection Service	e to all Multi l	Jnit Dwelli	ing		
3.	Garden Organics collection service from 240L green lid Mobile Bins	per scheduled service (\$/bin/service)					

### 7. Provision of Bulky Waste Collection Services

- 7.1 This clause 7 of this Schedule 2 is applicable during the Services Term.
- 7.2 The Fee payable for the provision by the Contractor of the Bulky Waste Collection Services, including the cost for the collection and transportation of booked Bulky Waste from Service-Entitled Premises and Dumped Waste locations notified by Council, to the Nominated Processing Facility for Bulky Waste, and all activities associated with the provision of the collection services for Bulky Waste during the Services Term, must be



calculated using the unit rates set out in Table 4 below, as adjusted in accordance with Part 3 of this Schedule 2.

- 7.3 In Table 4 below, under the Unit Rate column:
  - Nominated Facility, refers to the unit rate payable for the transportation of Bulky Waste to Veolia - Greenacre Transfer Station, 75 Anzac Road, Chullora NSW 2190;
  - 7.3.2 Zone 1, refers to the unit rate payable for the transportation of Bulky Waste to 145 Wicks Road in North Ryde, NSW 2113;
  - 7.3.3 Zone 2, refers to the unit rate payable for the transportation of Bulky Waste to Kimbriki Resource Recovery Centre at Kimbriki Rd, Ingleside NSW 2084;
  - 7.3.4 Zone 3, refers to the unit rate payable for the transportation of Bulky Waste to Lucas Heights; and
  - 7.3.5 Zone 4, refers to the unit rate payable for the transportation of Bulky Waste to 1725 Elizabeth Drive, Kemps Creek NSW 2178.
- 7.4 The unit rates specified under the Unit Rate column 'Nominated Facility' includes all tolls.
- 7.5 The unit rates specified for Zone 1, Zone 2, Zone 3 and Zone 4 are exclusive of any tolls paid by Collection Vehicles while transporting Bulky Waste and Dumped Waste direct to the Nominated Processing Facility for Bulky Waste.

Table 4 Provision of Bulky Waste Collection Services (Option 1: Booked Bulky Waste Collection Service)

Item	Service Description	Unit	Unit Rate (\$)					
			Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4	
1.	Booked Bulky Waste Collection Service from Service-Entitled Premises including collection and transportation to the Nominated Facility.	per booked service (\$/booked service)						
2.	Collection and transportation of Dumped Waste from within Council's LGA.	per service (\$/service)						



Table 4 - Provision of Bulky Waste Collection Services (Option 2: Scheduled and Booked Bulky Waste Collection Service)

Item	Service	Unit	Unit Rate (\$)				
item	Description		Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4
4	Scheduled Bulky Waste Collection Service from Service-Entitled Premises including collection and transportation to the Nominated Facility. Includes 3 scheduled collections per year for all Service- Entitled Premises.	per scheduled service per Service- Entitled Premises (\$/scheduled service per Service- Entitled Premises)					
2	Booked Bulky Waste Collection Service from Service-Entitled Premises including collection and transportation to the Nominated Facility.	per booked service (\$/booked service)					
3	Collection and transportation of Dumped Waste from within Council's LGA.	per service (\$/service)					

### 8. Provision of Bulk Green Waste Collection Services

- 8.1 This clause 8 of this Schedule 2 is applicable during the Services Term.
- 8.2 The Fee payable for the provision by the Contractor of the Bulk Green Waste Collection Services, including the cost for the collection and transportation of booked Bulk Green Waste from Service-Entitled Premises to the Nominated Processing Facility for Bulk Green Waste, and all activities associated with the provision of the collection services for Bulk Green Waste during the Services Term, must be calculated using the unit rates set out in Table 5 below, as adjusted in accordance with Part 3 of this Schedule 2.
- 8.3 In Table 5 below, under the Unit Rate column:
  - 8.3.1 Nominated Facility, refers to the unit rate payable for the transportation of Bulk Green Waste to Cleanaway Pty Ltd (Cleanaway) at 145 Wicks Road in North Ryde, NSW 2113:
  - 8.3.2 **Zone 1**, refers to the unit rate payable for the transportation of Bulk Green Waste to Artarmon;
  - 8.3.3 **Zone 2**, refers to the unit rate payable for the transportation of Bulk Green Waste to Anzac Street, Chullora;



- 8.3.4 **Zone 3**, refers to the unit rate payable for the transportation of Bulk Green Waste to Wallgrove Rd, Eastern Creek NSW 2766; and
- 8.3.5 Zone 4, refers to the unit rate payable for the transportation of Bulk Green Waste to 1725 Elizabeth Drive, Kemps Creek NSW 2178.
- 8.4 The unit rates specified under the Unit Rate column 'Nominated Facility' includes all tolls.
- 8.5 The unit rates specified for Zone 1, Zone 2, Zone 3 and Zone 4 are exclusive of any tolls paid by Collection Vehicles while transporting Bulk Green Waste direct to the Nominated Processing Facility for Bulk Green Waste.

Table 5 Provision of Bulk Green Waste Collection Services

Item	Service Description	Unit	Unit Rate (\$)				
			Nominated Facility	Zone 1	Zone 2	Zone 3	Zone 4
1.	Booked Bulk Green Waste Collection Service-from Service- Entitled Premises including collection and transportation to the Nominated Facility.	per scheduled service (\$/booked service)					

### 9. Supply and Delivery of Bulk Waste Bins to all Service-Entitled Premises

- 9.1 This clause 9 of this Schedule 2 is applicable during the Services Term (including Service Period A and Service Period B).
- 9.2 The Fee payable for the supply and delivery by the Contractor of new Mobile Bins, of the kind specified in Table 6 below, to Service-Entitled Premises or locations as directed by Council within the Council LGA, must be calculated:
  - 9:2.1 prior to the FOGO Commencement Date; and
  - 9.2.2 on and from the FOGO Commencement Date,

using the unit rates set out in Table 6 below, as adjusted in accordance with Part 3 of this Schedule 2.



Table 6 Supply and delivery of new Bulk Waste Mobile Bins

Item	Service Description	Unit	Unit Rate (\$)
1	Supply and deliver 360L yellow lid Mobile Bins to the location within the Council LGA as required by Council	per bin (\$/bin)	
2	Supply and deliver 360L green lid Mobile Bins to the location within the Council LGA as required by Council	per bin (\$/bin)	
3	Supply and deliver 660L red lid Mobile Bins to the location within the Council LGA as required by Council	per bin (\$/bin)	9.
4	Supply and deliver 660L yellow lid Mobile Bins to the location within the Council LGA as required by Council	per bin (\$/bin)	
5	Supply and deliver 1100L red lid Mobile Bins to the location within the Council LGA as required by Council	per bin (\$/bin)	
6	Supply and deliver 1100L yellow lid Mobile Bins to the location within the Council LGA as required by Council	per bin (\$/bin)	

### 10. Provision of Waste Collection Service (Service Period B)

- 10.1 This clause 10 of this Schedule 2 is applicable during Service Period B.
- The Fee payable for the provision by the Contractor of the Waste Collection Services, including the cost for the collection and transportation of Waste from red lid Mobile Bins to the Nominated Facility for Waste, and all activities associated with the provision of the collection services for Waste including:
  - 10.2.1 the supply of additional red lid Mobile Bins;
  - 10.2.2 the replacement of red lid Mobile Bins; and
  - 10.2.3 the maintenance of red lid Mobile Bins,

during the Services Term, must be calculated using the unit rates set out in Table 7 below, as adjusted in accordance with Part 3 of this Schedule 2.

- 10.3 In Table 7 below, under the Unit Rate column:
  - 10.3.1 Nominated Facility 1, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Veolia's Banksmeadow Facility at 14 Beauchamp Rd, Banksmeadow NSW 2019;
  - 10.3.2 Nominated Facility 2, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Veolia's Clyde Transfer Station located in Clyde NSW 2142:
  - 10.3.3 Zone 1, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to 145 Wicks Road in North Ryde, NSW 2113;



- 10.3.4 Zone 2, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Kimbriki Resource Recovery Centre at Kimbriki Rd, Ingleside NSW
- 10.3.5 Zone 3, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to Lucas Heights; and
- 10.3.6 Zone 4, refers to the unit rate payable for the transportation of Waste from red lid Mobile Bins to 1725 Elizabeth Drive, Kemps Creek NSW 2178.
- 10.4 The unit rates specified under the Unit Rate column 'Nominated Facility' includes all tolls.
- 10.5 The unit rates specified for Zone 1, Zone 2, Zone 3 and Zone 4 are exclusive of any tolls paid by Collection Vehicles while transporting Waste from red lid Mobile Bins and static waste compactors direct to a Nominated Disposal Facility.

service from 240L (\$/bin/service)

Item	Service Description	Unit	Unit	Unit Rate					
			Nominated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4	
Stand	lard Waste Collection	on Service to all	Single Unit	Dwellings					
1.	Weekly Waste collection service from 140L red lid Mobile Bins	per scheduled service (\$/bin/service)				Control Estate I			
2.	Weekly Waste collection service from 240L red lid Mobile Bins	per scheduled service (\$/bin/service)							
3.	Weekly infirm Waste collection service from 140L red lid Mobile Bins	per scheduled service (\$/bin/service)							
4.	Weekly infirm Waste collection	per scheduled service							

	red lid Mobile Bins		
Optio	on - Fortnightly Wast	te Collection Ser	vice to all Single Unit Dwellings
1A.	Fortnightly Waste collection service from 240L red lid Mobile Bins	per scheduled service (\$/bin/service)	
2A.	Fortnightly infirm Waste collection service from 240L	per scheduled service (\$/bin/service)	

Item	Service Description	Unit	Unit Rate (\$)					
			Nominated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4
	red lid Mobile Bins				9			
3A.	Retrieval of 140L red lid Mobile Bins from Service-Entitled Premises and recycle as required	per Mobile Bin Retrieved and Recycled (\$/bin)						
4A.	Option - Supply and Deliver 240L red lid Mobile Bins to Service- Entitled Premises as required	per Mobile Bin supplied and delivered (\$/bin)						
Stand	lard Waste Collection	on Service to all I	Multi Unit C	Owellings (	includes	all reside	ential)	
5.	Waste collection service from 240L red lid Mobile Bins	per scheduled service (\$/bin/service)						
6.	Waste collection service from 660L red lid Mobile Bins	per scheduled service (\$/bin/service)						
7.	Waste collection service from 1100L red lid Mobile Bins	per scheduled service (\$/bin/service)						
8.	Waste collection service from 1500L non-	per scheduled service (\$/bin/service)						

per scheduled

(\$/bin/service)

per scheduled

(\$/bin/service)

service

service

compacted Mobile

Waste collection

1500L compacted

Waste collection

compacted Mobile

service from

Mobile Bins

service from

2000L non-

Bins

Bins

10.



Item	Service Description	Unit	Unit Rate (\$)					
			Nominated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4
Other	Waste Collection Serv	rice (includes com	mercial was	te)				
11.	Dog waste collection service from 140L Mobile Bins at nominated parks	per scheduled service (\$/bin/service)						
12.	Dog waste collection service from 240L Mobile Bins at nominated parks	per scheduled service (\$/bin/service)						
13.	The Concourse – Waste Collection Service from 140L MGBs	per scheduled service (\$/bin/service)						
14.	The Concourse – Waste Collection Service from 240 litre MGBs	per scheduled service (\$/bin/service)						
15.	Council facilities Waste Collection from 240L Mobile Bins	per scheduled service (\$/bin/service)						
16.	Council facilities Waste Collection from 600L Mobile Bins	per scheduled service (\$/bin/service)						
17.	Council facilities Waste Collection from 1100L Mobile Bins	per scheduled service (\$/bin/service)						
18.	Council facilities Waste Collection from 1500L bulk bin	per scheduled service (\$/bin/service)						
19.	Commercial small business premises Waste Collection from 240L Mobile Bins	per scheduled service (\$/bin/service)					741	

Item	Service Description	Unit	Unit Rate (\$)					
			Nominated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4
Waste	Collection Service for	r Special Events (i	ncluding su	pply of red	lid Mobile	Bins)	SUPA SE	
20.	Waste Collection Service from 240L Mobile Bins at a small event (supply of 1 to 5, 240L red lid Mobile Bins)	per scheduled service (\$/bin/service)						
21.	Waste Collection Service from 240L Mobile Bins at a medium event (supply of 6 to 10, 240L red lid Mobile Bins)	per scheduled service (\$/bin/service)						
22.	Waste Collection Service from 240L Mobile Bins at a large event (supply of more than 11, 240L red lid Mobile Rins)	per scheduled service (\$/bin/service)						

- 11. Provision of Food Organics and Garden Organics Collection Services (Service Period B)
- 11.1 This clause 11 of this Schedule 2 is applicable during Service Period B.
- The Fee payable for the provision by the Contractor of the FOGO Collection Services, including the cost for the collection and transportation of FOGO Waste from green lid Mobile Bins to the Nominated Processing Facility for FOGO, and all activities associated with the provision of the collection services for FOGO Waste including:
  - 11.2.1 supply of additional green lid Mobile Bins,
  - 11.2.2 replacement of green lid Mobile Bins and
  - 11.2.3 maintenance of green lid Mobile Bins,

during the Services Term, must be calculated using the unit rates set out in Table 8 below, as adjusted in accordance with Part 3 of this Schedule 2.

- 11.3 In Table 8 below, under the Unit Rate column:
  - 11.3.1 **Zone 1**, refers to the unit rate payable for the transportation of FOGO Waste from green lid Mobile Bins to Artarmon;



- 11.3.2 Zone 2, refers to the unit rate payable for the transportation of FOGO Waste from green lid Mobile Bins to Anzac Street, Chullora;
- Zone 3, refers to the unit rate payable for the transportation of FOGO Waste from 11.3.3 green lid Mobile Bins to Wallgrove Rd, Eastern Creek NSW 2766; and
- 11.3.4 Zone 3, refers to the unit rate payable for the transportation of FOGO Waste from green lid Mobile Bins to 1725 Elizabeth Drive, Kemps Creek NSW 2178.
- 11.4 The unit rates specified for Zone 1, Zone 2, Zone 3 and Zone 4 are exclusive of any tolls paid by Collection Vehicles while transporting FOGO from green lid Mobile Bins direct to the Nominated Processing Facility for FOGO.

**Table 8 Provision of FOGO Collection Services** 

Item	Service Description	Unit	Unit Rate (\$)			
			Zone 1	Zone 2	Zone 3	Zone 4
Standa	ard FOGO Collection	Service to all Sin	gle Unit Dw	elling		
1.	Weekly FOGO collection service from 240L green lid Mobile Bins	per scheduled service (\$/bin/service)				
2.	Weekly infirm FOGO collection service from 240L green lid Mobile Bins	per scheduled service (\$/bin/service)				
Standa	ard FOGO Collection	Service to all Mu	ti Unit Dwe	lling		
3.	FOGO collection service from 240L green lid Mobile Bins	per scheduled service (\$/bin/service)				
Other I	FOGO Collection Serv	vice (includes con	nmercial was	ste)		
4.	The Concourse – FOGO Collection Service from 240 green litre Mobile Bins	per scheduled service (\$/bin/service)				
5.	Commercial small business premises FOGO Collection from 240L green lid Mobile Bins	per scheduled service (\$/bin/service)				



- 12. Supply and Delivery of Mobile Bins and Kitchen Caddies (Service Period B)
- 12.1 This clause 12 of this Schedule 2 is applicable during Service Period B.
- The Fee payable for the supply and delivery by the Contractor of new Mobile Bins, Bin Lids and Kitchen Caddies, and the initial supply and delivery of Kitchen Caddy bin liners, of the kind specified in Table 9 below, to Service-Entitled Premises as directed by Council, must be calculated using the unit rates set out in Table 9 below, as adjusted in accordance with Part 3 of this Schedule 2.

Table 9 Supply and Delivery of Mobile Bins and Kitchen Caddies at the FOGO Commencement Date

Item	Service Description	Unit	Unit Rate (\$)
	and delivery of Standard Kitchen 7 litre Cado encement of FOGO Collection Service as nom		
1	Supply and delivery of initial "FOGO pack" of one each:  1 Kitchen Caddy; and 1 pack of 52 Kitchen Caddy Bin Liners, along with any relevant education material to the nominated Service-Entitled Properties.	per initial "FOGO pack" (\$/FOGO Pack)	
2	Supply and delivery of 240L green lid Mobile Bins as required by Council to the Nominated Service-Entitled Premises	Per Mobile Bin (\$/Mobile Bin)	
3	Replace the lid of existing red lid 240L Mobile Bin to green lid at the Service- Entitled Premises nominated by Council	Per Mobile Bin and replacement of lid (\$/Mobile Bin and lid replacement)	

- 12.3 The Fee payable for the supply and delivery by the Contractor of Kitchen Caddies as required by Council to Service-Entitled Properties nominated by Council, for the purpose of:
  - 12.3.1 replacing the Kitchen Caddy at a Service-Entitled Premises if it is broken; or
  - 12.3.2 providing an additional Kitchen Caddy to a Service-Entitled Premises,

must be calculated using the unit rates set out in Table 10 below, as adjusted in accordance with Part 3 of this Schedule 2.

12.4 The rates specified in Table 10 below do not include, and are not to be used for the calculation of any Fees for the initial supply of Kitchen Caddies to the FOGO Service-Entitled Premises or new and additional FOGO collection services during the Services Term.



### Table 10 Supply and Delivery of Kitchen Caddies

Item	Service Description	Unit	Unit Rate (\$)
Supply	and Delivery of Standard Kitchen Caddy as	specified in the Agreem	ent
1.	Supply and delivery of Kitchen Caddy to the nominated Service-Entitled Premises or to a	per Kitchen Caddy	

- 12.5 The Fee payable for the supply and delivery by the Contractor of Kitchen Caddy bin liners to the FOGO Service-Entitled Premises, for the purpose of:
  - 12.5.1 the ongoing supply and delivery of Kitchen Caddy bin liners to the FOGO Service-Entitled Premises as required by Council; or
  - 12.5.2 the supply and delivery of Kitchen Caddy bin liners to Council specified locations such as Council's own premises or other locations where Council would stock Kitchen Caddy bin liners for residents to buy from,

must be calculated using the unit rates set out in Table 11 below, as adjusted in accordance with Part 3 of this Schedule 2.

The rates specified in Table 11 below do not include, and are not to be used for the 12.6 calculation of any Fees for the initial supply of Kitchen Caddy bin liners to the FOGO Service-Entitled Premises or new and additional FOGO collection services during the Services Term.

Table 11 Supply and Delivery of Kitchen Caddy Bin Liners (Option)

Item	Service Description	Unit	Unit Rate (\$)
Supply regular	and Delivery of Kitchen Caddy bin liners to a basis	all Service-Entitled Premi	ses – on a
1.	Supply and delivery of individual packs of 52 Kitchen Caddy liners directly to each FOGO Service-Entitled Premises on a regular interval not more than 6 months apart as directed by Council.	per pack of 52 Kitchen Caddy bin liners (\$/pack)	
2.	Supply and delivery of Kitchen Caddy bin liners in a pack of 52 Kitchen Caddy bin liners to the location(s) within the LGA nominated by Council.	per pack of 52 Kitchen Caddy bin liners (\$/pack)	
Supply via onl	and Delivery of Kitchen Caddy bin liners to Sine order or phone order	Service-Entitled Premises	on demand
3.	Accept order online or via phone and supply and delivery of individual packs of 52 Kitchen Caddy liners directly to FOGO Service-Entitled Premises in accordance	per pack of 52 Kitchen Caddy bin liners (\$/pack)	



Item	Service Description	Unit	Unit Rate (\$)
	with the order placed by the residents of the Service-Entitled Premises.		

### 13. Additional Transportation Rate

- 13.1 This clause 13 of this Schedule 2 is applicable during the Services Term.
- 13.2 If the Contractor transports Contract Waste to a Nominated Facility, which is located greater than 50 kilometres radius from the Approximate Centroid, an additional Fee will be payable for each kilometre of transportation that exceeds that 50 kilometre radius, calculated using the unit rate set out in Table 13 below, as adjusted in accordance with Part 3 of this Schedule 2.
- To avoid doubt, the Fee is only payable under this clause 13 of this Schedule 2 in respect of each kilometre that is greater than 50 kilometres radius from the Approximate Centroid. For example, if the Contractor transports Contract Waste to a Nominated Facility that is located 65 kilometres radius from the Approximate Centroid, the Contractor will be entitled to claim a payment calculated by multiplying 15 kilometres by the unit rate specified in Table 13 below (in addition to any other Fee payable under this Schedule 2 for transport to Zone 4).

Table 13 Additional Transportation Rate

Item	Service Description	Unit	Unit Rate (\$/km)
Provisi	on of transportation beyond Zone 4		
1.	Provision of transportation to a Nominated Facility that is located more than 50 kilometres radius from the Approximate Centroid.	per Collection Vehicle per kilometre	

#### 14. Monthly Depot Charge

- 14.1 This clause 14 of this Schedule 2 is applicable during the Services Term.
- 14.2 A Fee is payable in each month of the Services Term to compensate the Contractor for its provision of a depot in order to provide the Services. That Fee is to comprise:
  - 14.2.1 an amount calculated using the unit rate set out in Table 14 below, as adjusted in accordance with Part 3 of this Schedule 2; and
  - 14.2.2 an amount equal to the amount paid by the Contractor in that month of the Services Term in respect of Council rates, land tax or other charges in respect of the Depot (but excluding all reasonable outgoings directly related to the Contractor's activities at the Depot, including electricity, general maintenance, and water).



Table 14 Monthly Depot Charge

Item	Service Description	Unit	Unit Rate (\$/month)
Provisi	on of depot to provide the Services		
<b>1.</b>	Provision of a depot in order to provide the Services.	per month	



#### Part 3 - Rise and fall

#### 15. Definitions

- 15.1 In this Part 3 of Schedule 2:
  - 15.1.1 Adjustment Amount means for each Adjustment Date, an amount referred to in clause 16 of this Schedule 2 and added to the Applicable Rate;
  - 15.1.2 Adjustment Date means:
    - (a) initially, the Services Commencement Date; and
    - (b) subsequently, each of the following dates for the remainder of the Services Term: 1 January, 1 April, 1 July and 1 October;
  - 15.1.3 Applicable Rate means each Unit Rate specified in Part 2 of this Schedule 2, except where specifically noted in this Schedule 2 that indexation will not be applied to that Unit Rate;
  - 15.1.4 Labour Index (or 'L') means the Average Weekly Earnings of Employees: full-time Adults (All employees, ordinary time earnings), as detailed in Average Weekly Earnings, States and Australia (6302.0), Table 13A- Average Weekly Earnings (NSW) Dollars (original), published by the Australian Bureau of Statistics;
  - 15.1.5 Other Costs Index (or 'O') means the Consumer Price Index for Sydney (All Groups), as detailed in the Consumer Price Index (6401.0), Table 5, Sydney, All Groups, published by the Australian Bureau of Statistics;
  - 15.1.6 Petroleum Index (or 'DP' for diesel and 'UP' for unleaded) means for any specified period, the average of the daily terminal gate prices for Sydney as published by the Australian Institute for Petroleum (<a href="http://www.aip.com.au/pricing/terminal-gate-prices">http://www.aip.com.au/pricing/terminal-gate-prices</a>) in that period, less the amount of the Fuel Tax Credit applying in that period; and
  - 15.1.7 Relevant Proportion means for an Applicable Rate, the proportion of the Applicable Rate to which each index, being the Labour index, Other Costs Index and Petroleum Index, applies. The unleaded petroleum ('UP') index may be substituted for the diesel petroleum ('DP') index, if required.

### Adjustment of Agreement Prices

- On each Adjustment Date, the following Adjustment Amounts may be added to each Applicable Rate:
  - 16.1.1 'Labour Index Adjustment Amount' calculated in accordance with clause 16.2 of this Schedule 2;
  - 16.1.2 'Petroleum Index Adjustment Amount' calculated in accordance with clause 16.3 of this Schedule 2; and
  - 16.1.3 'Other Costs Index Adjustment Amount' calculated in accordance with clause 16.4 of this Schedule 2.



16.2 The Labour Index Adjustment Amount must be calculated for each Applicable Rate as follows:

Labour Index Adjustment Amount = 
$$AR_1 \left( \frac{O_X - O_1}{O_1} \right) P\%$$

Where:

AR<sub>1</sub> = the Applicable Rate at the Tender Closing Date;

O<sub>X</sub> = the Labour Index last published by the Australian Bureau of Statistics on the Adjustment Date; and

O<sub>1</sub> = the Labour Index last published by the Australian Bureau of Statistics on the Tender Closing Date; and

P% = the Relevant Proportion, 'P<sub>L</sub>' for the Applicable Rate.

16.3 The Petroleum Index Adjustment Amount must be calculated for each Applicable Rate as follows:

Petroleum Index Adjustment Amount = 
$$AR_1 \left( \frac{O_{\chi} - O_1}{O_1} \right) P\%$$

Where:

AR<sub>1</sub> = the Applicable Rate at the Tender Closing Date;

O<sub>X</sub> = the Petroleum Index calculated for the 3-month period immediately preceding the Adjustment Date; and

O<sub>1</sub> = the Petroleum Index calculated for the 3-month period immediately preceding the Tender Closing Date; and

P% = the Relevant Proportion, 'Ppp' for the Applicable Rate.

16.4 The Other Costs Index Adjustment Amount must be calculated for each Applicable Rate as follows:

Other Costs Index Adjustment Amount = 
$$AR_1 \left( \frac{O_X - O_1}{O_1} \right) P\%$$

Where:

AR<sub>1</sub> = the Applicable Rate at the Tender Closing Date;

 O<sub>X</sub> = the Other Costs Index last published by the Australian Bureau of Statistics on the Adjustment Date; and

O<sub>1</sub> = the Other Costs Index last published by the Australian Bureau of Statistics on the Tender Closing Date; and

**P%** = the Relevant Proportion, 'Poc' for the Applicable Rate.



- 16.5 The Relevant Proportions for each Applicable Rate is specified in the following table.
- 16.6 The indexation element 'Fixed' or 'P<sub>F</sub>' indicates the proportion of the Unit Rate that is fixed for the Term and is not subject to indexation under this Part 3 of Schedule 2.

Table 15 - Proportion of Unit Rate subject to indexation

Schedule 2 Table(s)	Service Description	Indexation element		nt Prop tion (%)		f Unit Ra	ate subje	et to
Waste Coll	ection Services (Waste)		Neminated Facility 1	Nominated Facility 2	Zone 1	Zone 2	Zone 3	Zone 4
Table 1	Escalation of each	Labour (PL)						
	unit rate specified in Table 1 ('Provision of Waste Collection	Petroleum (P <sub>PD</sub> )						
	Service' - Service Period A)	Other (Poc)						
		Fixed (P <sub>F</sub> )						
		(total)						
Table 7	Escalation of each	Labour (P <sub>L</sub> )						
	unit rate specified in Table 7 ('Provision of Waste Collection	Petroleum (P <sub>PD</sub> )						
	Service' – Service Period B)	Other (Poc)						
		Fixed (P <sub>F</sub> )						
		(total)	100%	100%	100%	100%	100%	100%
Waste Colle	ection Services (non-W	aste)	Nominal Facility	ted 2	one 1	Zone 2	Zone 3	Zone 4
Table 2, Table 3, Table 4, Table 5	Escalation of each unit rate specified in:  Table 2 ('Provision of	Labour (PL) Petroleum (PPD) Other (Poc)						
	Recyclables Collection	Fixed (P <sub>F</sub> )						
	Service'); and	(total)	100%	1	00%	100%	100%	100%
	Table 3 ('Provision of Garden Organics Collection Service')	,			£.	3		
	Table 4 ('Provision of Bulky Waste Collection Service')						ea	
	Table 5 ('Provision of Bulk Green Waste							



Schedule 2 Table(s)	Service Description	Indexation element	Relevant indexation	Proportion n (%)	of Unit F	Rate subj	ect to
	Collection Service')						
Table 8	Escalation of each	Labour (P <sub>L</sub> )					
	unit rate specified in Table 8 ('Provision of FOGO Collection	Petroleum (P <sub>PD</sub> )					
	Service')	Other (Poc)					
		Fixed (P <sub>F</sub> )					
9.		(total)	100%	100%	100%	100%	100%
Supply of N	lobile Bins, Kitchen Ca	ddies and Bin	Liners				
Table 6	Escalation of each	Labour (P <sub>L</sub> )					
	unit rate specified in Table 6 ('Supply and Delivery of Bulk	Petroleum (P <sub>PD</sub> )					
	Waste Bins')	Other (Poc)					
		Fixed (P <sub>F</sub> )					
		(total)	100%				
Table 9,	Escalation of each	Labour (PL)					
Table 10, Table 11	<ul> <li>Table 9 ('Supply and Delivery of Mobile Bins and Kitchen Caddies at the</li> </ul>	Petroleum (P <sub>PD</sub> )					
		Other (Poc)					
		Fixed (P <sub>F</sub> )					
	FOGO Commencemen t Date');	(total) men					
	<ul> <li>Table 10         ('Supply and         Delivery of         Kitchen         Caddies'); and</li> </ul>		100%	9			
	<ul> <li>Table 11         ('Supply and         Delivery of         Kitchen Caddy         Bin Liners')</li> </ul>	); ·					38
Additional T	ransportation Rate			ST 18.		3470	
Table 13	Escalation of unit	Labour (P <sub>L</sub> )			772		
	rate specified in Table 13 ('Additional Transportation Rate')	Petroleum (P <sub>PD</sub> )				_	
		Other (Poc)					



Schedule 2 Table(s)	Service Description	Indexation element	Relevant Proportion indexation (%)	n of Unit Rate subject to
		Fixed (P <sub>F</sub> )		
		(total)	100%	(%)
Monthly De	epot Charge			
Table 14	Escalation of unit	Other (Poc)	100%	
	rate specified in Table 14 ('Monthly Depot Charge')	(total)	100%	

### Schedule 3 Performance Management System

- 1.1 If the Contractor fails to meet the requirements of any of the Key Performance Indicators that are listed in clause 1.2 of this Schedule 3, then Council may in accordance with clause 12.8:
  - 1.1.1 reduce the Fees that are otherwise payable to the Contractor under clause 12; or
  - 1.1.2 increase any amounts that are otherwise payable by the Contractor to Council under clause 12.

by the amounts as set out below.

### 1.2 If:

### 1.2.1 Key Performance Indicator:

(Missed Collection) in any month, for every 10,000 collections from Service-Entitled Premises undertaken in respect of the following Services:

- (a) Waste Collection Services;
- (b) Recyclables Collection Services;
- (c) Garden Organics Collection Services;
- (d) FOGO Collection Services; and
- (e) Bulky Waste Collection Services,

there are no more than 5 Missed Collections.

### Amount of reduction in Fee for breach of Key Performance Indicator:

If there is a breach of the Key Performance Indicator in a month, \$300 for each Missed Collection in that month in excess of 5 Missed Collections per 10,000 collections.

For example, if in a month there are 150,000 collections across the five collection Services, the Key Performance Indicator will be achieved if there are no more than 75 Missed Collections (being 150,000/10,000 x 5). Therefore, if in that month there are 23 Missed Collections, there would be no Fee reduction. However, if in that month there were 100 Missed Collections, this would exceed the Key Performance Indicator by 25 Missed Collections and would equate to a Fee reduction of \$7,500 (being \$300 multiplied by 25).

### 1.2.2 Key Performance Indicator:

(wheel out wheel back service) Council's Representative is notified of a complaint of an unreturned Mobile Bin that is subject to Wheel Out Wheel Back Service (being either a Waste Collection Service, Recyclables Collection Service, Garden Organics Collection Service, FOGO Collection Service or Bulky Waste Collection Service).



### Amount of reduction in Fee for breach of Key Performance Indicator:

- if there are 5 or more incidents of breaches of the Key Performance Indicator in a month, \$5 for each Mobile Bin that is not returned to the bin bay in the specified time; and
- (b) if there are 10 or more incidents of breaches of the Key Performance Indicator in a month, \$6 for each Mobile Bin that is not returned to the bin bay in the specified time (in addition to the Fee reduction under paragraph (a)).

### 1.2.3 Key Performance Indicator:

(return to service "Difficult Access") Council's Representative is notified of a complaint of a Service-Entitled Premises not being serviced Mobile Bins that are subject to Difficult Access in clause 7.5 of Part A of the Services Specification (being either a Waste Collection Service, Recyclables Collection Service, Garden Organics Collection Service, FOGO Collection Service or Bulky Waste Collection Service).

### Amount of reduction in Fee for breach of Key Performance Indicator:

- (a) if there are 5 or more incidents of breaches of the Key Performance Indicator in a month, \$10 for each Mobile Bin that is not serviced and returned to the bin bay in the specified time; and
- (b) if there are 10 or more incidents of breaches of the Key Performance Indicator in a month, \$15 for each Mobile Bin that is not serviced and returned to the bin bay in the specified time (in addition to the Fee reduction under paragraph (a)).

#### 1.2.4 Key Performance Indicator:

(complaint rectification) a complaint is not rectified on time in accordance with clause 8.4 of Part A of the Services Specification (being either a Waste Collection Service, Recyclables Collection Service, Garden Organics Collection Service, FOGO Collection Service or Bulky Waste Collection Service):

### Amount of reduction in Fee for breach of Key Performance Indicator:

- (a) if there are 10 or more incidents of breaches of the Key Performance Indicator in a month, \$100 for each breach; and
- (b) if there are 20 or more incidents of breaches of the Key Performance Indicator in a month, \$120 for each breach (in addition to the Fee reduction under paragraph (a)).

#### 1.2.5 Key Performance Indicator:

(supply of replacement Mobile Bins or repair of Mobile Bins) Council's Representative is notified of a complaint of the Contractor not having supplied a replacement Mobile Bin or carried out a repair of a Mobile Bin on time in accordance with clause 10.12 of Part A of the Services Specification (being either a Waste Collection Service, Recyclables Collection Service, Garden Organics Collection Service, FOGO Collection Service or Bulky Waste Collection Service):



### Amount of reduction in Fee for breach of Key Performance Indicator:

- if there are 5 or more incidents of breaches of the Key Performance Indicator in a month, \$50 for each breach; and
- (b) if there are 10 or more incidents of breaches of the Key Performance Indicator in a month, \$75 for each breach (in addition to the Fee reduction under paragraph (a)).

### 1.2.6 Key Performance Indicator:

(failing to supply any information required under this Agreement) the Contractor fails to supply any information or provide a report required to be supplied to Council or the Council's Representative under this Agreement within the required time period specified in this Agreement:

### Amount of reduction in Fee for breach of Key Performance Indicator:

If there are 5 or more breaches of the Key Performance Indicator in a Service Period, \$2,000 for each such breach in that Service Period.

### 1.2.7 Key Performance Indicator:

(required start and finish times) the Contractor fails to comply with the required start and finish times for performance of the Waste Collection Services, Recyclables Collection Service, Garden Organics Collection Service, FOGO Collection Service or Bulky Waste Collection Service as required by this Agreement:

### Amount of reduction in Fee for breach of Key Performance Indicator:

- (a) if there are 5 or more breaches of the Key Performance Indicator in a month, \$1,500 for each such breach in that month; and
- (b) if there are 20 or more breaches of the Key Performance Indicator in a Service Period, \$1,500 for each such breach in that Service Period (in addition to the Fee reduction under paragraph (a)).

#### 1.2.8 Key Performance Indicator:

(compliance to management plan and management systems) the Contractor fails to comply with the Management Systems and or Services Management Plans (clause 7.1 and clause 7.2):

### Amount of reduction in Fee for breach of Key Performance Indicator:

- (a) if there are 5 or more breaches of the Key Performance Indicator in a month, \$2,000 for each such breach in that month; and
- (b) if there are 20 or more breaches of the Key Performance Indicator in a Service Period, \$2,000 for each such breach in that Service Period (in addition to the Fee reduction under paragraph (a)).

### 1.2.9 Key Performance Indicator:

(education) the Contractor fails to comply with a commitment required by the Annual Education Plan:



### Amount of reduction in Fee for breach of Key Performance Indicator:

If there are 5 or more breaches of the Key Performance Indicator in a Service Period, \$1,000 for each such breach in that Service Period.

### 1.2.10 Key Performance Indicator:

(data management system) the Contractor fails to deliver the data required under the Services Specification in the formats required by the Services Specification on waste collection, contamination management and vehicle tracking as required by this Agreement:

### Amount of reduction in Fee for breach of Key Performance Indicator:

- (a) if there are 3 or more breaches of the Key Performance Indicator in a month, \$1,000 for each such breach in that month; and
- (b) if there are 10 or more breaches of the Key Performance Indicator in a Service Period, \$1,500 for each such breach in that Service Period (in addition to the Fee reduction under paragraph (a)).

For data management, the breach of the Key Performance Indicator would mean the system on board any vehicles at any time is not functional and inhibits Council's ability to retrieve data in the required time and format proposed by the Contractor.

One breach means one vehicle not being able to provide the data in the format proposed by the Contractor for the Business Day. As an example, if five vehicles are not able to provide the data for the day, then this will constitute five breaches.



# Schedule 4 Services Specification

# Schedule 4

Services Specification for Waste, Recyclables, Organics and Bulky Waste Collection Services

Tender Number: T04-2022

# **Table of Contents**

P	ART 1: G	ENERAL SPECIFICATION	1
1,	, INT	RODUCTION AND SCOPE	1
2.	. AIN	IS AND OBJECTIVES	1
3.	DEF	INITIONS	3
4.	OPE	RATIONS	11
	4.1	General	11
	4.2	General Operational Requirements	11
	4.3	Collection Days and Times	12
	4.3.1 4.3.2 4.4		12
	4.4.1		
	4.4.2 4.4.3		
	4.4.3		
	4.5	Collection Point	
	4.5.1		
	4.5.2		
_	4.5.3		
5.		IVERY AND OWNERSHIP OF MATERIALS	
6.	6.1	New Collection Service	
		Additional Services	
	6.2		
	6.3	Cessation of Services	
	6.4	Temporary Collection Services	
7.		N-COLLECTION AND MOBILE BIN PRESENTATION PROBLEMS	
	7.1	General	
	7.2	Contractor Not to Collect	
	7.3	Contractor to Notify Concerning Non-Collection	
	7.4	Mobile Bin Presentation Problems	
	7.4.1 7.4.2	Second Occurrence: Contractor to Collect and Notify Customer	17
	7.4.3 7.4.4		
	7.5	Difficult Access	
8.	cus	TOMER SERVICE AND REQUEST RECTIFICATION (COUNCIL)	18
	8.1	Introduction – Council to Manage Requests and Enquiries	18
	8.2	Request Notification	18
	8.3	Urgent Requests	19

8.6 Customer Satisfaction Surveys 9. REQUIREMENTS FOR MOBILE BINS	2 360L, 660L, 1100L and 2000L Mobile Bins			Rectification of Requests	
9. REQUIREMENTS FOR MOBILE BINS. 9.1 Specifications for Mobile Bins	QUIREMENTS FOR MOBILE BINS		8.5	Request Rectification Reporting	19
9.1 Specifications for Mobile Bins 9.2 Overview of Mobile Bin Supply, Maintenance and Ownership 9.2.1 120L, 140L and 240L Mobile Bins 9.2.2 360L, 660L, 1100L and 2000L Mobile Bins 10. SUPPLY OF MOBILE BIN AND KITCHEN CADDIES 10.1 Introduction – Contractor Supply of Mobile Bins 10.2 Stocks of Mobile Bins 10.3 Requirements of Mobile Bins and Kitchen Caddies 10.4 Approval of Mobile Bins and Kitchen Caddies 10.5 Ownership and Risk in Mobile Bins 10.5.1 At the Commencement 10.5.2 During the Term of the Contract 10.5.3 At the End of the Term 10.5.4 No Arrangement to the Contrary 10.5.5 Survival of Rights and Obligations 10.6 Mobile Bin Repairs, Replacements and Additional Services 10.6.1 Repairs and Maintenance 10.6.2 Supply of Replacement Mobile Bins 10.6.3 Supply of Additional Mobile Bins 10.6.4 Requirements for Replacement and Additional Mobile Bins 10.6.5 Retrieval and Repair of Mobile Bins 10.6.6 Delivery of Replacement and Additional Mobile Bins 10.7 Contractor to Advise and Replace 10.8 Mode of Delivery 11.1 Supply and Standard of Vehicles 11.2 Vehicle Description and Identification 11.3 Changes to Fleet 11.4 Inventory of Plant in Use 11.5 Communication Equipment	Specifications for Mobile Bins         20           Overview of Mobile Bin Supply, Maintenance and Ownership         20           120L, 140L and 240L Mobile Bins         20           360L, 660L, 1100L and 2000L Mobile Bins         21           PLY OF MOBILE BIN AND KITCHEN CADDIES         22           Introduction – Contractor Supply of Mobile Bins         22           Stocks of Mobile Bins         23           Approval of Mobile Bins and Kitchen Caddies         23           Approval of Mobile Bins and Kitchen Caddies         23           Ownership and Risk in Mobile Bins         23           1 At the Commencement         23           2 During the Term of the Contract         23           3 At the End of the Term         23           4 No Arrangement to the Contrary         24           5 Survival of Rights and Obligations         24           Mobile Bin Repairs, Replacements and Additional Services         24           Mobile Bin Repairs, Replacement Mobile Bins         25           2 Supply of Replacement Mobile Bins         25           3 Supply of Replacement Mobile Bins         25           4 Requirements for Replacement and Additional Mobile Bins         25           5 Retrieval and Repair of Mobile Bins         25           5 Retrieval and Repair of Mobile Bins		8.6	Customer Satisfaction Surveys	20
9.2 Overview of Mobile Bin Supply, Maintenance and Ownership. 9.2.1 120L, 140L and 240L Mobile Bins. 9.2.2 360L, 660L, 1100L and 2000L Mobile Bins.  10. SUPPLY OF MOBILE BIN AND KITCHEN CADDIES.  10.1 Introduction — Contractor Supply of Mobile Bins.  10.2 Stocks of Mobile Bins.  10.3 Requirements of Mobile Bins and Kitchen Caddies.  10.4 Approval of Mobile Bins and Kitchen Caddies.  10.5 Ownership and Risk in Mobile Bins.  10.5.1 At the Commencement.  10.5.2 During the Term of the Contract.  10.5.3 At the End of the Term.  10.5.4 No Arrangement to the Contrary.  10.5.5 Survival of Rights and Obligations.  10.6 Mobile Bin Repairs, Replacements and Additional Services.  10.6.1 Repairs and Maintenance.  10.6.2 Supply of Replacement Mobile Bins.  10.6.4 Requirements for Replacement and Additional Mobile Bins.  10.6.5 Retrieval and Repair of Mobile Bins.  10.6.6 Delivery of Replacement and Additional Mobile Bins.  10.6.7 Contractor to Advise and Replace.  10.8 Mode of Delivery.  11. COLLECTION VEHICLES AND DEPOT.  11.1 Supply and Standard of Vehicles.  11.2 Vehicle Description and Identification.  11.3 Changes to Fleet.  11.4 Inventory of Plant in Use.  11.5 Communication Equipment.	Overview of Mobile Bin Supply, Maintenance and Ownership	9.	REQ	UIREMENTS FOR MOBILE BINS	20
9.2.1 120L, 140L and 240L Mobile Bins	120L, 140L and 240L Mobile Bins			,	
9.2.2 360L, 660L, 1100L and 2000L Mobile Bins	2   2   2   2   2   2   2   2   2   2		9.2	Overview of Mobile Bin Supply, Maintenance and Ownership	20
10.1 Introduction – Contractor Supply of Mobile Bins	Introduction – Contractor Supply of Mobile Bins				
10.2 Stocks of Mobile Bins	Stocks of Mobile Bins	10			
10.3 Requirements of Mobile Bins	Requirements of Mobile Bins		10.1	Introduction – Contractor Supply of Mobile Bins	.22
10.4 Approval of Mobile Bins and Kitchen Caddies  10.5 Ownership and Risk in Mobile Bins  10.5.1 At the Commencement  10.5.2 During the Term of the Contract  10.5.3 At the End of the Term  10.5.4 No Arrangement to the Contrary  10.5.5 Survival of Rights and Obligations  10.6 Mobile Bin Repairs, Replacements and Additional Services  10.6.1 Repairs and Maintenance  10.6.2 Supply of Replacement Mobile Bins  10.6.3 Supply of Additional Mobile Bins  10.6.4 Requirements for Replacement and Additional Mobile Bins  10.6.5 Retrieval and Repair of Mobile Bins  10.6.6 Delivery of Replacement and Additional Mobile Bins  10.7 Contractor to Advise and Replace  10.8 Mode of Delivery  11. COLLECTION VEHICLES AND DEPOT  11.1 Supply and Standard of Vehicles  11.2 Vehicle Description and Identification  11.3 Changes to Fleet  11.4 Inventory of Plant in Use  11.5 Communication Equipment	Approval of Mobile Bins and Kitchen Caddies		10.2	Stocks of Mobile Bins	22
10.5 Ownership and Risk in Mobile Bins  10.5.1 At the Commencement  10.5.2 During the Term of the Contract  10.5.3 At the End of the Term.  10.5.4 No Arrangement to the Contrary.  10.5.5 Survival of Rights and Obligations.  10.6 Mobile Bin Repairs, Replacements and Additional Services  10.6.1 Repairs and Maintenance.  10.6.2 Supply of Replacement Mobile Bins  10.6.3 Supply of Additional Mobile Bins  10.6.4 Requirements for Replacement and Additional Mobile Bins.  10.6.5 Retrieval and Repair of Mobile Bins.  10.6.6 Delivery of Replacement and Additional Mobile Bins  10.7 Contractor to Advise and Replace.  10.8 Mode of Delivery.  11. COLLECTION VEHICLES AND DEPOT  11.1 Supply and Standard of Vehicles  11.2 Vehicle Description and Identification  11.3 Changes to Fleet.  11.4 Inventory of Plant in Use  11.5 Communication Equipment.	Ownership and Risk in Mobile Bins231 At the Commencement232 During the Term of the Contract233 At the End of the Term234 No Arrangement to the Contrary245 Survival of Rights and Obligations24Mobile Bin Repairs, Replacements and Additional Services241 Repairs and Maintenance252 Supply of Replacement Mobile Bins253 Supply of Additional Mobile Bins254 Requirements for Replacement and Additional Mobile Bins255 Retrieval and Repair of Mobile Bins256 Delivery of Replacement and Additional Mobile Bins256 Delivery of Replacement and Additional Mobile Bins26Contractor to Advise and Replace26Mode of Delivery27LECTION VEHICLES AND DEPOT27Supply and Standard of Vehicles27Vehicle Description and Identification28Changes to Fleet28Inventory of Plant in Use28Communication Equipment28Technology on Collection Vehicles28Collection Vehicle Appearance and Signage29Maintenance of Collection Vehicles29Emission Management System for Diesel Vehicles29		10.3	Requirements of Mobile Bins	.23
10.5.1 At the Commencement  10.5.2 During the Term of the Contract  10.5.3 At the End of the Term.  10.5.4 No Arrangement to the Contrary.  10.5.5 Survival of Rights and Obligations.  10.6 Mobile Bin Repairs, Replacements and Additional Services  10.6.1 Repairs and Maintenance  10.6.2 Supply of Replacement Mobile Bins  10.6.3 Supply of Additional Mobile Bins  10.6.4 Requirements for Replacement and Additional Mobile Bins  10.6.5 Retrieval and Repair of Mobile Bins  10.6.6 Delivery of Replacement and Additional Mobile Bins  10.7 Contractor to Advise and Replace  10.8 Mode of Delivery.  11. COLLECTION VEHICLES AND DEPOT  11.1 Supply and Standard of Vehicles  11.2 Vehicle Description and Identification  11.3 Changes to Fleet  11.4 Inventory of Plant in Use  11.5 Communication Equipment	1 At the Commencement		10.4	Approval of Mobile Bins and Kitchen Caddies	.23
10.5.2 During the Term of the Contract.  10.5.3 At the End of the Term.  10.5.4 No Arrangement to the Contrary.  10.5.5 Survival of Rights and Obligations.  10.6 Mobile Bin Repairs, Replacements and Additional Services.  10.6.1 Repairs and Maintenance	22 During the Term of the Contract		10.5	Ownership and Risk in Mobile Bins	23
10.5.3 At the End of the Term	At the End of the Term		10.5.		
10.5.4 No Arrangement to the Contrary	4 No Arrangement to the Contrary				
10.5.5 Survival of Rights and Obligations  10.6 Mobile Bin Repairs, Replacements and Additional Services  10.6.1 Repairs and Maintenance  10.6.2 Supply of Replacement Mobile Bins	1.5 Survival of Rights and Obligations				
10.6.1 Repairs and Maintenance 10.6.2 Supply of Replacement Mobile Bins 10.6.3 Supply of Additional Mobile Bins 10.6.4 Requirements for Replacement and Additional Mobile Bins 10.6.5 Retrieval and Repair of Mobile Bins 10.6.6 Delivery of Replacement and Additional Mobile Bins 10.7 Contractor to Advise and Replace 10.8 Mode of Delivery  11. COLLECTION VEHICLES AND DEPOT 11.1 Supply and Standard of Vehicles 11.2 Vehicle Description and Identification 11.3 Changes to Fleet 11.4 Inventory of Plant in Use 11.5 Communication Equipment	Mobile Bin Repairs, Replacements and Additional Services				
10.6.2 Supply of Replacement Mobile Bins 10.6.3 Supply of Additional Mobile Bins 10.6.4 Requirements for Replacement and Additional Mobile Bins 10.6.5 Retrieval and Repair of Mobile Bins 10.6.6 Delivery of Replacement and Additional Mobile Bins 10.7 Contractor to Advise and Replace 10.8 Mode of Delivery  11. COLLECTION VEHICLES AND DEPOT 11.1 Supply and Standard of Vehicles 11.2 Vehicle Description and Identification 11.3 Changes to Fleet 11.4 Inventory of Plant in Use 11.5 Communication Equipment	22 Supply of Replacement Mobile Bins				
10.6.3 Supply of Additional Mobile Bins  10.6.4 Requirements for Replacement and Additional Mobile Bins  10.6.5 Retrieval and Repair of Mobile Bins  10.6.6 Delivery of Replacement and Additional Mobile Bins  10.7 Contractor to Advise and Replace  10.8 Mode of Delivery  11. COLLECTION VEHICLES AND DEPOT  11.1 Supply and Standard of Vehicles  11.2 Vehicle Description and Identification  11.3 Changes to Fleet  11.4 Inventory of Plant in Use  11.5 Communication Equipment	3 Supply of Additional Mobile Bins		10.6.	1 Repairs and Maintenance	.25
10.6.4 Requirements for Replacement and Additional Mobile Bins	4 Requirements for Replacement and Additional Mobile Bins				
10.6.5 Retrieval and Repair of Mobile Bins 10.6.6 Delivery of Replacement and Additional Mobile Bins 10.7 Contractor to Advise and Replace 10.8 Mode of Delivery  11. COLLECTION VEHICLES AND DEPOT 11.1 Supply and Standard of Vehicles 11.2 Vehicle Description and Identification 11.3 Changes to Fleet 11.4 Inventory of Plant in Use 11.5 Communication Equipment	5.5 Retrieval and Repair of Mobile Bins256 Delivery of Replacement and Additional Mobile Bins26Contractor to Advise and Replace26Mode of Delivery27LECTION VEHICLES AND DEPOT27Supply and Standard of Vehicles27Vehicle Description and Identification28Changes to Fleet28Inventory of Plant in Use28Communication Equipment28Technology on Collection Vehicles28Collection Vehicle Appearance and Signage29Maintenance of Collection Vehicles29Emission Management System for Diesel Vehicles29				
10.6.6 Delivery of Replacement and Additional Mobile Bins 10.7 Contractor to Advise and Replace 10.8 Mode of Delivery  11. COLLECTION VEHICLES AND DEPOT 11.1 Supply and Standard of Vehicles 11.2 Vehicle Description and Identification 11.3 Changes to Fleet 11.4 Inventory of Plant in Use 11.5 Communication Equipment	1.6 Delivery of Replacement and Additional Mobile Bins 26 Contractor to Advise and Replace 26 Mode of Delivery 27 LECTION VEHICLES AND DEPOT 27 Supply and Standard of Vehicles 27 Vehicle Description and Identification 28 Changes to Fleet 28 Inventory of Plant in Use 28 Communication Equipment 28 Technology on Collection Vehicles 28 Collection Vehicle Appearance and Signage 29 Maintenance of Collection Vehicles 29 Emission Management System for Diesel Vehicles 29				
10.8 Mode of Delivery	Mode of Delivery				
11. COLLECTION VEHICLES AND DEPOT  11.1 Supply and Standard of Vehicles  11.2 Vehicle Description and Identification  11.3 Changes to Fleet  11.4 Inventory of Plant in Use  11.5 Communication Equipment	LECTION VEHICLES AND DEPOT		10.7	Contractor to Advise and Replace	26
11.1 Supply and Standard of Vehicles  11.2 Vehicle Description and Identification  11.3 Changes to Fleet  11.4 Inventory of Plant in Use  11.5 Communication Equipment	Supply and Standard of Vehicles				
11.2 Vehicle Description and Identification	Vehicle Description and Identification       28         Changes to Fleet       28         Inventory of Plant in Use       28         Communication Equipment       28         Technology on Collection Vehicles       28         Collection Vehicle Appearance and Signage       29         Maintenance of Collection Vehicles       29         Emission Management System for Diesel Vehicles       29	11	. COL	LECTION VEHICLES AND DEPOT	27
11.3 Changes to Fleet	Changes to Fleet		11.1	Supply and Standard of Vehicles	.27
11.4 Inventory of Plant in Use	Inventory of Plant in Use		11.2	Vehicle Description and Identification	.28
11.5 Communication Equipment	Communication Equipment       28         Technology on Collection Vehicles       28         Collection Vehicle Appearance and Signage       29         Maintenance of Collection Vehicles       29         Emission Management System for Diesel Vehicles       29		11.3	Changes to Fleet	28
	Technology on Collection Vehicles		11.4	Inventory of Plant in Use	.28
11.6 Technology on Collection Vehicles	Collection Vehicle Appearance and Signage		11.5	Communication Equipment	28
	Maintenance of Collection Vehicles		11.6	Technology on Collection Vehicles	.28
11.7 Collection Vehicle Appearance and Signage	Emission Management System for Diesel Vehicles29		11.7	Collection Vehicle Appearance and Signage	29
11.8 Maintenance of Collection Vehicles	Emission Management System for Diesel Vehicles29		11.8	Maintenance of Collection Vehicles	.29
11.9 Emission Management System for Diesel Vehicles			11.9	Emission Management System for Diesel Vehicles	.29
	Contractors Depot				
11.11 Contractors Depot	•			•	
·			11.12	Collection Vehicle Wash-Downs	30

	11.13	Contractor's Office	30
	11.14	Emergency Contact Number	30
12	2. WO	RK, HEALTH AND SAFETY	30
	12.1	Contractor Work Health and Safety Management System	30
	12.2	Work Health and Safety Performance Reporting	32
	12.3	Work Health and Safety Assessment	
	12.4	Prosecution Notification	32
	12.5	Emergency Plan	33
13	. QU	ALITY MANAGEMENT	33
	13.1	Preparation of Quality Plan	
	13.2	Review of Quality Plan	34
	13.3	Business Continuity and Resilience Plan	34
	13.4	Review of Business Continuity and Resilience Plan	34
ř	13.5	Preparation of Services Termination Transition Plan	34
15	13.6	Review of Services Termination Transition Plan	35
	13.7	Special Events Waste Management Plan	35
14	. ENV	/IRONMENTAL MANAGEMENT	35
	14.1	Preparation of Environmental Management Plan	35
	14.2	Incident Notice and Prosecution Notification	35
	14.3	Review of Environmental Management Plan	36
15	. IND	USTRIAL RELATIONS AND WORKFORCE PLAN	36
16	. HEA	VY VEHICLE CHAIN OF RESPONSIBILITY (COR)	37
17		FORMANCE MANAGEMENT COMMITTEE	
	17.1	Establishment of Committee	38
	17.2	Participation in the Committee	38
	17.3	Appointment of Committee Representatives	38
	17.4	Functions of the Committee	
	17.5	Committee Procedure	39
	17.6	Decisions of Committee not Binding	39
18	. con	MMUNITY EDUCATION	
	18.1	Pre Service and Start Up Contribution	
	18.2	Annual Education	39
	18.2.	1 Annual Financial Contribution	39
		2 Annual Increase in Financial Contribution	
		Contractor to Develop and Deliver Waste Education	
		5 Annual Education Plan	
	18.2.	6 Contents of Annual Education Plan	40
2		7 Reporting	
	10.2.	o ove or all macpenacific octains FIVAINST	41

		.2.9 Verification and Approval of Materials	
	18.3	Dedicated Education Officer	
19.	RI	EPORTING REQUIREMENTS	42
20.	D	ATA MANAGEMENT	43
	20.1	Navigation and Tracking	
	20.2	Collection Information	44
	20.3	Existing Data	44
	20.4	Contamination Management	44
	20.5	Web Based Portal and Online Access	45
_	20.6	Data Integrity and Innovation	45
- 1	20.7	Data Accessibility and Ownership	46
21.	W	ASTE RECYCLABLES OR ORGANICS AUDITS	46
	21.1	General	46
	21.2	Frequency of Kerbside Audits	46
	21.3	Purpose of Kerbside Audits	46
22.	V	ARIATIONS AND BETTER PERFORMANCE	47
	22.1	Innovation and Trials	47
:	22.2	Innovation, Improved Services and Reduced Costs	47
23.	A	DVERTISING	
10	23.1	No Advertising without Council Consent	
	23.2	Messages on Collection Vehicle	
24.	0	BLIGATIONS OF THE CONTRACTOR	
:	24.1	Changes in the Method of Collection	
	24.2	Research and Trials by Council	
25.	C	OLLECTIONS FROM COUNCIL PARKS AND RESERVES	48
PΑ	RT 2:	WASTE COLLECTION SPECIFICATION	49
1,	IN	NTRODUCTION	49
2.	SE	ERVICE REQUIREMENTS	49
:	2.1	Collection Service and Frequency for Single Premises	
	2.2	Collection Service for Multi-occupancy Premises	49
:	2.3	Waste Collection Service for Other Service-Entitled Premises	50
:	2.4	Waste Collection Service for Special Events	
	2.6	Collection Service for Dog Waste	51
:	2.4	Variable Waste Collection Service	51
3.	A	DDITIONAL MOBILE BIN REQUIREMENTS	51
4.	D	ISPOSAL AND DELIVERY OF MATERIALS	51
ı	4.1	Disposal and Treatment Costs	51
	4.2	Nominated Facility for Waste	52

	4.3	Alternative Facilities	52
	4.4	Payment for Transport to Nominated Facility or Alternative Facility	52
	4.4		
,	4.4. 4.5	.2 Payment for Use of Alternative Facility	
	4.6	Operating Hours of Facilities	
	4.7	Only Materials from the Service Area	
D		RECYCLABLES COLLECTION SPECIFICATION	
1.		TRODUCTION	
1. 2.		RVICE REQUIREMENTS	
۷.	2.1	Recyclables to be Collected	
	2.2	Collection and Frequency for Single Premises	
	2.3	Collection and Frequency for Multi-occupancy Premises	
	2.4	Recyclables Collection Service for Other Service-Entitled Premises	
ì	2.5	Recyclables Collection Service for Special Events	
	2.6	Variable Recyclable Collection Service	
3.	AD	DDITIONAL MOBILE BIN REQUIREMENTS	
4.		DDITIONAL REQUIREMENTS FOR VEHICLES	
5.		CYCLABLES OWNERSHIP AND DELIVERY	
٠.	5.1	Council Ownership of Recyclables	
	5.2	Amendment of Recyclables	
	5.3	Nominated Facility for Recyclables	
	5.4	Alternative Facilities	
	5.5	Payment for Transport to Nominated Facility or Alternative Facility	
	5.5.	1 General	57
	5.5.		
	5.6	Unloading of Recyclables Materials	
	5.7	Operating Hours of Facilities	
	5.8	Rejection of Recyclables and Disincentive Charges	
_	5.9	Only Recyclables from the Service Area	
6.	6.1	MPACTION AND QUALITY MANAGEMENT	
7.		NTAMINATION MANAGEMENT FOR RECYCLABLES	
/.	7.1	Contamination Management Strategy and Operations for Recyclables	
	7.2	Supporting Materials to be Developed	
	7.3	Contamination Procedures for Recyclables Material	
	7.4	Minimum Contamination Requirements and Procedures	
	7.4.	59	
	7.4.		

  #	7.4.3	· ·	
	7.4.4		
	7.4.5 7.4.6		
	7.4.7	·	
	7.5	Reporting and Documenting Contamination Incidents	
	7.6	Council Contamination Approach for Recyclables	61
	7.7	Review of Contamination Management Strategy and Program for Recyclables	61
P/	ART 4: G	ARDEN ORGANICS COLLECTION SPECIFICATION	62
1.	INT	RODUCTION	62
2.	SER	VICE REQUIREMENTS	62
	2.1	Collection Service and Frequency for Single Premises	62
	2.2	Collection Service and Frequency for Multi-occupancy Premises	62
	2.3	Variable Garden Organics Collection Service	62
3.	ADI	DITIONAL MOBILE BIN	63
	3.1	Mobile Bins for Garden Organics	63
4.	ADI	DITIONAL REQUIREMENTS FOR VEHICLES	63
5.	GAF	RDEN ORGANICS OWNERSHIP AND DELIVERY	63
	5.1	Council Ownership of Garden Organics	63
	5.2	Nominated Facility for Garden Organics	63
	5.3	Alternative Facilities	
	5.4	Payment for Transport to Alternative Facility	64
	5.4.1		
10	5.4.2 5.5	Payment for Use of Alternative Facility	
	5.6	Only Materials from the Service Area	
6.		ITAMINATION MANAGEMENT FOR GARDEN ORGANICS	
-	6.1	Contamination Management Strategy and Operations for Garden Organics	
	6.2	Supporting Materials to be Developed	
	6.3	Contamination Procedures for Garden Organics	65
	6.4	Minimum Contamination Requirements and Procedures	65
	6.4.1		
	6.4.2		
	6.4.3	The state of the s	
	6.4.4 6.4.5	·	
	6.4.6		
	6.4.7		
	6.5	Reporting and Documenting Contamination Incidents	
	6.6	Council Contamination Approach for Garden Organics	67
	6.7	Review of Contamination Management Strategy and Program for Garden Organics	

P	ART 5	: FOGO COLLECTION SPECIFICATION	68
1.	. 4	NTRODUCTION	68
	1.1	Commencement and Term of FOGO Collection	7690
	1.2	Notification of Option by Council	68
2.	. s	SERVICE REQUIREMENTS	68
	2.1	Collection Service and Frequency for Single Premises	69
	2.2	Collection Service and Frequency for Multi-occupancy Premises	
	2.3	Variable FOGO Collection Service	69
3.	, N	MOBILE BIN AND KITCHEN CADDY REQUIREMENTS	69
	3.1	Additional Requirements for FOGO Mobile Bins	69
	3.2	Additional Mobile Bins	
	3.3	Kitchen Caddies	70
	3.4	Kitchen Caddy Liners	71
	3.5	Kitchen Caddy and Caddy Liners Distribution Plan	71
	3.6	Mode of Delivery of Kitchen Caddies and Caddy Liners	72
	3.0	6.1 Initial Supply and Delivery of Kitchen Caddies and Caddy Liners	
	_	6.2 Supply and Delivery of Kitchen Caddies for New Commencement	
		6.3 Replacement of Broken Kitchen Caddies	
	3.0	6.5 Ongoing Supply and Delivery of Kitchen Caddy Liners (Optional)	
4.	Р	PRE SERVICE AND START UP EDUCATION FOR FOGO	74
	4.1	Pre Service and Start Up Contribution for FOGO	74
	4.2	Contractor to Develop and Deliver Pre Service and Start Up Education	74
	4.3	Purchase of Environmentally Preferable Goods	
	4.4	Pre Service and Start Up Education Plan	75
	4.5	Dedicated Education Officer for FOGO	75
	4.6	Verification and Approval of Materials and Timing	76
5.	C	HANGES REQUIRED FOR INTRODUCTION OF FOGO	76
	5.1	Collection Days and Routes	76
	5.2	Changes to the Mobile Bins	76
6.	Α	ADDITIONAL REQUIREMENTS FOR VEHICLES	77
7.	F	OGO OWNERSHIP AND DELIVERY	77
	7.1	Council Ownership of FOGO	77
	7.2	Nominated Facility for FOGO	77
	7.3	Alternative Facilities	77
	7:4	Payment for Transport to Alternative Facility	78
		4.1 General	
	7.4 7.5	4.2 Payment for Use of Alternative Facility	
		-	
	7.6	Only Materials from the Service Area	/8

8. C	ONTAMINATION MANAGEMENT FOR FOGO	78
8.1	Contamination Management Strategy and Operations for FOGO	78
8.2	Supporting Materials to be Developed	79
8.3	Contamination Procedures for FOGO	79
8.4	Minimum Contamination Requirements and Procedures	79
8.4	.1 Gross Contamination – Visible at the Kerbside	79
8.4	.2 Contamination – Visible at the Kerbside	79
8.4		79
8.4		80
8.4		80
8.4		80
8.4		
8.5	Reporting and Documenting Contamination Incidents	
8.6	Council Contamination Approach for FOGO	80
8.7	Review of Contamination Management Strategy and Program	81
PART 6:	BULKY WASTE COLLECTION SPECIFICATION	82
1, IN	ITRODUCTION	82
2. B	ULKY WASTE AND BULK GREEN WASTE COLLECTION SERVICE	82
2.0	Notification of Bulky Waste Collection Option	82
2.0 2.1	Notification of Bulky Waste Collection Option  Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)	
	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service) Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83	82 ed Service)
2.1	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service) Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke	82 ed Service)
2.1 2.1	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service) Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83	82 ed Service) 85
2.1 2.1 2.2 2.3 2.4	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)  Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83  Bulky Waste or Bulk Green Waste to be Collected	82 ed Service) 85 85
2.1 2.1 2.2 2.3 2.4	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)  Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83  Bulky Waste or Bulk Green Waste to be Collected	82 ed Service) 85 85
2.1 2.1 2.2 2.3 2.4	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)  Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83  Bulky Waste or Bulk Green Waste to be Collected	82 ed Service)858585
2.1 2.1 2.2 2.3 2.4 3. D	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)  Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83  Bulky Waste or Bulk Green Waste to be Collected	82 ed Service)858585
2.1 2.1 2.2 2.3 2.4 3. D	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)  Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83  Bulky Waste or Bulk Green Waste to be Collected	82 ed Service)85858585
2.1 2.1 2.2 2.3 2.4 3. D 3.1 3.2	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)  Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83  Bulky Waste or Bulk Green Waste to be Collected	82 ed Service)8585858586
2.1 2.2 2.3 2.4 3. D 3.1 3.2	Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)  Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booke 83  Bulky Waste or Bulk Green Waste to be Collected	82 ed Service)85858586
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# Part 1: General Specification

# Part 1: General Specification

# Introduction and Scope

This General Specification applies to the following services:

- (a) Waste Collection Service;
- (b) Recyclables Collection Service;
- (c) Garden Organics Collection Service;
- (d) Bulky Waste Collection Service; and
- (e) Food Organics and Garden Organics (FOGO) Collection Service which will also represent Food Only Collection, on and from the FOGO Commencement Date.

The Contractor must ensure that Services provided under this Agreement address the requirements of the General Specification. In respect of any particular Service, to the extent of any inconsistency between the General Specification and the Service Specification that specifically applies to that Service, the specific Service Specification shall have precedence.

All Services provided under this Agreement are to comply with relevant Australian Standards except where this Services Specification requires a more stringent standard in which case this Services Specification takes precedence.

# 2. Aims and Objectives

The Aims and Objectives of this Agreement are:

- to achieve and maintain a high standard of performance in provision of the Services by the Contractor using best practice methods and systems;
- to maintain Services within the performance benchmarks for Missed Collections, early starts and other customer requests;
- to regularly assess the performance of the Contractor and to gain continual improvement to work practices and resource recovery;
- (d) to promote the health, safety and welfare of all persons engaged in or affected by the Services;
- to minimise noise impacts and to ensure all spilt materials are cleaned up during collection at the time of collection;
- (f) to purchase environmentally preferred goods including recycled material whenever possible and to uphold the principles of sustainability while promoting circular economy;
- (g) to facilitate a sustained effort to increase the type, quality and amount of resources recovered from the waste stream;
- to preserve the resource integrity and value of recoverable and reusable materials delivered to the processing facility;

- to provide high standard, integrated waste and resource recovery services, based on 'best practice' principles, which are complementary to national, state and regional waste strategies as well as Council's own waste management strategy and policies;
- to fulfil the Council's obligations under legislation relating to provision of waste and resource recovery services;
- (k) to fulfil the Council's obligations under the Local Government Act 1993 including by considering the 'long term and cumulative effect of actions on future generations' and 'the principles of ecologically sustainable development';
- (I) to provide cost-effective services that represents value for money;
- (m) to deliver a service that provides a high level of Customer satisfaction; and
- (n) to meet and adhere to the Endorsed Quality Plan.

# 3. Definitions

3.1 In this General Specification and each other Part of the Services Specifications, terms will, unless inconsistent with the context, have the meanings indicated below or as specified in clause 1.1 of the Operative Terms.

### 'Alternative Collection Point'

means an alternative location for Customer placement of Mobile Bins for collection, determined by Council where, for example, there is no space at the kerb or for other reasons including safety.

### 'Alternative Facility'

means a facility nominated or approved by Council under this Services Specification for receiving Contract Waste under this Agreement instead of a Nominated Facility.

# 'Approximate Centroid'

means the intersection of Mowbray Road and Penshurst Street, Willoughby NSW 2068.

### 'Bulk Bins

means bins that are 660 litre or larger and include, but not limited to:

- (a) 660L bins
- (b) 1100L bins
- (c) 1500L bins
- (d) 2000L bins

### 'Bulk Green Waste'

All green waste that cannot be put into 240L Garden Organics Bin and includes:

- (a) Small trees cut and removed from Service Entitled Premises:
- (b) Branches; and
- (c) Other vegetation removed from Service Entitled Premises

# 'Bulk Green Waste Collection Service'

means the collection of Bulk Green Waste from Bulk Green Waste Service-Entitled Premises, and the delivery of that Bulk Green Waste to the Nominated Facility for Bulk Green Waste.

## 'Bulky Waste'

means such item as, but not limited to:

- (a) furniture;
- (c) toys;
- (d) carpet;
- (e) metals;
- (f) floor coverings;
- (g) stoves;

- (h) white goods;
- (i) small household appliances, and
- (j) guttering, timber and fence palings, and any other items as directed by Council disposed of from Bulky Waste Entitled-Premises, but excluding mattresses.

## 'Bulky Waste Service-Entitled Premise'

means any premise entitled to Bulky Waste collection service as specified under clause 2 of the Bulky Waste Collection Specification from time to time and clauses 4.4.1, 6.1, 6.2 and 6.3 of this General Specification.

# 'Bulky Waste Collection Service'

means the collection of Bulky Waste from Bulky Waste Service-Entitled Premises, and the delivery of that Bulky Waste to the Nominated Facility for Bulky Waste.

# 'Bulky Waste Collection Specification'

means Part 6 of the Services Specification.

### 'Collection Service'

# means each of the:

- · Waste Collection Service;
- Recyclables Collection Service;
- Garden Organics Collection Service;
- · FOGO Collection Service; and
- Bulky Waste Collection Service.

### 'Collection Schedule'

means the systematic scheme prepared pursuant to clause 4.4.2 of this General Specification.

## 'Collection Vehicles'

means a vehicle or vehicles used by the Contractor to perform the Services including compactors.

### 'Compaction Level'

means, in any given Collection Vehicle, the total weight of the Recyclable Waste in the Collection Vehicle divided by the total capacity of the Collection Vehicle expressed as kg per m<sup>3</sup>.

# 'Compostable Food Organics'

Includes food waste, but not limited to:

- · breads, cereal, rice, grains nuts;
- fruit and vegetables scraps/peels;
- food scraps/leftovers;
- dairy products;
- egg shells;
- meat scraps and bones;

- · seafood scraps and bones;
- teabags/coffee grounds;
- pet food scraps;
- contaminate paper, tissues, paper towels (no cleaning chemicals).

### 'Contamination'

### means material which is not:

- Recyclables, when placed in a Recyclables Mobile Bin;
- Garden Organics, when placed in a Garden Organics Mobile Bin; and
- FOGO, when placed in a FOGO Mobile Bin.

### 'Contract Determination'

has the meaning attributed to 'contract determination' in the *Industrial Relations Act 1996* (NSW).

### 'Contractor's Depot'

has the meaning given to that term in clause 11.11 of this General Specification.

### 'Contractor's Office'

has the meaning given to that term in clause 11.13 of this General Specification.

#### 'Customer'

means a person entitled to, or who benefits from, a Collection Service.

## 'Customer Service Centre'

means the Customer Service Centre of Council which is the main contact centre of Council for all Service Entitled Premises;

# 'Day of Service'

means the day on which the service is scheduled to be performed.

# 'Depot'

has the meaning given to that term in the Operative Terms.

### 'Designated Early Start Street List'

means the list of all streets as approved by Council for collection before the designated Start Time.

### 'Designated Late Finish Street List'

•

means the list of all streets as approved by Council for collection after the designated Finish Time.

# 'Dumped Waste'

Bulky Waste identified by Council as waste that is illegally dumped within the LGA that do not belong to any nominated Service Entitled Premises.

# 'Early Starts'

means the commencement of Services before the Start Times of the Designated Early Start Street List as approved by Council.

# 'Emergency Plan'

means a step-by-step plan to cover any work health and safety emergencies, or other emergencies, that may affect

the Services as specified in clause 12.5 of the General Specification.

'Environmental Management Plan' means the management plan identifying environmental impacts of the Services and any measures to improve environmental performance as specified in clause 14.1 of this General Specification.

'Excessive Weight'

means any Mobile Bin, which is unable to be physically moved by the Collection Vehicle lifting equipment or by the Contractor's personnel or any Mobile Bin which is deemed to pose a significant risk of damage to any equipment or vehicle or injury to any person if collected, generally being a Mobile Bin together with its contents which weighs eighty (80) kilograms or over.

'Finish Time'

means the time of day that collection services are required to be completed as detailed in this Services Specification or as varied by Council from time to time.

'FOGO'

means the combination of compostable food only or Compostable Food Organics and Garden Organics.

'FOGO Collection Option'

means an option that may be adopted by Council in accordance with clause 1.2 of the FOGO Collection Specification, whereby FOGO Collection Services will be required to be performed during Service Period B.

'FOGO Collection Service'

means the collection of FOGO Waste from FOGO Service-Entitled Premises, and the delivery of that FOGO Waste to the Nominated Facility for FOGO Waste.

'FOGO Commencement Date' means, if Council issues a notice to the Contractor under clause 1.2 of the FOGO Collection Specification advising the Contractor that 'FOGO Collection Option' is adopted, the date specified in that notice as the commencement date of Service Period B.

'FOGO Mobile Bin'

means a Mobile Bin designated for FOGO.

'Food Organic and Garden Organic Waste' or 'FOGO Waste' means the material placed for collection in a Mobile Bin at a Service-Entitled Premises which is designated for the combination of Compostable food only or Compostable Food Organics and Garden Waste within the Service Area.

'FOGO Service-Entitled Premise' means any premise entitled to FOGO collection service as specified under clause 2 of the FOGO Collection Specification from time to time and Clauses 4.4.1, 6.1, 6.2 and 6.3 of this General Specification.

'FOGO Collection Specification'

means Part 5 of the Services Specification

### 'Garden Organics'

means material that in its raw form comprises of vegetation including but not limited to grass, leaves, mulch, plants, branches, twigs, lawn clippings, leaves and cut flowers

### 'Garden Organics Collection Service'

means the collection of Garden Waste from Garden Organics Service-Entitled Premises, and the delivery of that Garden Waste to the Nominated Facility for Garden Organics.

## 'Garden Organics Mobile Bin'

means a Mobile Bin designated for Garden Organics.

# 'Garden Organics Service-Entitled Premise'

means any premise entitled to Garden Organics Collection Service as specified in the Garden Organics Collection Specification and clauses 4.4.1, 6.1, 6.2 and 6.3 of this General Specification.

# 'Garden Organics Collection Specification'

means Part 4 of the Services Specification.

### 'General Specification'

means this Part 1 of the Services Specification.

### 'Gross Contamination'

#### means

- (a) in relation to the collection of Recyclable Waste: all materials which are not Recyclables as defined in this General Specification, where it is evident upon visual inspection that excessive amounts of these materials are present within the Mobile Bin. This may include for example bags of Waste visible at the top of the Mobile Bin.; and
- (b) in relation to the collection of Garden Waste or FOGO Waste:

all materials which are not Garden Waste or FOGO Waste (respectively) as defined in this General Specification, where it is evident upon visual inspection that excessive amounts of these materials are present within the Mobile Bin. This may include for example bags of Waste visible at the top of the Mobile Bin.

### 'Hazardous Wastes'

means a Contaminant that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of:

- (a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability; or
- (b) its physical, chemical or infectious characteristics.

### 'Incident'

includes an accident, injury, property damage or environmental damage.

### 'Industrial Action'

has the same meaning attributed to it in the Fair Work Act 2009 (Cth).

### 'Industrial Instruments'

### Means:

- (a) a Modern Award;
- (b) an enterprise agreement, as that term is defined in the Fair Work Act 2009 (Cth);
- (c) a transitional instrument, as that term is defined in the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth);
- (d) a Contract Determination; or
- (e) a contract agreement, as that term is defined in the Industrial Relations Act 1996 (NSW).

# 'Industrial Relations and Workforce Plan'

means a plan dealing with the Contractor's workplace and industrial relations and resourcing issues relevant to the Services and as set out in clause 15 of this General Specification.

### 'Infirm Household'

means any premises included in the Collection Schedule that Council has determined (on such evidence as Council deems appropriate) that by reason of ill health or other physical or mental incapacity, no Customer of such premises is reasonably able to place a Mobile Bin out for collection.

### 'Kerbside'

means the area adjacent to any road carriageway.

### 'Kitchen Caddies'

means small container for Food Waste that is utilised by the Service Entitled Premises to temporarily store Food Waste.

### 'LGA'

means the Willoughby local government area.

# 'Materials Recovery Facility' or 'MRF'

means the Nominated Processing Facility for the receipt and processing of Contract Waste comprising Recyclable Waste, including an Alternative Facility.

## 'Maximum Compaction Level'

means a Compaction Level of 180 kg per m<sup>3</sup>.

# 'MGB', 'Mobile Garbage Bin', or 'Mobile Bin'

means a wheeled plastic Waste Container complying with clause 9 of Part A General Specification.

### 'Missed Collection'

has the meaning given to that term in the Operative Terms.

## 'Mobile Bin Distribution Plan'

means plan developed by the Contractor and approved by Council for the distribution of Mobile Bins.

### 'Modern Award'

has the meaning attributed to it in the Fair Work Act 2009 (Cth).

'Nominated Facility'

has the meaning given to that term in the Operative Terms.

'Obsolete Mobile Bin'

means each bin at a Service-Entitled Premises that the Contractor is required to replace with a Mobile Bin under this Agreement.

'Operatives Terms'

means clauses 1 to 31 of the Agreement.

'Other Request'

means any other reasonable request from a Customer about the Services that is not a Missed Service or a noise complaint about Early Starts.

'Performance Management Committee'

means a committee established under clause 17 of this General Specification.

'Post-Consumer Recycled Content'

means materials that have been used by consumers and recovered for use as raw materials to make new products.

'Previous Contractor'

means the Collection Contractor that provides the Waste Collection Service immediately prior to the Service Commencement Date of this Agreement.

'Recyclables'

means each of the following containers, packaging and products emanating from Service-Entitled Premises:

- recyclable Paper and Cardboard
- liquid paperboard cartons
- glass bottles and jars
- aluminium cans, packaging and foil
- PET (1), HDPE (2) and PVC (3) rigid plastic packaging
- other rigid plastic packaging including LDPE (4), PP (5), PS (6), other (7)
- steel rigid packaging, including aerosol cans, and any other material that Council and the Contractor agree in writing to include within this definition of 'Recyclables' from time to time.

'Recyclables Mobile Bin'

means a Mobile Bin designated for Recyclables.

'Recyclable Paper and Cardboard' means the paper-based materials including, but not limited to the following:

- newspapers
- magazines
- junk mail
- stationery
- office paper
- envelopes
- telephone books
- cardboard.

## 'Recyclables Collection Service'

means the collection of Recyclable Waste from Recyclables Service-Entitled Premises, and the delivery of that Recyclable Waste to the Nominated Facility for Recyclables.

# 'Recyclables Collection Specification'

means Part 3 of the Services Specification.

# 'Recyclables Service-Entitled Premise'

means any premise entitled to a Recyclables collection service as specified under clause 2 of the Recyclables Collection Specification from time to time and clauses 4.4.1, 6.1, 6.2 and 6.3 of this General Specification.

### 'Service Area'

means the area for the collection of Contract Wastes by the Contractor, being the area indicated on the Service Area Maps included as Schedule 9 to this Agreement, together with such additional premises that Council may nominate during the Term, provided that such nominated premises are within the LGA.

### 'Service-Entitled Premises'

### means:

- in respect of Waste, each Waste Service-Entitled Premise:
- in respect of Recyclable Waste, each Recyclables Service-Entitled Premise;
- in respect of Garden Waste, each Garden Organics Service-Entitled Premise;
- in respect of FOGO Waste, each FOGO Service-Entitled Premise; and
- in respect of Bulky Waste, each Bulky Waste Service-Entitled Premise.

### 'Special Event'

### means any event that includes:

- a) a public performance involving a gathering of people
- a meeting, parade, sporting event, exhibition, filming or festival; and
- a fair, market or other gathering of people for the sale, purchase or exchange of

# 'Special On-Property Collection'

means any service that Council has determined (on such evidence as Council deems appropriate) requires collection from within the property boundaries of the Service-Entitled Premises. This may occur due to lack of kerb space, on-site storage issues or other reasons.

### 'Start Time'

means the time of day when collection services are designated to commence as detailed in this Services Specification or as varied by Council from time to time.

### 'Waste'

means the material placed for collection in a Mobile Bin at a Service-Entitled Premises which is mixed solid waste and includes refuse and rubbish, but excludes Recyclable Waste, Garden Waste, FOGO Waste, and Bulky Waste, building or construction wastes, Hazardous Wastes and car parts.

'Waste Container'

means a Mobile Bins also referred to as Mobile Garbage Bin (MGB), Rear-lift Mobile Bins, or other container which must be provided or serviced as part of the performance of the Services, as described in clause 9.

'Waste Service-Entitled Premise' means any premise entitled to a Waste collection service as specified under clause 2 of the Waste Collection Specification from time to time and clauses 4.4.1, 6.1, 6.2 and 6.3 of this General Specification.

'Waste Collection Service'

means collection of Waste from all Waste Service-Entitled Premises, and the delivery of that Waste to the Nominated Disposal Facility.

'Waste Collection Specification' means Part 2 of the Services Specification.

'Work Health and Safety Management System' means a structured systematic means for managing work health and safety risks and maintaining a safe work environment as specified in clause 12.1 of this General Specification, which as a minimum complies with AS\NZS 4804:2001.

'Working Day(s)'

means Monday to Friday of every week of the year including public holidays, and any other days detailed in the Collection Schedule as required for the performance of the Services.

# 4. Operations

# 4.1 General

The Services provided under this Agreement must be efficient and effective and be services on which Customers at all Service-Entitled Premises can depend on. All services must be carried out with maximum regard for safety of all persons, tidiness and the preservation of property and amenity and in compliance with Law applicable to the provision of the Services including but not limited to workplace/industrial relations, work health and safety, environmental and local government legislation. Services provided under this Agreement must be delivered in a manner that maximises resource recovery, reduces contamination and promotes continuous improvement.

# 4.2 General Operational Requirements

- (a) The Contractor's employees must, after emptying each Mobile Bin, return the completely emptied Mobile Bin, with the lid closed and in an upright position, as near as practicable to the position in which it was located prior to being emptied.
- (b) Notwithstanding clause 4.2(a), after emptying, Mobile Bins must not be left in a position which might impede pedestrian or vehicular movement.

- (c) The contents of Mobile Bins must not be emptied into another Mobile Bin prior to servicing.
- (d) The Contractor must ensure that any Contract Waste that is spilt or found spilt by the Contractor's employees or subcontractors in the course of performing the Services, whether caused by the Contractor's actions or not, is removed by the Contractor immediately.
- (e) When any Collection Vehicle is passing along roads or left standing in any public place, it must be secured so as to prevent the escape of any materials from the Collection Vehicle. No Collection Vehicle shall be left standing in such a manner as to cause damage to the environment, offence or present a hazard to a member(s) of the public.
- (f) Collection Vehicles must remain stationary whilst emptying Mobile Bins.
- (g) The Services must be performed with minimum noise, nuisance and disturbance.
- (h) Mobile Bins must not be handled in a manner that may result in damage to the Mobile Bin.
- (i) The Collection Schedule must be adhered to.

# 4.3 Collection Days and Times

### 4.3.1 Days of Collections

Services must be provided by the Contractor on Working Days. Services must not take place on any other day without the written approval of Council. Council's consent may be given subject to such conditions as Council considers appropriate.

The collection of Waste, Garden Waste (or FOGO Waste), and Recyclable Waste must be on the same day of the week for each premise serviced, except for where alternate arrangement is made.

All collection of Waste, Recyclable Waste and Garden Waste (or FOGO Waste) must be carried out in accordance with the collection schedule prepared by the Contractor and approved by Council.

### 4.3.2 Time of Collections

The Services must not be performed:

- (a) before the time indicated as the Start Time or Early Start Time for those streets approved by Council for Early Start and as updated by Council from time to time;
- (b) after the time indicated as the Finish Time or Late Finish Time for those streets approved by Council and as updated by Council from time to time;
- (c) before the Start Time, being 6:00 am, in all other areas; and
- (d) after the Finish Time, being 5:00 pm, in all other areas.

Services must not take place at any other time without the prior written consent of Council.

Council may approve changes to times of collection in special circumstances that may impact on the ability for the Contractor to carry out Services, including changes in facility operating hours on public holidays, disruptions to Services, emergencies and work, health and safety considerations.

### 4.4 Collection Schedule

### 4.4.1 List of Addresses

Council will, no later than twelve (12) weeks prior to the Services Commencement Date, provide the Contractor with a complete listing of the addresses of all Service-Entitled Premises under this Agreement. This list will include Infirm Households in accordance with clause 4.5.2 of this General Specification. This list may be updated by the Council at any time during the Term.

The list of addresses will include all details required by the Contractor for the provision of Services under this Agreement.

### 4.4.2 Provision of Collection Schedule

The Contractor must prepare a systematic scheme for the performance of Services.

A draft of the Collection Schedule (including a map of the proposed collection routes) must be submitted to the Council for written approval no later than thirty (30) Business Days prior to the Services Commencement Date.

The Collection Schedule must include lists of all roads or parts of roads to be serviced by each Collection Vehicle, in the order in which they are likely to be serviced.

The Collection Schedule must include lists of Premises that require on-property Services due to the Premise being deemed by Council to be an Infirm Household, in accordance with clause 4.5.2 of this General Specification.

The Council may:

- (a) require that the Contractor provide further information in relation to the proposed Collection Schedule or any related matter;
- (b) direct reasonable amendments to the proposed Collection Schedule; and,
- (c) make its approval of the proposed Collection Schedule subject to such reasonable conditions as it considers appropriate.

Where the collection routes change for any reason including, but not limited to the growth and development and efficiencies of collection, the Contractor must present to Council the new route for approval and be responsible for all correspondence and notification of the affected residents. The Contractor must undertake letterbox drops and any other notification to the affected Service-Entitled Premises based on the plan approved by Council.

### 4.4.3 List of Roads

Within ten (10) Business Days of the Council giving approval to the Collection Schedule, the Contractor must supply the Council with an alphabetical list, in electronic and hard-copy format, of all roads in the Service Area stating in respect of each:

- (a) the day on which particular Services will be undertaken from that road or part there of;
- (b) the Collection Vehicle which will undertake the Services from that road; and,
- (c) a map showing the collection zone for each Collection Vehicle on each day.

### 4.4.4 Amendments to Schedule

The Contractor must operate the Service in accordance with the Collection Schedule approved by the Council. Any alteration to the Collection Schedule must only be made with the prior written consent of the Council.

The Council's consent may be given subject to such conditions, as considered appropriate by it in the circumstances.

### 4.5 Collection Point

### 4.5.1 General

Services must be undertaken from the Kerbside adjacent to each Premise, unless special arrangements are specified in clauses 4.5.2 and 4.5.3 of this General Specification. Where no space is available at the Kerbside or for other reasons including safety, Council may determine Alternative Collection Points.

### 4.5.2 Infirm Services

Where a Service-Entitled Premise is deemed by Council to require an on-property service due to the Customer(s) being infirm, and the Premise therefore declared an Infirm Household, the Contractor's employees must obtain the Mobile Bin(s) from the bin bay or storage location, convey the Mobile Bin(s) and its contents to the Collection Vehicle, transfer contents into the vehicle and then immediately return the completely emptied Mobile Bin(s) to the same location or bin bay from which is was first removed.

The Contractor's Representative and the allocated Contractor's employee shall visit all Infirm Households prior to the first Service being undertaken at the Premise, to confirm storage locations of Mobile Bins and access arrangements.

### 4.5.3 Wheel-out Wheel-back Collections

The Contractor shall provide a wheel out wheel back collection service for all Services of Public Place Waste bins, Recycling bins, Dog Waste bins that are undertaken using Mobile Bins. Locations of these bins are in the Public Place Recycling Bins List and Dog Waste Bins List included in the Annexure to the General Specification.

The Contractor shall provide a wheel out wheel back collection service for all Services to multioccupancy dwellings that are undertaken using Bulk Bins.

This Service applies to all multi-occupancy Premises in the Service Area unless prior arrangements have been made for Customers or caretakers to undertake the placement of Mobile Bins at the kerb, in which case, the Council will notify the Contractor in writing to cease the wheel out wheel back service at that Premise.

The Contractor's employee(s) must obtain Mobile Bins from the bin bay or storage location, convey each Mobile Bin and its contents to the Collection Vehicle, transfer contents into the vehicle and then return the completely emptied Mobile Bin(s), within one (1) hour to the same location or bin bay from which it was first removed.

# 5. Delivery and Ownership of Materials

Material delivery and ownership for each type of Contract Waste is specified in the particular Service Specification applicable to each Collection Service.

# 6. Additional, New and special Services

### 6.1 New Collection Service

When the Contractor is directed in writing to include any premise as a Service-Entitled Premise, it must do so from the next day on which the Service is performed in the area in which the premise is located.

### 6.2 Additional Services

The Council may direct that the Contractor empty additional Mobile Bins supplied to particular Service-Entitled Premises as a result of upgrade of service to that property. The Contractor must commence servicing the additional Mobile Bins from the next day on which the Service is performed in the area in which the Premise is located.

The Contractor will provide Council with the necessary information to update the Council's database of Mobile Bins and serial numbers against Service-Entitled Premises. Delay in providing such information may delay payment to the Contractor for such additional services.

### 6.3 Cessation of Services

It is expected that all Service-Entitled Premises will be provided with Services unless there are special circumstances, such as repeated Contamination incidents as specified in the Recyclables Collection Specification, Garden Organics Collection Specification, FOGO Collection Specification, Bulky Waste Collection Specification, alternative arrangements for collection are made by the Customer, or if the property is vacant for a period of time.

Under these circumstances or any other circumstances Council may direct the Contractor that Services for the Service-Entitled Premise(s) concerned cease immediately or from a specified date. The Contractor must:

- (a) retrieve the Mobile Bin(s) from that Service-Entitled Premise(s) at the time of collection;
- (b) sanitise the Mobile Bin(s) retrieved from the premises;
- (c) return the Mobile Bins to the Contractor's safe storage; and
- (d) update data management system to reflect the changes to the Collection Schedule.

Any cessation of Collection Service will be at the sole discretion of Council.

# 6.4 Temporary Collection Services

From time to time, the Council may request the Contractor to provide a temporary Collection Service, generally being once only or an infrequent collection, at a nominated Service-Entitled Premise.

Following receipt of a request for a temporary Collection Service, the Contractor must provide this service on the collection day indicated by Council in its request, or when no collection day has been specified, no later than the next Working Day after receipt of the instruction.

The Contractor will be compensated for the temporary Collection Service at the same Agreement Prices as are applicable to the standard Collection Service.

# 7. Non-collection and Mobile Bin Presentation Problems

### 7.1 General

All Mobile Bins presented for collection at the normal collection time must be emptied, unless the Mobile Bin is deemed unacceptable for collection in accordance with clause 7.2 or clause 7.4 of this General Specification.

Non-collection of Services due to Gross Contamination is specified in clause 7 of the Recyclables Collection Specification, clause 8 of the Garden Organics Collection Specification and clause 8 of the FOGO Collection Specification.

The Contractor must develop procedures for Customer and Council notification related to noncollection and Mobile Bin presentation problems as part of the Quality Plan specified under clause 13 of this General Specification.

In the case of multi-occupancy Service-Entitled Premises where an individual Service-Entitled Premise cannot be identified by the Contractor, all references in this clause that refer to Contractor notification of Customers must be taken to include all Service-Entitled Premises within the block of units or multi-occupancy development in question.

The Contractor must develop and maintain a database for the purpose of logging non-collection and Mobile Bin presentation problems as detailed in clause 7 of this General Specification.

The database must be maintained through the Contractor's Data Management System that must be accessible to Council via online portal in accordance with clause 20.

# 7.2 Contractor Not to Collect

The Contractor must not knowingly collect:

- (a) any dangerous, hazardous or illegal substance;
- (b) materials from non-approved Mobile Bin(s);
- (c) materials not placed inside a Mobile Bin(s) unless spilt or found spilt under clause 4.2 of this General Specification; or,
- (d) materials from Mobile Bins which are of Excessive Weight.

# 7.3 Contractor to Notify Concerning Non-Collection

In the case of a non-collection in accordance with clause 7.2 of this General Specification, the Contractor must provide the Customer with a notice in a form approved or provided by Council, specifying the problem, in a form approved by the Council.

The notice must be delivered to the Customer either by way of being placed in the letterbox of the Service-Entitled Premise or otherwise securely delivered to the Service-Entitled Premise, such as by placement of a sticker on the Mobile Bin or on materials placed alongside the Mobile Bin. Customers must be notified in the manner required by this clause prior to 5:00pm on the day the Incident occurred.

The Customer must be given the opportunity to rectify the problem and contact the Customer Service Centre to request a Service. The Contractor must return to the Service-Entitled Premise within two (2) Working Days of the Customer request for the Service being notified to the Contractor and provide the Service with the relevant Collection Vehicle at no additional charge to Council.

The Contractor must notify the Council of non-collection in accordance with clause 7.2 of this General Specification, as required by the Council, and prior to 5:00pm on the day the collection would otherwise have occurred.

### 7.4 Mobile Bin Presentation Problems

Customers have a responsibility to place Mobile Bins out for emptying in a manner that is suitable for collection. The Contractor has a responsibility under this Agreement to assist Customers rectify problems with presentation by promptly notifying Customers of the problem and working with Customers and Council to find Alternative Collection Points as specified under clauses 4.5.1 and 7.4.3 of this General Specification.

Mobile Bin presentation problems may include Mobile Bins facing the wrong way or being placed behind a vehicle or other obstruction or Mobile Bins being overfilled.

## 7.4.1 First Occurrence: Contractor to Collect and Notify Customer

At the first occurrence of a Customer not placing Mobile Bin(s) out in a reasonable manner, the Contractor must empty the Mobile Bin.

The Contractor must provide the Customer with a notice in a form approved or provided by Council, specifying the problem, in a form approved by the Council. The notice may be posted by the Contractor or placed by the Contractor in the letterbox of the Premise or otherwise securely delivered to the Premise, such as by placement of a sticker on the Mobile Bin. The Council must be advised of the address of the Premise and the Mobile Bin presentation problem.

### 7.4.2 Second Occurrence: Contractor to Collect and Notify Customer

If the problem recurs a second time within three (3) months of the first recorded occurrence, the Contractor must empty the Mobile Bin. The Contractor must provide the Customer with a notice in a form approved or provided by Council, specifying the problem. The notice may be posted by the Contractor or placed by the Contractor in the letterbox of the Premise or otherwise securely delivered to the Service-Entitled Premise, such as by placement of a sticker on the Mobile Bin. The Council must be advised of the details of the Service-Entitled Premise and the Mobile Bin presentation problem.

### 7.4.3 Third Occurrence: Contractor may Refuse to Collect and Must Notify

If the bin presentation problem continues on a third occasion, within three (3) months of the first recorded occurrence, the Contractor may refuse to empty the Mobile Bin.

The Contractor must notify the Customer of the problem by way of notice in a form approved or provided by Council, with the wording approved by the Council, being placed in the letterbox of the Premise. The Customer must be notified prior to 5:00 pm on the day the Incident occurred.

Such notice must provide advice to the Customer on how to comply with service requirements. The Contractor must as soon as reasonably practicable after giving notice to the Customer of the third occurrence of the bin presentation problem or the refusal to empty the Mobile Bin, notify the Council of such action and detail recommendation(s) to resolve the issue(s), including proposed Alternative Collection Points if relevant.

The Customer must be given the opportunity to rectify the problem and contact the Customer Service Centre to request a Service. The Contractor must return to the Service-Entitled Premise within two (2) Working Days of the Customer request for the service being Notified to the Contractor and provide the Service at no additional charge to Council.

## 7.4.4 Council May Specify Requirements

For the purposes of this clause 7.4, the Council will nominate requirements for the placement of materials and Mobile Bins for collection from time to time, and the Contractor must incorporate these requirements in all notices to Customers regarding the services.

# 7.5 Difficult Access

The Contractor must notify Council of any collection points that the Contractor is unable to access due to:

- blocked access;
- parked cars; or
- any other restrictions.

If the access to service the Mobile Bins is restricted over three (3) scheduled collection days in a row, then the Contractor must identify alternative collection points and inform Council of the same. The Contractor must make arrangements with the Customer, or Body Corporate if a Multi Unit Dwelling complex and identify a appropriate solution for the Collection Service at that location.

Where the Contractor is unable to access the Mobile Bins due to parked cars or any other restrictions, the Contractor must return to the location at suitable times within that same day to empty the Mobile Bins.

If the Mobile Bins are not emptied by the Contractor due to its lack of attempts to empty the Mobile Bins, then Council at its own discretion may reduce the Fees that are otherwise payable to the Contractor in accordance with the Schedule 3 of the Agreement unless:

- the Contractor can demonstrate to Council's satisfaction that at least three (3) trips were made at a minimum of two hours apart to the location and the Contractor was unable to access the Mobile Bins; or
- upon notifying the matter to Council, Council has approved the servicing of the Mobile Bins on another day.

The Contractor must provide such evidence as photographs with times and dates and the Collection Vehicle GPS system to demonstrate the date and time the vehicle was at the location.

The Contractor will be responsible for all cost in relation to any additional attempts made by the Contractor to empty the Mobile Bins.

# 8. Customer Service and Request Rectification (Council)

# 8.1 Introduction – Council to Manage Requests and Enquiries

Council will be the primary point of contact for Customer enquiries and requests in relation to the Services under this Agreement. Council will forward all service requests, on the same day the request is made, to the Contractor for rectification and reporting.

## 8.2 Request Notification

The Contractor must accept from the Council any records of Customer requests about the Services under this Agreement.

The requests will be detailed in a format developed by Council and agreed to by the Contractor prior to the Services Commencement Date. The Contractor may request reasonable changes to the format. The Contractor must accept records of Customer requests from Council via telephone,

email, through Contractor's Data Management System under clause 20 in writing or any other form of communication as agreed upon by Council and the Contractor.

During the Contract Term, Council may at its own discretion change the format of request notification to the Contractor. Council will provide the notice of any such change to the Contractor in no less than 20 Business Days.

# 8.3 Urgent Requests

In an instance where the Contractor is notified by Council of a Customer request that requires urgent attention, the Contractor must take steps to resolve the request within two hours of receiving the request and must report to the Council in writing on the steps and time taken to resolve the request.

An urgent request includes a request that may impact on safety of any person(s) or property, traffic hazards, public health or repeated poor service levels at a specific Service-Entitled Premise.

If the urgent request is directed to the Contractor by Council, it shall be marked as "URGENT". Any request reasonably deemed to be urgent by Council shall be treated as an urgent request by the Contractor.

# 8.4 Rectification of Requests

The Contractor must efficiently rectify all requests that relate to Services in a timely manner.

The Contractor must investigate and attempt to resolve all requests within the shift during which the request was received, or within the next Working Day.

If the request is about spilt material(s), the Contractor must clean it up within three (3) hours of notification.

If the request is about a Missed Collection and is received by the Contractor before 12:00pm on the scheduled Collection Day, clearance must be attended to that same day. For later notification, clearance must occur on the following day. To avoid doubt, the "following day" can also include Saturday. As an example, if the request about the Missed Collection is received after 12:00pm on a Friday, then the Contractor must attend the Missed Collection premises on the following day, being Saturday.

If the Contractor fails to meet the requirements of requests rectification in accordance with this clause 8.4, then Council at its own discretion may reduce the Fees that are otherwise payable to the Contractor in accordance with Schedule 3 of the Agreement.

If the request is about Services undertaken outside of the times of collection in accordance with clause 4.3 of this General Specification, the Contractor must investigate the request fully and must report in writing to the Council within two (2) Working Days on the action taken.

# 8.5 Request Rectification Reporting

The Contractor is responsible for reporting to Council, as required, on the request rectification progress and completion. The Contractor must report in a format approved by Council prior to the Services Commencement Date as part of the Quality Plan referred to in clause 13.1. Some specific requirements may be detailed in this Services Specification.

# 8.6 Customer Satisfaction Surveys

To ensure that Services are being carried out in accordance with the Services Specification, and that the Contractor is fulfilling its obligations completely, Council may carry out Customer satisfaction surveys.

Effective management of user problems will be an important aspect of such surveys, and will be used as a guide for the improvement of the service. The Contractor must collaborate with Council the outcomes of such surveys and improve the services to the community.

# 9. Requirements for Mobile Bins

# 9.1 Specifications for Mobile Bins

Unless otherwise approved in writing by the Council, Mobile Bins used in the performance of Services must:

- (a) comply with Australian Standard 4123 Mobile Waste Containers;
- (b) be coloured coded as per the Australian Standard 4123 Mobile Waste Containers as detailed in the particular Services Specification;
- (c) contain a minimum of thirty percent (30%) Australian Post-Consumer Recycled Content
- (d) be made in Australia, unless otherwise approved by Council;
- (e) include permanently moulded individual identification (serial numbers) in sequential order;
- (f) be provided with Council approved permanent embossing in all manufacturer insert locations on the lid; and
- (g) be hot stamped with message for Garden Organics Mobile Bins, FOGO Mobile Bins and Recyclable Mobile Bins based on the design provided by Council to the Contractor.

Full details of replacement, new and additional Mobile Bins to be supplied during the term of the Agreement must be provided to Council for approval no later than 30 days prior to the Service Commencement Date.

The details must include supplier, country of origin, Australian Post-Consumer Recycled Content, recyclability at end of life and ease of access to spare parts. If requested by Council, representative samples must also be supplied by the Contractor to the Council.

# 9.2 Overview of Mobile Bin Supply, Maintenance and Ownership

### 9.2.1 120L, 140L and 240L Mobile Bins.

The table included in this clause presents the requirements of this Agreement in relation to Mobile Bin supply, Mobile Bin repairs, replacements, new and additional services and Mobile Bin ownership for 120L, 140L and 240L Mobile Bins.

Service	Supply of Mobile Bins at the beginning of Contract	Repairs, Replacements, New and Additional Services	Ownership during the Term of the Contract	Ownership at the end of this Agreement in accordance with clause 10.5.3
Waste Collection	Not applicable – Utilise existing Mobile Bins as distributed	Contractor	Contractor	Council
Recyclables Collection	Not applicable — Utilise existing Mobile Bins as distributed	Contractor	Contractor	Council
Garden Organics Collection Or FOGO Collection	Not applicable — Utilise existing Mobile Bins as distributed	Contractor	Contractor	Council

The Contractor must allow for the cost of repair, maintenance and replacement of 120L Mobile Bins, 140L Mobile Bins and 240L Mobile Bins at their own cost. Any such cost is deemed to have been included in the Agreement Prices for providing the Collection Service under this Agreement.

At the end of the Term the ownership of, all 120L Mobile Bins, 140L Mobile Bins, 240L Mobile Bins will revert back to Council in accordance with 10.5.3

# 9.2.2 360L, 660L, 1100L and 2000L Mobile Bins

The table included in this clause presents the requirements of this Agreement in relation to Mobile Bin supply, Mobile Bin repairs, replacements, new and additional services and Mobile Bin ownership for 660L and 1100L Mobile Bins.

Mobile Bin Type	Supply of Mobile Bins at the beginning of Contract	Supply for New and Additional Services	Repairs, maintenance and Replacements	Ownership during the Term of the Contract	Ownership at the end of this Agreement in accordance with clause 10.5.3
360L Mobile Bins	Not Applicable	Contractor, but at Council's cost based on Agreement Prices	Contractor	Contractor	Council
600L Mobile Bins	Not Applicable	Contractor, but at Council's cost based on	Contractor	Contractor	Council

	0	Agreement Prices	1.5	>	12
1100L Mobile Bins	Not Applicable	Contractor, but at Council's cost based on Agreement Prices	Contractor	Contractor	Council
2000L Mobile Bins	Not Applicable	Contractor, but at Council's cost based on Agreement Prices	Contractor	Contractor	Council

During the Term, the Contractor will be responsible for the repair maintenance and replacement of the existing 660L and any new 360L and 1100L Mobile Bins introduced during the Term.

As required by Council, the Contractor must supply and deliver 360L Mobile Bins, 660L Mobile Bins and 1100L Mobile Bins during the Term of this Agreement that are for new service or additional service. The Contractor will be compensated for the supply and delivery of 360L Mobile Bins, 660L Mobile Bins at the Agreement Prices for the supply and delivery of 360L Mobile Bins, 1100L Mobile Bins and 2000L Mobile Bins.

The Contractor must allow for the cost of repair, maintenance and replacement of 360L Mobile Bins, 660L Mobile Bins and 1100L Mobile Bins at their own cost. Any such cost is deemed to have been included in the Agreement Prices for providing the Collection Service under this Agreement.

At the end of the Term the ownership of all 360L Mobile Bins, 660L Mobile Bins, 1100L Mobile Bins and 2000L Mobile Bins will revert back to Council in accordance with 10.5.3.

# 10. Supply of Mobile Bin and Kitchen Caddies

# 10.1 Introduction - Contractor Supply of Mobile Bins

This clause relates to the supply of Mobile Bins (Replacement and Additional Service) during the Term and Kitchen Caddies as identified for the following Services as detailed in Clause 9.2 of this General Specification:

- (a) Waste Mobile Bins;
- (b) Recyclables Mobile Bins;
- (c) Garden Organics or FOGO Mobile Bins; and
- (d) during Service Period B, Garden Organics Mobile Bins will be utilised for FOGO Collection Service and Contractor must deliver Kitchen Caddies to all FOGO Service-Entitled Premises.

### 10.2 Stocks of Mobile Bins

The Contractor must:

(a) ensure that it maintains a sufficient stock of Mobile Bins to meet its obligations under clause 10.6 of this General Specification; and,

(b) ensure that the benefits of all warranties applicable to the Mobile Bins are passed to the Council immediately upon the delivery of the Mobile Bins to Premises.

# 10.3 Requirements of Mobile Bins

The Contractor must ensure all Mobile Bins:

- (a) meet all of the obligations under clause 9.1 of this General Specification;
- (b) meet any additional obligations specified in the Services Specification for that particular service; and
- (c) are new at the time of supply to a Service-Entitled Premise.

# 10.4 Approval of Mobile Bins and Kitchen Caddies

The Contractor must obtain the prior written approval of Council for the Mobile Bins and Kitchen Caddies proposed to be supplied during the Term of the Agreement.

Full details of the Mobile Bins and kitchen caddies (if FOGO is introduced) proposed to be supplied, including specific information regarding compliance with all requirements of this clause 10.4, must be identified and provided to Council prior to the supply.

Representative samples must also be supplied by the Contractor to the Council at that time. The Contractor must ensure the Mobile Bins and Kitchen Caddies proposed to be supplied by the Contractor must meet the requirement of clause 9.1 of this Part 1 General Specification and are:

- (a) recyclable at end of life; and
- (b) have ease of access to spare parts.

# 10.5 Ownership and Risk in Mobile Bins

### 10.5.1 At the Commencement

At the end of the term of the contract for kerbside collection between Council and the Previous Contractor immediately prior to the Commencement Date, Council is the owner of the existing distributed stocks of all Mobile Bins used for the provision of Schedule Collection Services. The incoming Contractor must:

- (a) take ownership of the existing Mobile Bins at the Service Entitled Premises: and
- (b) at its own cost repair, replace and provide additional Mobile Bins as required in accordance with clause 10.6.

### 10.5.2 During the Term of the Contract

During the Services Term, the ownership and all risks, as set out in this Services Specification and the Agreement, of all Mobile Bins currently provided to, or subsequently provided to Service-Entitled Premises for that purpose will transfer to and remain with the Contractor during the Term.

The Contractor acknowledges that the risk of maintaining and replacing, where required, the Mobile Bins and all other risks in relation to the Mobile Bins as set out in this Services Specification and the Agreement is incorporated in its Agreement Prices.

### 10.5.3 At the End of the Term

At the Expiry Date:

- (a) all existing Mobile Bins and all Mobile Bins supplied to Service-Entitled Premises by the Contractor during the Term will become the property of the Council, free from encumbrances and other adverse interests;
- (b) the ownership and risk in any Mobile Bins held as recovered or repaired stock from discontinued services including Mobile Bins held for the purposes of compliance with clause 10.6 will revert to the Council; and
- (c) the Contractor must not remove any Mobile Bins from any of the Service-Entitled Premises.

On any earlier termination of the Agreement prior to the Expiry Date:

- (a) all Mobile Bins supplied to Service-Entitled Premises by the Contractor at the during the Term under this clause 10.5.3 will become the property of the Council, free from encumbrances and other adverse interests;
- (b) the ownership and risk in any Mobile Bin held as recovered or repaired stock from discontinued services including Mobile Bins held for the purposes of compliance with clause 10.6 will revert to the Council; and
- (c) the Contractor must not remove any Mobile Bins from any of the Service-Entitled Premises.

The ownership of all Mobile Bins delivered during the Term will revert to Council as specified in this clause 10.5.3 in exchange for a payment of \$1.00 plus GST in total for all Mobile Bins or any other waste containers utilised or acquired for the purpose of Waste, Recyclables, Garden Organics of FOGO Collection Services under this Agreement. All Mobile Bins and waste containers will remain distributed to the Service-Entitled Premises at the end of the Term.

### 10.5.4 No Arrangement to the Contrary

Except with the prior written approval of the Council, the Contractor must:

- (a) accept transfer of ownership of existing Mobile Bins from Council on the Services Commencement Date;
- (b) repair, replace or supply the necessary Mobile Bins when required during the Term; and
- (c) retain ownership of the Mobile Bins, free from encumbrances and other adverse interests, until ownership of the Mobile Bins passes to the Council under clause 10.5.3.

# 10.5.5 Survival of Rights and Obligations

The rights and obligations of the parties under this clause 10.5 will survive the termination or expiry of this Agreement.

### 10.6 Mobile Bin Repairs, Replacements and Additional Services

This clause relates to the following Mobile Bins as detailed in clause 9.2 of this General Specification:

- (a) Waste Mobile Bins;
- (b) Recyclables Mobile Bins;
- (c) Garden Organics Mobile Bins; and
- (d) FOGO Mobile Bins.

### 10.6.1 Repairs and Maintenance

The Contractor must effect repairs to and maintain all Mobile Bins during the Term or any extension of the Term.

### 10.6.2 Supply of Replacement Mobile Bins

During the Term or any extension of the Term, the Contractor must at its own cost supply and deliver a Mobile Bin(s) to any Service-Entitled Premise within the Service Area where a Mobile Bin has been:

- (a) lost or stolen; or
- (b) damaged or destroyed,

or as nominated by the Council.

The Contractor acknowledges and agrees that it has allowed for all cost associated with such supply, delivery and replacement of the Mobile Bins in the Agreement Prices for the Collection Service under this Agreement.

The Contractor must supply and deliver Mobile Bins under this clause 10.6.2 within two (2) Working Days of the Contractor becoming aware of the supply and delivery of Mobile Bins to the Service-Entitled Premises.

If the Contractor fails to meet the requirements of the delivery times of the Mobile Bins, then Council at its discretion may reduce the Fees that are otherwise payable to the Contractor in accordance with the Schedule 3 of the Agreement.

### 10.6.3 Supply of Additional Mobile Bins

The Contractor must supply Mobile Bin(s) to any Service-Entitled Premise as nominated by the Council to meet the requirements of Clauses 6.1 and 6.2 of this General Specification during the Term or any extension of the Term.

The Contractor is responsible for all costs associated with any Mobile Bins provided during the Term and is deemed to be included in the Agreement Prices.

# 10.6.4 Requirements for Replacement and Additional Mobile Bins

All Mobile Bins supplied by the Contractor to meet its obligation contained in clauses 10.6.1, 10.6.2 and 10.6.3 of this General Specification, must:

- (a) meet all of the obligations under clause 9 of this General Specification;
- (b) meet any additional obligations specified in the Services Specification for that particular service; and;
- (c) be in good working order; and
- (d) be new in the case of additional services under clause 10.6.3 of this General Specification.

# 10.6.5 Retrieval and Repair of Mobile Bins

The Contractor must retrieve all damaged Mobile Bins, or Mobile Bins no longer required (including cessation of Collection Service), at any Service-Entitled Premise and either:

- (a) recycle them where it is practicable;
- (b) dispose of them where a practicable recycling option is not available, if they are damaged beyond repair; or

(c) repair, sanitise and store them at the Contractor's Depot for re-issue to premises in accordance with Clause 10.6.4 of this General Specification,

as agreed by Council.

The Contractor must retrieve Mobile Bins, within two (2) Working Days of the Contractor becoming aware that a Mobile Bin requires repair, replacement or retrieval.

The Contractor is responsible for all costs associated with any retrieval and repair of all Mobile Bins.

If the Contractor fails to meet the requirements of the delivery times of the Mobile Bins, then Council at its own discretion may reduce the Fees that are otherwise payable to the Contractor amount in accordance with the Schedule 3 of the Agreement.

### 10.6.6 Delivery of Replacement and Additional Mobile Bins

The Contractor must undertake repairs in accordance with clause 10.6.1 of this General Specification and supply Mobile Bins(s) in accordance with clauses 10.6.2, 10.6.3 and 10.6.4 of this General Specification, to a Service-Entitled Premise within two (2) Working Days of:

- (a) Contractor becoming aware that the Mobile Bin has been:
  - i. lost or stolen; or
  - ii. damaged or destroyed; or
- (b) Council nominating a Service-Entitled Premises under clauses 6.1 and 6.2 for the provision of an additional service, new service or a change in the size of the service.

The Contractor is responsible for all costs associated with the replacement of, lost, stolen, damaged or additional Mobile Bins.

If the Contractor fails to meet the requirements of the delivery times of the Mobile Bins, then Council at its own discretion may reduce the Fees that are otherwise payable to the Contractor in accordance with the Schedule 3 of the Agreement.

# 10.7 Contractor to Advise and Replace

The Contractor must ensure that Contractor's Staff arrange for the replacement of Mobile Bins that are not serviceable or that are badly damaged or split, by a method approved by the Council. This may include, without limitation, advising the Customer by way of leaflet or posted letter of the procedure for organising replacement or repair of Mobile Bins.

The Contractor must advise the Council's Representative in writing within two (2) Business Days of it becoming aware of:

- (a) its Contractor's Staff causing any damage, other than fair wear and tear, to a Waste Container in the course of performing, or purporting to perform, the Collection Service; or
- (b) any Waste Container having been damaged, having significantly deteriorated or having been lost or stolen. For this purpose, the Contractor is deemed to be aware of all matters within the knowledge, or which should reasonably have been within the knowledge had reasonable care been taken, of its Contractor's Staff;

and report on the following to Council:

- (a) address of container;
- (b) date when noticed; and
- (c) type of damage to the container.

The Contractor is responsible for all costs associated with any damage to the Mobile Bins.

# 10.8 Mode of Delivery

The Contractor must deliver each Mobile Bin to a Service-Entitled Premise under clause 10.6.6 of this General Specification.

The Contractor must place the Mobile Bin within the boundaries of the Premises in a safe and secure manner. Where the Contractor is unable to access the Premises, then Contractor must place the Mobile Bin as close to the boundary or letterbox as possible.

If required by the Council, on delivery of the Mobile Bin(s) the Contractor must deliver a new service education package as detailed in clause 18 of this General Specification. Other requirements may also be specified under clause 18 of this General Specification.

# 11. Collection Vehicles and Depot

# 11.1 Supply and Standard of Vehicles

The Contractor must provide, and maintain throughout the Term, sufficient Collection Vehicles and Contractor's Plant to carry out its obligations under this Agreement in a safe, thorough, reliable, and efficient manner, including circumstances where any regular Collection Vehicles are unavailable for use on Services due to any cause.

The Contractor must ensure that Collection Vehicles are of a presentable appearance and represent the highly respected image and reputation of Council within the community.

The Contractor must ensure that all its Collection Vehicles used in carrying out the Services be new at the Services Commencement Date.

The Contractor must ensure that bin lifting mechanism fitted to all its Collection Vehicles used in carrying out the Services is capable of servicing the full range of standard mobile bin sizes required by Council.

All Collection Vehicles must be fitted with an automatic braking device, which engages when the driver alights from the Collection Vehicle. All Collection Vehicles must be fitted with rear view camera systems and monitor located in the cab of the Collection Vehicle so that the driver can observe pedestrian and other traffic when reversing.

The Contractor must at its own cost expand its fleet of Collection Vehicles and the capacity to service additional waste collection within Council's LGA as the number of Service-Entitled Premises increase due to growth and development.

The Contractor must also at its own cost provide any specific lifting and or servicing mechanism required to provide the service under this Agreement. Any such cost is deemed to have been included in the Agreement Prices for providing the service under this Agreement.

The Contractor must provide sufficient number of vehicles that can be used for the services throughout the term of the Contract including new and additional services required under the Agreement. The Contractor must also provide sufficient number of vehicles to service any changes introduced by Council such as introduction of FOGO. Any cost for additional vehicles is deemed to have been included in the Agreement Prices for providing the service under this Agreement. To avoid doubt, no additional payment will be made for additional vehicles over the term of the Agreement including the introduction of FOGO.

# 11.2 Vehicle Description and Identification

No less than two (2) months prior to the Services Commencement Date, the Contractor shall provide to the Council, a description of all Collection Vehicles to be used in the performance of this Agreement. Details must include for each vehicle:

- (a) Confirmation of purchase or lease;
- (b) the vehicle type and manufacturer's name;
- (c) compactor body type, size(s) and manufacturer's name; and
- (d) the noise level shown on the noise label attached to compactor.

At least one (1) week prior to the Services Commencement Date, the Contractor shall provide to the Council, the following information on all Collection Vehicles to be used in the performance of the Contract:

- (a) engine numbers;
- (b) date of manufacture;
- (c) chassis numbers;
- (d) manufacturers' specifications; and,
- (e) registration numbers.

This description and information will form the basis of the inventory required under clause 11.4 of this General Specification.

# 11.3 Changes to Fleet

Full details of any additions or deletions to the fleet must be notified to the Council for Approval prior to use under this Agreement. Any new, replacement or additional Collection Vehicles shall conform to the requirements of this Agreement.

### 11.4 Inventory of Plant in Use

On each anniversary of the Services Commencement Date, the Contractor must prepare, sign and deliver to the Council an inventory of the Contractor's Collection Vehicles and Contractor's Plant. This inventory must include details of any changes to Collection Vehicles made during the year, including spare Collection Vehicles. An updated inventory must be provided to the Council when any change is made.

# 11.5 Communication Equipment

For the purposes of effecting control over Collection Vehicles engaged in this Agreement, the Contractor must be able to establish immediate and effective communication with Collection Vehicles from the Contractor's office. All Collection Vehicles operated by the Contractor in delivering the Services must be fitted with an effective communication system, such as cellular telephones or two-way radios.

# 11.6 Technology on Collection Vehicles

In addition to the technology provided by the Contractor on the Collection Vehicles in accordance with the requirements of this Agreement, the Contractor must allow Council to install technology from time to time at Council's own cost that will allow Council to gather data and information for its own LGA. Such technology will not hinder or change the Collection Services of the Contractor.

Use of Council's own technology on Council's vehicles in accordance with this clause 11.6 will not incur any additional costs to Council.

# 11.7 Collection Vehicle Appearance and Signage

Each Collection Vehicle cab and body must be professionally decorated as required and approved by the Council, unless specific requirements are detailed in this Services Specification. The Collection Vehicle(s) signage must be available for inspection by the Council not less than three (3) weeks prior to the Services Commencement Date. All Collection Vehicles must be clearly numbered. Signage may include a requirement that the Council's logo be painted on the vehicle and words to the effect that the Contractor is a contractor to the Council. Vehicles must be of a presentable appearance to the satisfaction of Council.

All original signage as required by this clause 11.7 must by be undertaken by the Contractor at their own cost.

Council may from time to time request the changes to the signage in accordance with clause 23.2.

### 11.8 Maintenance of Collection Vehicles

Nothing in this clause 11 limits or affects the Contractor's obligations under the Operative Terms with respect to Collection Vehicles or Contractor's Plant, including under clause 6 of the Operative Terms.

All Collection Vehicles must be kept clean to the satisfaction of the Council and washed down both inside and outside as required by Council. Cleansing must be carried out at the Contractor's Depot or at another facility approved by the Council.

All Collection Vehicles must:

- (a) be operated, maintained and serviced to the manufacturers' manuals, guidelines and specifications;
- (b) be maintained in good repair mechanically;
- (c) be in a clean, reliable and roadworthy condition; and
- (d) be of presentable appearance.

# 11.9 Emission Management System for Diesel Vehicles

The Contractor must ensure that each Collection Vehicle that is a diesel vehicle complies, is in line with, or exceeds the relevant national standard for Diesel Vehicle Maintenance.

## 11.10 Collection Vehicle Use

Unless otherwise approved by the Council, Collection Vehicles may not be used for any purpose other than the provision of Services specified under this Agreement.

### 11.11 Contractors Depot

The Contractor must, throughout the Term, provide and maintain in:

- (a) good repair, order and condition; and,
- (b) a clean, presentable and sanitary state,

to the satisfaction of the Council, a site to accommodate the Contractor's Vehicles and Contractor's Plant (the "Contractor's Depot"). The Contractor's Depot must be located at the Depot, but the

Contractor may change the location of the Contractor's Depot from time to time with prior written notice to Council.

The Contractor must allow Council to enter the Contractor's Depot during operating hours on any Working Day to examine the Contractor's Depot. The Contractor must provide reasonable assistance to the Council for the purpose of such examination.

### 11.12 Collection Vehicle Wash-Downs

The Contractor shall: .

- (a) provide and maintain, at the Contractor's Depot, a minimum of one (1) vehicle wash down bay;
- (b) cause all sludge and water deposited from the wash down bay to be disposed of in a manner approved by Council and in accordance with any applicable Law.

### 11.13 Contractor's Office

The Contractor must provide and maintain an office with an operative telephone and email system, which must be staffed for the receipt of messages, directions and instructions between the hours of 8:00am and 5:00pm on every Working Day.

The Contractor must provide the Council with telephone numbers in the Contractor's Office prior to the Services Commencement Date and must inform the Council of any changes to such telephone numbers within twenty-four (24) hours of the change being made.

The Contractor must provide and keep up to date the contact details of data management personnel that will assist Council with such information as the collection data and information in relation to any incidents involving the Contractor's vehicles as required under clause 20 of this Services Specification.

The Contractor must provide Council with alternate arrangements for holiday periods such as Christmas and New Year and any other alternate arrangements due to government directives of changes to working arrangements and shutdowns.

# 11.14 Emergency Contact Number

The Contractor will provide two (2) alternative contact numbers (including mobile numbers) where the Council may have emergencies addressed when the Contractors Office is unattended. These telephone numbers must be available twenty-four (24) hours a day, every day of the year.

# 12. Work, Health and Safety

# 12.1 Contractor Work Health and Safety Management System

The Contractor must establish, implement and operate a Work Health and Safety Management System.

The Contractor warrants and represents that the Work Health and Safety Management System:

- (a) will ensure that any premises controlled by the Contractor, where any persons are performing work, are safe and without risks to health;
- (b) will ensure that any plant or substance provided for use by any persons performing work are safe and without risks to health when properly used;

- (c) will ensure that systems of work, including the working environment, are safe and without risks to health;
- (d) will provide such information, instruction, training and supervision to ensure health and safety in the provision of the Services;
- (e) will provide adequate facilities for persons performing the Services;
- (f) will have work health and safety policies and procedures and will provide any persons performing work, with information, instruction, training and supervision as required as to those policies and procedures and their duties and obligations in relation to work health and safety;
- (g) will provide any persons performing work, with information, instruction training and supervision in relation to changes and amendments to the work health and safety policies and procedures and their duties;
- (h) will ensure that any subcontractors comply with and implement their own Work Health and Management System;
- will ensure that any subcontractor's Work Health and Safety Management System is kept up to date with developments in work health and safety including legislation changes, new guidelines and codes and amendments to guidelines and codes; and
- (j) will comply with any legislative requirements.

The Work Health and Safety Management System must be:

- (a) submitted to the Council for Endorsement under clause 7.3 of the Operative Terms;
- (b) submitted to the Council under clause 7.4.2 of the Operative Terms after any changes are made; and
- (c) be reviewed and, if necessary, updated under clause 7.4 of the Operative Terms at least by each anniversary of the Services Commencement Date.

The Work Health and Safety Management System must include as a minimum:

- (a) the Contractor's assessment of all risks, including hazard identification, arising from its performance of its obligations under this Agreement
- (b) the Contractor's work health and safety risk assessment and risk management procedures
- (c) the Contractor's work health and safety policy and objectives
- (d) the Contractor's work health and safety procedures and action plans
- the Contractor's organisational structure and allocation of responsibilities, accountability and resources in relation to work health and safety
- (f) safe work methods statements
- (g) the Contractor's work health and safety information, instruction, training, supervision and induction of all persons performing the Services
- (h) the Contractor's work health and safety auditing and inspection procedures
- (i) the Contractor's work health and safety consultation procedures
- (j) the Contractor's work health and safety Incident reporting procedures
- (k) the Contractor's work health and safety review of risk assessments and control measures and review of the Work Health and Safety Management System more generally
- (I) the Contractor's work health and safety performance monitoring

- (m) the Contractor's collection and analysis of work health and safety data and records
- (n) the Contractor's emergency procedures and provision for medical and first aid treatment.

# 12.2 Work Health and Safety Performance Reporting

The Contractor must, when requested by the Council, provide evidence of the Contractor's ongoing implementation of the Work Health and Safety Management System.

The Contractor must also provide the following information to the Council, on a monthly basis:

- (a) the 'lost time' frequency injury rate of the Contractor's employees, agents or subcontractors
- (b) the number of Working Days lost due to injury
- (c) the number of 'near miss' Incidents
- (d) the current status of any injured personnel, damaged property or environmental damage or pollution
- (e) the status of the implementation and outcomes of corrective actions undertaken as a result of Work Health and Safety inspections and risk assessments
- (f) the status of Work Health and Safety Management System audits undertaken by the Contractor; and,

the Contractor must, when requested by the Supervisor, provide reports on Work Health and Safety inspections, audits or assessments undertaken during the Term.

# 12.3 Work Health and Safety Assessment

At least three (3) months prior to the Services Commencement Date, the Contractor must perform a work health and safety assessment of all sites that the Contractor will access for the purpose of all works under this Agreement. This will include, but not limited to:

- (a) collection of 360L, 660L and 1100L Mobile Bins;
- (b) servicing of Static Compactors with Hook lift Trucks; and
- (c) any other onsite collection as required by Council.

Upon completion of the work health and safety assessment, the Contractor must provide Council with the report outlining the assessment findings. The Contractor must work with Council and the Customers to ensure all standards required under this Agreement is met while providing the Collection Service.

# 12.4 Prosecution Notification

Without limiting or affecting the Contractor's obligations under clause 5.14 of the Operative Terms, the Contractor must promptly notify the Council of any fines, charges or notices (including but not limited to improvement and prohibition notices) which are issued to the Contractor under WHS Law and which are issued either during the performance of Services or as a result of the Services. If requested by Council, the Contractor must, within three (3) Working Days after receiving any such fine, charge or notice at any other time on request by Council, provide the Council with (as requested):

- (a) details of such fines, charges or notices; or
- (b) a copy of such fines, charges or notices; or

(c) a written report into such fines, charges or notices.

# 12.5 Emergency Plan

The Contractor must prepare an Emergency Plan and submit it to Council for Endorsement under clause 7.3 of the Operative Terms. The Emergency Plan must be reviewed and, if necessary, updated under clause 7.4 of the Operative Terms, at least by each anniversary of the Services Commencement Date.

The Emergency Plan must include as a minimum:

- (a) a list of events that would constitute an emergency;
- (b) the name(s) of the persons who will declare an event to be an emergency;
- the procedures for contacting the Nominated Facilities and Alternative Facility and Council
  to specify alternate arrangements; and,
- (d) the procedure for communicating the effect of the event to Customers if the Council considers it necessary to inform Customers of the event.

Events that constitute an emergency in the Emergency Plan may constitute interruption of Service.

# 13. Quality Management

# 13.1 Preparation of Quality Plan

The Contractor shall have a quality management system ("Quality Plan") which shall monitor, control and manage the work being undertaken under this Agreement.

A draft Quality Plan must be submitted to Council for Endorsement under clause 7.3 of the Operative Terms.

The Quality Plan must identify all critical quality aspects of the Service and establish procedures for meeting the Contractor's obligations in respect of the critical quality factors, which must, include:

- (a) quality assurance philosophies, policies and procedures;
- (b) continuous improvement philosophies, policies and procedures;
- (c) details of how the Quality Plan will be implemented, reviewed and maintained;
- (d) collection methodology;
- (e) procedures for Customer and Council notification related to non-collection;
- (f) quiet work practice strategy to minimise noise impacts;
- (g) proposed methodology to measure and report compaction levels of Recyclable Waste:
- (h) procedures for rectification of requests including Missed Collections outside the times of collection as specified under Clause 4.3 of this General Specification;
- procedures for Customer and Council notification related to non-collection and Mobile Bin presentation problems,
- (j) performance measures and methods used by the Contractor to monitor performance;
- (k) final Contamination management strategy and procedures including periodic reporting as specified under clause 7 of the Recyclables Collection Specification, clause 8 of the Garden Organics Collection Specification and the FOGO Collection Specification;

- details of audits to be used to ensure that the service is provided consistently in accordance with this Agreement;
- (m) request rectification reporting; and
- (n) reporting procedures and schedule.

#### 13.2 Review of Quality Plan

The Contractor must review and, if necessary, update the Quality Plan under clause 7.4 of the Operative Terms at least annually within one (1) month of each anniversary of the Services Commencement Date.

### 13.3 Business Continuity and Resilience Plan

The Contractor shall have a Business Continuity and Resilience Plan which shall outline how the Contractor plans to continue the provision of the Services to Council in circumstances including a pandemic, natural disaster and or emergency.

A draft Business Continuity and Resilience Plan must be submitted to Council for Endorsement under clause 7.3 of the Operative Term.

The Business Continuity and Resilience Plan must identify all critical aspects of the Services and establish procedures for meeting the Contractor's obligations in respect of the critical business continuity factors, which must, include at a minimum:

- (a) Business continuity philosophies, policies and procedures;
- (b) details of how the Business Continuity and Resilience Plan will be implemented, reviewed and maintained;
- (c) work practice and strategy to minimise disruption in the event of pandemic, natural disaster and or any other emergency;
- (d) alternative arrangements in circumstances where the Contractor's Depot (including the Depot) is unavailable or inadequate for the purposes of the Services;
- (e) proposed methodology and process for dealing with events covered under the Business Continuity and Resilience Plan;
- (f) procedures for Customer and Council notification related to events covered under the Business Continuity and Resilience Plan; and
- (g) reporting procedures.

### 13.4 Review of Business Continuity and Resilience Plan

The Contractor must review and, if necessary, update the Business Continuity and Resilience Plan under clause 7.4 of the Operative Terms at least annually within one (1) month of each anniversary of the Services Commencement Date.

# 13.5 Preparation of Services Termination Transition Plan

The Contractor must prepare a Services Termination Transition Plan for the transition of the Services to Council or a replacement contractor at expiry of the Term or earlier termination of this Agreement.

A draft Services Termination Transition Plan must be submitted to Council for Endorsement under clause 7.3 of the Operative Terms.

The Services Termination Transition Plan must identify the program, activities and milestones to ensure an efficient and cooperative transition of services at the end of the Term or earlier termination of this Agreement, including at a minimum:

- (a) transfer of data;
- (b) program and key milestones of activities; and
- (c) reporting procedures to provide Council with assurance that the handover will be carried out with minimal interruptions.

#### 13.6 Review of Services Termination Transition Plan

The Contractor must review and, if necessary, update the Services Termination Transition Plan under clause 7.4 of the Operative Terms at least annually within one (1) month of each anniversary of the Services Commencement Date.

### 13.7 Special Events Waste Management Plan

At least five (5) days prior to each Special Event, the Contractor shall develop, for the Council, a Special Event Waste Management Plan for Waste and Recyclables collection specific to the Special Event to be held.

The Special Events Waste Management Plan for Waste and Recyclables collection must be prepared to Council's reasonable satisfaction and must include at a minimum:

- location plan for the siting of Mobile Bins;
- · proposed numbers of plant and labour resources and timing of their availability;
- setting up procedure for the placement of Mobile Bins;
- Mobile Bin numbers and sizes; and
- methodology for servicing of the Mobile Bins both during the Special Event and at the conclusion of the Special Event.

The Contractor must implement the Special Events Waste Management Plan for Waste and Recyclables prepared under this clause 13.7 in respect of the Special Event.

# 14. Environmental Management

### 14.1 Preparation of Environmental Management Plan

The Contractor must prepare (if not already in existence) and submit to Council for Endorsement under clause 7.3 of the Operative Term an Environmental Management Plan that complies with AS/NZS ISO 14001:2016 and which details the impact of its service delivery on the environment and measures to improve environmental performance and management, including emissions from Collection Vehicles.

#### 14.2 Incident Notice and Prosecution Notification

If the Contractor is required by any legislation to give any notification of any environmental damage occurring during the performance by the Contractor of its obligations under this Agreement, the Contractor must at the same time, or as soon thereafter as possible in the circumstances, give a copy of such notification to the Council within four hours from the time of incident.

The Contractor must promptly notify the Council of any other environmental damage which occurs during the performance of the Services whether or not it is required to give notification to any Authority.

The Contractor must promptly notify the Council of any fines, charges or notices issued to the Contractor under any environmental legislation and which are issued either during the performance of Services or as a result of the Services. If requested by the Council, the Contractor must, within three (3) Business Days after the imposition of any such fine, the laying of any charge or the service of any notice or request by Council provide the Council with details of or a copy of or a written report relating to such fine, charge or notice.

Nothing in this clause limits or affects the Contractor's obligations under clause 5.14 of the Operative Terms.

### 14.3 Review of Environmental Management Plan

The Contractor must review and, if necessary, update the Environmental Management Plan under clause 7.4 of the Operative Terms at least annually within one (1) month of each anniversary of the Services Commencement Date.

#### 15. Industrial Relations and Workforce Plan

The Contractor must prepare an Industrial Relations and Workforce Plan and submit it to Council for Endorsement under clause 8.3 of the Operative Terms.

The Industrial Relations and Workforce Plan must address issues involving the Contractor's workplace and workforce on the provision of Services under this Agreement, including Industrial Action.

The Industrial Relations and Workforce Plan must include, as a minimum, information regarding:

- (a) the number of persons employed or engaged by the Contractor to perform the Services;
- (b) the classifications of persons employed or engaged by the Contractor to perform the Services;
- (c) the Industrial Instruments which apply to the persons employed or engaged by the Contractor to perform the Services;
- (d) any agreements entered into which impact on or affect how disputes under Industrial Instruments are to be resolved or dealt with;
- (e) details of the arrangements with any subcontractors;
- (f) details of any negotiations to replace the Industrial Instruments which apply to the persons employed or engaged by the Contractor to perform the Services;
- (g) to the extent not otherwise covered by paragraphs (c) or (d) above, the process for resolving disputes regarding matters affecting employees and subcontractors including the process for resolving Industrial Action or threatened Industrial Action;
- (h) the industrial relations history of the Contractor for the past two (2) years, including, number of industrial disputes and action, types of Industrial Action taken, days lost through Industrial Action, details of the court or tribunal actions associated with the Industrial Action;
- any current matters being litigated, mediated, arbitrated or heard before dispute resolution providers or an industrial relations commission or tribunal, between the Contractor and the Contractor's employees, between the Contractor and any subcontractors, between the Contractor and any representative on behalf of the Contractors employee(s);

- any notices or correspondence issued by or on behalf of the Contractor's employees or subcontractors that threaten Industrial Action;
- (k) any notices or correspondence issued by or on behalf of the Contractor's employees or subcontractors seeking to make an enterprise agreement under the Fair Work Act 2009 (Cth) or any replacement legislation;
- any notices or correspondence issued by or on behalf of the Contractor's employees or subcontractors pursuant to legislation; and
- (m) indicate how and when the Council will be notified of Industrial Action or threatened Industrial Action.

The Contractor must review and, if necessary, update the Industrial Relations and Workforce Plan under clause 7.4 of the Operative Terms at least annually within one (1) month of each anniversary of the Services Commencement Date during the Term.

The Contractor must employ and manage staff in accordance with the Industrial Relations and Work Force Plan as updated in accordance with this Clause.

### 16. Heavy Vehicle Chain of Responsibility (CoR)

The Contractor must prepare and submit to Council under clause 7.3 of the Operative Terms a Chain of Responsibility System (CoRS) specifically developed for the works outlined in this Agreement. The Contractor must review and, if necessary, update the CoRS under clause 7.4 of the Operative Terms at least annually within one (1) month of each anniversary of the Services Commencement Date.

The CoRS must comply with all relevant laws effective in NSW and shall cover at least the following:

- (a) identification the Contractor's personnel responsible for ensuring compliance with CoRS;
- (b) methods for ensuring that the Contractor conducts relevant hazard and risk assessments to ensure compliance with CoR laws;
- (c) what controls are implemented by the Contractor to eliminate or minimise identified risks;
- (d) how the Contractor will monitor compliance with CoR laws;
- (e) how the Contractor shall prevent identified risks recurring;
- (f) how the Contractor will consult, cooperate and coordinate with Council regarding all compliance matters regarding the CoR laws;
- (g) approved KPIs for CoR performance;
- (h) how the Contractor shall report CoR performance to Council;
- how the Contractor shall design new processes or modification to existing processes for risk assessments, implementation of controls, monitoring methods, prevention of risks and reporting;
- any new or ongoing issues particular to the performance of the requirements under this.
   Agreement; and
- (k) the Contractor's timing and method for reviewing the operation of the CoRS.

The CoRS must include methods for managing CoR incidents. Without limiting or affecting the Contractor's obligations under clause 5.14 of the Operative Terms, the Contractor must ensure that Council is notified of all CoR incidents as soon as reasonably practicable. The Contractor must provide Council with a proposed resolution or contingency plan immediately following notification

to Council of any incident. In the event of any CoR incident, the Contractor must provide Council with the Contractor's intended response and remedy actions and confirm to Council when they have been successfully implemented.

### 17. Performance Management Committee

#### 17.1 Establishment of Committee

Council is committed to regular assessment of performance and continual improvement to work practices.

A Performance Management Committee shall be established to undertake the dual role of reviewing recent operations, and to consider future improvements to services.

### 17.2 Participation in the Committee

The Contractor and Council will each actively participate in joint meetings of the Performance Management Committee.

#### 17.3 Appointment of Committee Representatives

The Performance Management Committee must be comprised by the Council's Representative, Contractor's Representative and an additional nominee of Council and the Contractor under this clause.

The Council and the Contractor must each nominate one (1) representative to the Performance Management Committee (in addition to the Council's Representative and Contractor's Representative). Each will only select persons as representatives who have the necessary skills and knowledge to initiate and develop improvements of the nature specified in clause 17.4 of this General Specification. The Council may reject the appointment of any representative by the Contractor and the Contractor must promptly appoint another representative acceptable to the Council.

#### 17.4 Functions of the Committee

The Committee will monitor the Services and seek co-operatively to identify and investigate:

- (a) performance and problems in delivery of Services;
- (b) non compliance with service standards specified in this Part 1 General Specification;
- existence of trends in Contamination, resource recovery, glass breakage and disposal of materials;
- (d) measures that may be taken to increase and maintain resource recovery;
- (e) compaction rates;
- (f) technological developments and other possible improvements;
- (g) evaluation of and potential improvements to Contamination management procedures as specified under clause 7 of the Recyclables Collection Specification, clause 8 of the Garden Organics Collection Specification and the FOGO Collection Specification;
- (h) potential improvements to the efficiency, quality and productivity of Services;
- (i) promoting safer work practices;
- (j) promoting quieter work practices;

- (k) potential improvements to Customer Service Centre efficiency, quality and productivity;
- (I) performance targets for Service(s); and
- (m) any other improvements that could be made to Services.

### 17.5 Committee Procedure

The Performance Management Committee must be chaired by one (1) of the Council's nominees. Such chairperson will determine the procedures of the Performance Management Committee and call meetings as required.

Meeting frequency may be every month in the lead-up to the commencement of services and during the first twelve (12) months of the Term, then at least every three (3) months during the balance of the Term.

### 17.6 Decisions of Committee not Binding

Nothing requires any party to accept any proposals or decisions of the Performance Management Committee, and no decision of the Performance Management Committee will bind a party.

The outcomes of the Performance Management Committee will be achieved as a result of goodwill and a common desire to maximise the recovery of Recyclables and Organics and to provide the best possible services to the Customer. Both parties may agree to a variation to this Agreement to reflect the outcome of the Committee's work.

### 18. Community Education

### 18.1 Pre Service and Start Up Contribution

The Contractor must allow an amount of \$120,000 for development and implementation of pre service and start up education as part of the distribution of the new Mobile Bins to all Service-Entitled Premises. The minimum amount must be expended for this purpose prior to the Services Commencement Date. This education will be in addition to the education undertaken by Council on an ongoing basis.

The Contractor must provide a breakdown of this expenditure for the material to be delivered with the new Mobile Bins and the implementation of the education related to the commencement of the service.

#### 18.2 Annual Education

#### 18.2.1 Annual Financial Contribution

The Contractor must contribute an amount of \$1.60 per Service-Entitled Premises per annum during the Term.

#### 18.2.2 Annual Increase in Financial Contribution

The financial contribution outlined in clause 18.2.1 of this General Specification will increase each year of the Term by CPI (All Groups Sydney) and the amount for the following financial year will be determined on 1 July of that financial year based on the most recent CPI (All Groups Sydney) figures available.

#### 18.2.3 Contractor to Develop and Deliver Waste Education

Within the financial contribution outlined in clauses 18.1 and 18.2.1 of this General Specification, the Contractor will nominate and provide appropriately qualified and experienced personnel to undertake the education program on behalf of Council. The Contractor must provide Council with a copy of the personnel's past employment history or position description if the new personnel are being employed for this purpose.

The Contractor will provide all appropriate office accommodation, equipment and resources necessary for education personnel to undertake all duties in a professional and timely manner.

#### 18.2.4 Purchase of Environmentally Preferable Goods

The Contractor must purchase environmentally preferable goods, where possible, for the development of the pre service and start up education. This would include goods that are either recycled, recyclable or biodegradable with preference given to locally sourced and produced goods. Printed materials comply with AS14021 and the NSW Government Resource Efficiency Policy. Non-recycled paper must be sourced from sustainable sources accredited under the, FSC, PEFC with preference given to locally sourced and produced goods.

#### 18.2.5 Annual Education Plan

Two (2) months prior to each anniversary of the Services Commencement Date, the Contractor must prepare and submit for Council Endorsement under clause 7.3 of the Operative Terms, a detailed Annual Education Plan for the following year of this Agreement.

#### 18.2.6 Contents of Annual Education Plan

The annual education plan must be developed within the framework of Council's waste education objectives and must include:

- (a) ultimate and immediate outcomes of the plan;
- (b) detailed costings of materials and labour for all works to the value of the annual education contribution as outlined in Clauses 18.2.1 of this General Specification;
- (c) groups that the plan will target;
- (d) strategies to be used to target each group;
- (e) new resources to be developed;
- (f) reprinting of existing resource materials as required;
- (g) proposed environmentally preferable goods to be purchased;
- (h) details of how the plan will complement or enhance other contractual obligations such as Contamination management;
- (i) specific timeframes and responsibilities for carrying out tasks;
- (j) reporting timeline and methods;
- (k) details on how the plan will be evaluated including useful, feasible key performance indicators for the ultimate and immediate outcomes; and
- roles and responsibilities for development, approvals and delivery.

The Annual Education Plan must be Endorsed by Council prior to implementation.

Council reserves the right to make amendments or additions to the Annual Education Plan prior to final Endorsement. Such amendments or additions to the Annual Education Plan will not require the

Contractor to exceed the financial contributions stipulated at clause 18.2.1 and clause 18.1 of this General Specification.

#### 18.2.7 Reporting

The Contractor must provide to Council a detailed annual report on the activities and outcomes of the education program. The report will include an evaluation of performance against the agreed indicators as outlined in the Annual Education Plan as well as a detailed analysis of all associated expenditure.

Other activity reports may be required at agreed intervals throughout the year. A reporting timeline and methods will be provided with the annual education plan.

#### 18.2.8 Use of an Independent Service Provider

Should Council deem that the Contractor cannot satisfactorily provide appropriately qualified or experienced personnel, or, should the Contractor be found non-compliant in delivery of performance against agreed indicators, Council reserves the right to use the financial contribution outlined in Clauses 18.2.1 of this General Specification for engagement of an independent service provider.

Should this Clause be enacted, the total financial contribution required under clause 18.2.1 will be paid directly to the Council, in advance, on each anniversary of the Services Commencement Date.

#### 18.2.9 Verification and Approval of Materials

All communication from the Contractor to the Customers including education initiatives and collateral must be approved by the Council prior to distribution to Customers.

#### 18.2.10 Audit

The Contractor shall provide the Council sufficient information and documentation to enable it to audit the expenditure of the amounts referred to in clause 18.1 and clause 18.2.1 of this General Specification. Any shortfall in such expenditure may be deducted by the Council from any moneys payable to the Contractor pursuant to this Agreement.

#### 18.3 Dedicated Education Officer

During the Term, the Contractor must provide at its own cost one (1) fulltime employee dedicated to Council's education and contamination reduction program for Garden Organics or FOGO and Recyclables Collection.

The Dedicated Education Officer(s) provided by the Contractor will be in addition to the Annual Education Contribution required under clause 18.1.

The Dedicated Education Officer(s) must:

- (a) be employed by the Contractor and available for work at the commencement of this Agreement;
- (b) work closely with Council at the commencement of this Agreement to develop the work program for the education required leading up to the commencement of the Collection Service;
- (c) be available to work a minimum of 35 hours per week and when required be available to commence work early in line with the start times of scheduled collection under this Agreement;

- (d) be available to work from Council's nominated offices as required by Council;
- (e) implement the work program for the Domestic Collection Service as required by Council during the Term;
- (f) work closely with Council to develop annual work program prior to the 1 July of each year during the Term;
- (g) implement the annual work program as required by Council;
- (h) provide relevant reporting related to the work program developed and implemented by the Education Officer;
- contribute to the development of the annual education program required under clause 18.1; and
- (j) attend regular meetings with Council to discuss the progress against the annual work program and any other matter deemed necessary for the development and implementation of the of the work program.

### 19. Reporting Requirements

Unless otherwise agreed by the Council, the Contractor will be required to provide facilities for electronic transfer of information to and from the Council. As a minimum requirement, and without limiting any other reporting or notification obligation under this Agreement, the Contractor will be required to provide the following reports and data for each service:

Timing	Reporting Requirements
Daily (Telephone)	<ul> <li>urgent (within one (1) hour) notifying Council of serious personal injury or damage to property, or any significant interruption to the services for whatever cause</li> <li>immediate (within two (2) hours) notifying the council of any major malfunction of contractor's equipment, industrial situations, non-availability of facilities that has the potential to interrupt service</li> <li>routine (within three (3) hours) notifying the council of other service problems that customer service staff may need to respond to customer enquiries.</li> </ul>
Daily Report	<ul> <li>Daily incidents report. If no incidents, indicate that there were no incidents.</li> <li>Contaminated Recyclables, Garden Organics and FOGO Mobile Bins.</li> <li>Overflowing Mobile Bins.</li> </ul>
Weekly	<ul> <li>notifying the council of any service problems, industrial action, early start or serious requests including requests about contractor work health and safety, and service deficiencies that have occurred in the past week.</li> </ul>
Monthly	<ul> <li>quantities of materials collected, broken down by type</li> <li>compaction rates of recyclables including average, median, minimum and maximum</li> <li>total number of scheduled collections for all service types</li> </ul>

Timing	Reporting Requirements
ž.	compliance with performance benchmark or targets as specified in Schedule 3 of the Agreement
	WHS Law reporting requirements
	any other relevant issues relating to the past month's services
	any issues that the contractor becomes aware of that may affect services in future
127	graphical reports of service provision over the preceding twelve (12) months, showing trends
	the number of mobile bins repaired and/or replaced during the month
	the details and number of new and additional services provided within the month
	Response to the customer requests forwarded to the Contractor from Council.
Quarterly	average Recyclable Waste contamination rates;
	average Garden Waste and FOGO Waste contamination rates.
Annually upon anniversary of Services Commencement Date	Work Health and Safety management system/updates
	Emergency Plan/updates
	Quality Plan/updates
	Environmental Management Plan/updates
	Industrial Relations and Workforce Plan/updates
	insurances review and update
	revised annual education plans.
Upon early termination or end of contract	Number of Mobile Bins replaced by Mobile Bin type and the month and year they were replaced
	<ul> <li>List of all Mobile Bins as distributed by Mobile Bin type that are is being serviced by the Contractor.</li> </ul>

In addition to the reporting requirements outlined in the table above, the Contractor must meet all the Data Management and reporting that is required under clause 20 of this General Specification.

# 20. Data Management

Throughout the Services Term the Contractor must at its own cost provide a Data Management System for Waste Collection, Recyclables Collection and FOGO Collection Service. The Data Management System must at a minimum satisfy the requirements of this clause 20.

### 20.1 Navigation and Tracking

The Data Management System must provide the navigation and tracking such as Global Positioning System (GPS) Navigation data from all Collection Vehicles utilised for this Agreement, including any replacement Collection Vehicles. The data must include:

- (a) collection schedule for each truck in each collection zones;
- (b) GPS location of each Collection Vehicle during the daily collection runs;
- (c) location and times of the Collection Vehicles for collection of each bin;

- recorded video footage of the incidents related to the Contractor's vehicles and its ability to substantiate the evidence for any claims resulting from the incidents;
- (e) vision system that covers the surrounding of the Collection Vehicles;
- (f) situational awareness capability of the drivers of the Collection Vehicles; and

#### 20.2 Collection Information

Provide daily collection information for each Service-Entitled Premises including:

- (a) collection times for Waste collection, Recyclable Waste collection, Garden Waste collection and FOGO Waste collection service at each Service-Entitled Premise;
- (b) collection issues at the Service-Entitles Premises, which includes:
  - damaged/broken bins
  - overflowing bins
  - obstructed bins
  - bins that have contamination
  - incorrectly presented bins
  - presentation and non-presentation of bins at the service entitled premises
  - Missed Collections and the times the Missed Collections are collected or attempted to be collected.

#### 20.3 Existing Data

The Data Management System must integrate the existing data from the Council and be capable of adding data to the system that will ensure continuity of data from the Council's existing Collection Service to the Service provided under this Agreement. The existing data from the Council may include such information as:

- (a) Council's database of Service-Entitled Premises;
- (b) existing collection service and collection schedules;
- (c) existing bin types and collection methods; and
- (d) existing contamination history related to any Service-Entitled Premises.

#### 20.4 Contamination Management

The Data Management System must have capabilities to integrate all information in relation to Contamination and Gross Contamination including, but not limited to the following:

- (a) photographic evidence of contamination that enters into the truck. Photographic evidence must be recorded and be of suitable quality that clearly delineates contamination from Recyclable Waste, Garden Waste and FOGO Waste as specified in clause 7 of the Recyclables Collection Specification, clause 8 of the Garden Organics Collection Specification and the FOGO Collection Specification;
- ability to generate letters and or other educational correspondence to the service entitled premises including photographic evidence of the specific contamination incidences;
- ability to manage the data for contamination history for each Recyclables Service-Entitled Premise, Organics Service-Entitled Premise and FOGO Service-Entitled Premise that shows contamination incidents;

- (d) statistics of contamination for specific areas and suburbs for council and the Contractor to assist in the development of the education plan as required by Council; and
- (e) provide information to the performance management committee as required by clause 17 of this General Specification.

#### 20.5 Web Based Portal and Online Access

The Contractor must at its own cost provide the Council with a web-based access to the data management system with secure login for the Council staff and any other personnel that the Council authorises to have online access of this data. The web based portal and online access must include, at a minimum:

- (a) collection service data that is accessible in real time through online login;
- (b) show a full history of the collection schedule for each collection vehicle including collection service at individual Service-Entitled Premises;
- (c) map based collection information showing the collection points;
- (d) search function, which has the ability to search collection service information by street, property, contamination issues, different waste streams and any other functions that are relevant to council to utilise the data captured by the data management system;
- show the address and GPS location of collection and any issues relation to collection such as Missed Collections;
- show full history of contamination issues at individual Service-Entitled Premises for both recyclables collection service and organic collection service including colour photographs of contamination and any other issues related to collection;
- (g) ability for council to analyse collection data including contamination data and produce various reports as required by Council; and
- (h) ability to generate letters with photographs to the Recyclables Service-Entitled Premises, Organics Service-Entitled Premises and FOGO Service-Entitled Premises on Council's letterhead to inform the residents of the Service-Entitled Premises of contamination and any other relevant issues in relation to the collection service.

#### 20.6 Data Integrity and Innovation

The Contractor must ensure that all data collected as part of this Agreement is of the highest standard and must be managed based on the industry standards for such data type. The Contractor must ensure the following:

- (a) quality of data collected is maintained to the highest standard so as to ensure that the data is stored and is accessible to council at all times in the format required by Council;
- (b) data is stored on industry standard secure server with back up to protect the loss of data
- the data management system is kept up to date throughout the Term to ensure all functionalities are current and compatible with the changes in the industry software and hardware;
- ensure that there are sufficient flexibilities in the data management system to allow for innovation;
- (e) ensure that the data management system is able to expand to meet new collection types should council make changes to its collection service;

- ensure that data can be transferred in a systematic manner in industry standard formats;
   and
- (g) breakdowns in the data management system are managed promptly without loss of any data and functionality.

### 20.7 Data Accessibility and Ownership

All data collected as part of this Agreement shall remain the property of the Council and must be accessible to the Council at all times during the Term and beyond where required. The Contractor must ensure that:

- (a) all data collected is accessible to Council at all times through an online web portal and in the format agreed upon by Council;
- (b) the data can be manipulated to produce special reports if and when required by Council;
- (c) at the Expiry Date, the data collected throughout the Term is transferred to Council in the format agreed upon by Council; and
- (d) at the Expiry Date, the Contractor must continue to allow council to use the information through the web-based portal for a period of up to 6 months from the Expiry Date. Council must ensure that the web portal and online access will only be used by Council during this period.

### 21. Waste Recyclables or Organics Audits

#### 21.1 General

From time to time Council, the NSW EPA or any other agency authorised by Council will undertake audit of domestic waste streams. For any such audit, Council will inform the Contractor no later than 10 Business Days prior to the commencement of the audit.

The form of audits undertaken by Council will include audits of the Mobile Bins at the kerbside on the day of collection or at the back of the Collection Vehicle as required by Council.

The Contractor must ensure it cooperates with Council, the authorised agency and either or their respective waste audit contractors to ensure that the audit is undertaken efficiently and effectively.

#### 21.2 Frequency of Kerbside Audits

Council shall undertake kerbside audits of all domestic waste streams. The kerbside audit shall be conducted:

- (a) at a time considered to be representative of the year and excluding school holidays and Special Events;
- (b) every two (2) years at approximately the same time of year as the previous audit or any other time as Council determines to undertake the audit.

Council will inform the Contractor at least 10 Business Days prior to the commencement of the kerbside audit.

#### 21.3 Purpose of Kerbside Audits

Kerbside audits shall be conducted to determine:

(a) the composition of all waste streams;

- (b) the proportion and composition of potentially recoverable material available in the Waste stream:
- (c) the proportion and composition of unacceptable materials within the Recyclables, Garden Organics and FOGO streams; and
- (d) the recovery rate of Organics and of the individual Recyclables.

### 22. Variations and Better Performance

#### 22.1 Innovation and Trials

During the Term the Contractor is encouraged to propose innovative arrangements to the provision of Services for incorporation in the current or future contracts. Service trials may be undertaken provided the Council is satisfied that improved performance will result.

Prior to any trial the Contractor and the Council must agree on a price, set evaluation criteria, and performance measures for the trial.

Council, at its discretion, may use persons, other than the Contractor to conduct trials.

### 22.2 Innovation, Improved Services and Reduced Costs

During the Term either party may propose changes to Services that will deliver service improvements, improved resource recovery and performance outcomes or reduced costs. Where these proposals achieve cost savings then these will be shared equally between the parties.

The terms of any changes must be agreed upon and approved by Council prior to its implementation.

# 23. Advertising

### 23.1 No Advertising without Council Consent

The Contractor shall not advertise, nor permit advertising, on Collection Vehicles or Mobile Bins except as permitted in Clause 23 of this General Specification.

Council, at its absolute discretion, may permit the Contractor to affix Council's message to Collection Vehicles and/or Mobile Bins.

#### 23.2 Messages on Collection Vehicle

If the Council directs the Contractor to affix any messages on Collection Vehicles then the Contractor must permit such advertising to be so affixed to the vehicle.

The cost of any message placed on the Collection Vehicle at the request of Council under this clause 23.2 will be paid for by Council.

# 24. Obligations of the Contractor

#### 24.1 Changes in the Method of Collection

During the Term, Council may introduce new methods of collection such as underground network of collection as a trial or permanent collection method.

Where Council proposes to undertake such change in the collection method, the Contractor must cooperate with Council to facilitate the changes.

Any new method of collection will be subject to a variation to this Agreement or a separate Contract that Council will enter into with the Contractor or another proponent through a procurement process conducted by Council in its discretion.

### 24.2 Research and Trials by Council

During the Term, Council may undertake research and trials for the purpose of:

- (a) waste education;
- (b) new collection methods;
- (c) waste auditing; or
- (d) any other purpose.

When required by Council, the Contractor must cooperate with Council in such research and trials at no additional cost to Council.

### 25. Collections from Council parks and reserves

Despite any other clause in this Agreement, the Contractor is not required to, and must not (unless otherwise agreed in writing by Council), provide Waste Collection Services and Recyclables Collection Services in relation to public-place bins located in parks and reserves.

# Part 2: Waste Collection Specification

### Part 2: Waste Collection Specification

#### 1. Introduction

This Part defines explicit requirements for the collection of Waste from Waste Service-Entitled Premises in the Service Area and transport to the Nominated Disposal Facility. It must be read in conjunction with the General Specification, to form the complete specification in relation to the Waste Collection Service.

The Contractor must ensure that the Waste Collection Services provided under this Agreement address the requirements of the General Specification as well as this Waste Collection Specification. In respect of the Waste Collection Services, to the extent of any inconsistency between the General Specification and Waste Collection Specification, this Waste Collection Specification shall have precedence.

### 2. Service Requirements

Throughout the Services Term, the Contractor must provide a Waste Collection Service to the nominated Waste Service-Entitled Premises and at specified frequencies within the Service Area, in accordance with this Agreement.

Waste Service-Entitled Premises include nominated single premises and multi-occupancy premises, and those premises identified as other Waste Service-Entitled Premises.

### 2.1 Collection Service and Frequency for Single Premises

The base service level for Waste collection at a Single Unit Dwellings during Service Period A which will be:

140L red lid Mobile Bin collected weekly for Single Unit Dwellings.

If Council adopts FOGO Option, being the FOGO Collection Services, then during Service Period B the base service will be:

- 140L red lid Mobile Bin collected weekly from all Single Unit Dwellings; or
- 240L red lid Mobile Bin collected fortnightly from all Single Unit Dwellings if Council chooses to change to fortnightly collection of Waste.

Additional service(s) shall be available to Customers. If requested by Council, the Contractor must upgrade 140L Mobile Bin to 240L Mobile Bin and where required, make available additional 240L Mobile Bins, as specified in clause 2.4 of this Waste Collection Specification.

All collections will be from the Kerbside or an Alternate Collection Point, with the exception of Infirm Services as specified in clause 4.5.2 of the General Specification.

### 2.2 Collection Service for Multi-occupancy Premises

The majority of multi-occupancy premises must be provided with a weekly Waste collection on a shared arrangement whereby more than two (2) households will utilise one (1) 240L Mobile Bin between them or a larger 660L or 1100L Mobile Bins as required by Council.

Multi occupancy services may also be provided a more frequent service with less number of Mobile Bins.

The Contractor will be compensated based on the Agreement Prices only for the collection of 240L Waste Mobile Bins and 660L Waste Mobile Bins (or any other Mobile Bin size approved by Council) for the number of services provided, based on the number of Mobile Bins and the frequency of collection.

### 2.3 Waste Collection Service for Other Service-Entitled Premises

The Contractor shall provide Services to a number of other Waste Service-Entitled Premises including:

- Commercial small businesses
- The Concourse complex
- Council facilities; and
- Any other facilities within the Council LGA

Council will provide a lists of these premises and locations. (The list will be accurate at the Commencement Date, but will be subject to additions or deletions during the Term).

The Council will determine the entitlement of participation.

Other Garbage Service-Entitled Premises will be provided with a range of frequencies of Waste collection utilising either 240 litre Mobile Bins or 660 litre, or 1,100 litre or 1,500 litre bulk waste bins.

Multiple services shall be available to Premises, as specified in the General Specification.

All collections will be from the kerbside, with the exception of:

- Council's Administration Building 31 Victor Street, Chatswood
- Dougherty Centre 1-7 Victor Street
- Council's Depot 25-27 Gibbes Street Chatswood
- The Concourse Complex Victoria Avenue, Chatswood
- Forrest View Tennis Centre 325A Eastern Valley Way, Chatswood

Collection of Waste for these Premises/locations shall be from bin rooms and/or carparks.

#### 2.4 Waste Collection Service for Special Events

The Contractor shall provide Waste Collection Services during Special Events as may be directed by the Council's Representative from time to time. Special Events may occur on any day of the week including weekends and public holidays.

At least five (5) days prior to each Special Event, the Contractor shall develop, a Special Event Waste Management Plan specific to the Special Event to be held in accordance with clause 13.7 of Part 1 – General Specifications.

The Contractor shall supply the number of 240 litre red lid Mobile Bins, approved as part of the Special Event Waste Management Plan, and the Contractor shall collect the Waste during and at the conclusion of the Special Event, from the Mobile Bins in accordance with the Special Event Waste Management Plan.

All collections will be from the Special Event location.

The Contractor shall complete retrieval of all Mobile Bins after the completion of the Special Event and after the stall holders have left the area of the Special Event. The Contractor must retrieve the Mobile Bins no later than 24 hours after the end of the Special Event.

#### 2.6 Collection Service for Dog Waste

The Contractor shall provide Services to a number of 140 litre and 240 litre Dog Waste Bins located on parks and reserves. The service involves the collection of Dog Waste from MGBs at the locations listed in the List of Dog Waste Bins and Locations on a weekly basis.

The collection of Dog Waste shall occur as part of the Waste Collection provided for Service-Entitled Premises.

Council will provide a list of Dog Waste Bins locations which may be revised by Council from time to time.

#### 2.4 Variable Waste Collection Service

It is expected that the majority of Waste Service-Entitled Premises will utilise the base service level as specified in clause 2.1 and 2.2 of this Waste Collection Specification. However, additional base level service(s) (140L Mobile Bins) must be made available to Customers in accordance with clause 6.2 of the General Specification. In addition, if directed by Council, the 140L Mobile Bins may also be upgraded to 240L for the Customers and be serviced by the Contractor.

When instructed by Council, the Contractor must supply additional Mobile Bins to Service-Entitled Premises where Customers have chosen to increase the number of Mobile Bins or upgraded the size of the Mobile Bins used for provision of the Waste Collection Service.

When so instructed by the Council, the Contractor must supply 140L Mobile Bins to Service-Entitled Premises where Customers have chosen to downgrade from 240L Mobile Bin to 140L Mobile Bin.

Mobile bins no longer required by Customers are to be retrieved by the Contractor.

# 3. Additional Mobile Bin Requirements

In addition to the requirements for Mobile Bins under clause 9.1 of the General Specification, all Mobile Bins supplied by the Contractor to meet its obligation under this Waste Collection Specification must:

- (a) have a red lid; and
- (b) have a dark green body (as per AS4123.7).

# 4. Disposal and Delivery of Materials

### 4.1 Disposal and Treatment Costs

Council shall retain ownership of materials collected under this Waste Collection Specification and will remain responsible for all disposal and processing charges following the delivery of Contract Waste to the Nominated Disposal Facility.

The Contractor must provide the Council with evidence, in the form of weighbridge dockets or equivalent, to the satisfaction of the Council, of the separate amounts of all waste and other materials collected in the course of providing the Services, with the monthly progress payment claim.

#### 4.2 Nominated Facility for Waste

The material collected by the Contractor in the course of performing the Waste Collection Service must be delivered to the Nominated Disposal Facility.

Specific requirements of the Nominated Disposal Facility and any relevant contractual obligations will be provided to the Contractor at least 20 Working Days prior to the Services Commencement Date or the date that an Alternative Facility is to be used for the delivery of Waste under this Agreement.

Council may nominate an Alternative Facility during the Term as specified in Clause 4.3 of this Waste Collection Specification.

#### 4.3 Alternative Facilities

During the Term, Council may from time to time nominate an Alternative Facility for receiving Waste under this Agreement instead of a Nominated Facility. Once nominated, the Alternative Facility will be taken to be the Nominated Facility under this Agreement.

### 4.4 Payment for Transport to Nominated Facility or Alternative Facility

#### 4.4.1 General

For various reasons, it may be necessary to change the Nominated Facility or to move from the initial Nominated Facility to an Alternative Facility or Facilities at some time(s) during the Term.

#### 4.4.2 Payment for Use of Alternative Facility

If Council changes the Nominated Facility for Waste under this Agreement, and it is further or less in distance from the defined Approximate Centroid than the existing Nominated Facility for Waste for that service, then the Contractor or Council will be entitled to an additional payment or reduction in payment (as the case may be) based on the Agreement Prices for different zones in which the Nominated Facility for Waste or the Alternate Facility for Waste falls in.

The payment for the collection, transportation and the delivery of Waste will be based on the Agreement Prices for the location of the Nominated Facility for Waste or the Alternative Facility for Waste as defined in the Agreement Prices.

To avoid doubt, delivery of Waste by the Contractor to a facility that is not a Nominated Facility or Alternative Facility, will be a breach of this Agreement.

#### 4.5 Unloading of Waste

Collected materials must be unloaded from the Collection Vehicles by the Contractor at the Nominated Facility or Alternative Facility. The Contractor must comply with, and must ensure that its Contractor's Staff complies with, all instructions issued by Council, or the person in charge of the Nominated Facility or the Alternative Facility.

The Contractor will be responsible for ensuring that all materials collected comply with the requirements for receipt of materials at the Nominated Facility.

### 4.6 Operating Hours of Facilities

The Contractor must comply with the operating hours of the Nominated Facility or Alternative Facility.

### 4.7 Only Materials from the Service Area

The Contractor must ensure, and enable Council to verify, that only materials collected in the course of providing Services under this Agreement are taken to the Nominated Facility or Alternative Facility in the Collection Vehicles.

# Part 3: Recyclables Collection Specification

### Part 3: Recyclables Collection Specification

### 1. Introduction

This Part defines explicit requirements for the collection of Recyclables from Recyclables Service-Entitled Premises in the Service Area. It must be read in conjunction with the General Specification, to form the complete specification in relation to the Recyclables Collection Service.

The Contractor must ensure that Recyclables Collection Services provided under this Agreement address the requirements of the General Specification as well as this Recyclables Collection Specification. In respect of the Recyclables Collection Services, to the extent of any inconsistency between the General Specification and this Recyclables Collection Specification, this Recyclables Collection Specification shall have precedence.

### 2. Service Requirements

Throughout the Services Term, the Contractor must provide a Recyclables Collection Service for nominated Recyclables Service-Entitled Premises and at specified frequencies within the Service Area, in accordance with this Agreement.

Recyclables Service-Entitled Premises include nominated single premises and multi-occupancy premises, in addition to other Recyclables Service-Entitled Premises as nominated by Council.

### 2.1 Recyclables to be Collected

Recyclable Waste to be collected will include the Recyclables defined in the General Specification and include Recyclable Waste presented in the yellow lid Mobile Bins.

Based on the Recyclables accepted at the MRF and or additional categories of items are added as Recyclables, the list of items identified as Recyclables may change during the Term.

The Contractor must collect and empty the full content of the Recyclables Mobile Bin, unless the Mobile Bin is not emptied in accordance with clause 7.4 of this Recyclables Collection Specification.

### 2.2 Collection and Frequency for Single Premises

The Service involves the collection of fully commingled Recyclables from Single Unit Dwellings:

- 240L yellow lid Mobile Bins collected weekly from all Single Unit Dwellings; or
- 240L yellow lid Mobile Bins collected fortnightly from all Single Unit Dwellings if Council chooses to change to fortnightly collection of Recyclables.

Additional service(s) shall be available to Customers. If requested by Council, the Contractor will make available additional 240 litre Mobile Bins, as specified in clause 2.6 of this Recyclable Collection Specification.

All collections will be from the Kerbside or an Alternate Collection Point, with the exception of Infirm Services as specified in clause 4.5.2 of the General Specification.

### 2.3 Collection and Frequency for Multi-occupancy Premises

Unless otherwise specified, multi-occupancy Service-Entitled Premises will be provided with a weekly Recyclable Waste collection on a shared arrangement whereby two (2) households will utilise one (1) 240L Mobile Bin between them or 360L Mobile Bins in different combinations.

Multi occupancy services may also be provided a more frequent service with less number of Mobile Bins.

The Contractor will be compensated based on the Agreement Prices only for the collection of 240L Recyclables Mobile Bins and or 360L Recyclables Mobile Bins (or any other approved Mobile Bin size) for number of services provided based on the number of Mobile Bins and the frequency of collection.

### 2.4 Recyclables Collection Service for Other Service-Entitled Premises

The Contractor shall provide Services to a number of other Recyclables Service-Entitled Premises including:

- Commercial small businesses
- The Concourse complex
- Council facilities; and
- Any other facilities within the Council LGA

Council will provide a lists of these premises and locations. (The list will be accurate at the Commencement Date, but will be subject to additions or deletions during the Term).

The Council will determine the entitlement of participation.

Other Recyclables Service-Entitled Premises will be provided with a range of frequencies of Recyclables collection utilising either 240 litre Mobile Bins or any combination of Bulk Bins.

Multiple services shall be available to Premises, as specified in the General Specification.

All collections will be from the kerbside, with the exception of:

- Council's Administration Building 31 Victor Street, Chatswood
- Dougherty Centre 1-7 Victor Street
- Council's Depot 25-27 Gibbes Street Chatswood
- The Concourse Complex Victoria Avenue, Chatswood
- Forrest View Tennis Centre 325A Eastern Valley Way, Chatswood

Collection of Recyclables for these Premises/locations shall be from bin rooms and/or carparks.

### 2.5 Recyclables Collection Service for Special Events

The Contractor shall provide Recyclables collection services during Special Events as may be directed by the Council's Representative from time to time. Special Events may occur on any day of the week including weekends and public holidays.

At least five (5) days prior to each Special Event, the Contractor shall develop, a Special Event Waste Management Plan specific to the Special Event to be held in accordance with clause 13.7 of Part 1 — General Specifications.

The Contractor shall supply the number of 240 litre yellow lid Mobile Bins, approved as part of the Special Event Waste Management Plan, and the Contractor shall collect the Recyclables during and at the conclusion of the Special Event, from the Mobile Bins in accordance with the Special Event Waste Management Plan.

All collections will be from the Special Event location.

The Contractor shall complete retrieval of all Mobile Bins after the completion of the Special Event and after the stall holders have left the area of the Special Event. The Contractor must retrieve the Mobile Bins no later than 24 hours after the end of the Special Event.

#### 2.6 Variable Recyclable Collection Service

It is expected that the majority of Premises will utilise the base service level as specified in clauses 2.2 and 2.3 of this Recyclable Collection Specification. However, additional base level service(s) (240L Mobile Bin) must be made available to Customers in accordance with clause 6.1 of the General Specification. In addition, 360 litre Mobile Bins must be made available to Customers and be serviced by the Contractor.

When instructed by Council, the Contractor must supply additional Mobile Bins to Premises where Customers have chosen to increase the number of Mobile Bins used for provision of the Recyclables Collection Service.

When instructed by Council, the Contractor must supply 360 litre Mobile Bins to Premises where Customers have chosen to increase the size of the base level Mobile Bin.

Mobile bins no longer required by Customers are to be retrieved by the Contractor.

# 3. Additional Mobile Bin Requirements

In addition to the requirements for Mobile Bins under clause 9.1 of the General Specification, all Mobile Bins supplied by the Contractor to meet its obligation under this Recyclables Collection Specification must:

- (a) have a yellow lid; and
- (b) have a dark green body (as per the AS4123.7).

# 4. Additional Requirements for Vehicles

For the purposes of monitoring Contamination and vehicle loads, each Collection Vehicle used when performing the Recyclables Collection Service must be fitted with effective hopper mounted colour cameras. Colour monitors must be mounted within the cabin to allow the driver and other staff riding in the vehicle to view material as it enters the collection vehicle's hopper.

All Collection Vehicles used for Services must be operated, maintained and serviced to the manufacturers' manuals, guidelines and specifications. For this Recyclables Collection Specification, this includes without limitation, any features designed to optimise quality of Recyclables including compaction mechanisms, hydraulic controls or devices which may affect the compaction densities, lifting devices and lifting speeds.

Council may engage the services of the manufacturer of the collection equipment to inspect the operation of the equipment on all Collection Vehicles used to perform Services. This will include compaction mechanisms, hydraulic controls or devices which may affect the compaction densities,

lifting devices and lifting speeds. This inspection may be on an annual basis for the duration of the Services Term, or at any other time with reasonable notice supplied to the Contractor.

### 5. Recyclables Ownership and Delivery

### 5.1 Council Ownership of Recyclables

Council retains ownership of all Recyclables collected as part of the Recyclables Collection Service. Council will remain responsible for paying all processing costs following the delivery of Recyclable Waste to the Nominated Facility and will retain any income from materials sold through provision of this Service.

The Contractor must provide the Council with evidence, as required, in the form of weighbridge dockets or the equivalent, to the satisfaction of the Council, of the separate amounts of all Recyclable Waste collected in the course of providing the Services.

Sorting, separation, processing or sale of Recyclables is not part of this Agreement.

### 5.2 Amendment of Recyclables

The definition of 'Recyclables' in the General Specification may be varied from time to time with the agreement of the parties.

### 5.3 Nominated Facility for Recyclables

The material collected by the Contractor in the course of performing the Recyclables Collection Service must be delivered to the Nominated Facility for Recyclables.

Specific requirements of the Nominated Facility for Recyclables and any relevant contractual obligations will be provided to the Contractor at least 20 Working Days prior to the Services Commencement Date or the date that an Alternative Facility is to be used for the delivery of Recyclable Waste under this Agreement.

Council may nominate an Alternative Facility for Recyclables during the Term as specified in clause 5.4 of this Recyclables Collection Specification.

#### 5.4 Alternative Facilities

During the Term, Council may from time to time nominate an Alternative Facility for receiving Recyclable Waste under this Agreement instead of a Nominated Facility. Once nominated, the Alternative Facility will be deemed to be the Nominated Facility.

### 5.5 Payment for Transport to Nominated Facility or Alternative Facility

#### 5.5.1 General

For various reasons, it may be necessary change the Nominated Facility for Recyclables or to move from the initial Nominated Facility to an Alternative Facility or Facilities at some time(s) during the Term.

#### 5.5.2 Payment for Use of Alternative Facility

If Council changes the Nominated Facility for Recyclables under this Agreement, and it is further or less in distance from the defined Approximate Centroid than the Nominated Facility for that service, then the Contractor will be entitled to an additional payment or reduction in payment (as the case

may be) based on the Agreement Prices for different zones in which the Nominated Facility for Recyclables or the Alternate Facility for Recyclables falls in.

The payment for the collection, transportation and the delivery of Recyclable Waste will be based on the Agreement Prices for the location of the Nominated Facility for Recyclables, or the Alternative Facility for Recyclables as defined in the Agreement Prices.

To avoid doubt, delivery of Recyclable Waste by the Contractor to a facility that is not a Nominated Facility or Alternative Facility, will be a breach of this Agreement.

### 5.6 Unloading of Recyclables Materials

Recyclable Waste must be unloaded from the Collection Vehicles by the Contractor at the Nominated Facility for Recyclables or Alternative Facility for Recyclables. The Contractor must, and must ensure that its Contractor's Staff, comply with all instructions issued by Council, or the person in charge of the Nominated Facility for Recyclables or the Alternative Facility for Recyclables.

The Contractor will be responsible for ensuring that all materials collected comply with the requirements for receipt of materials at the Nominated Facility.

### 5.7 Operating Hours of Facilities

The Contractor must comply with the operating hours of the Nominated Facility for Recyclables or Alternative Facility for Recyclables.

### 5.8 Rejection of Recyclables and Disincentive Charges

Except as otherwise provided in this clause, where Recyclable Waste collected under this Recyclables Collection Specification is rejected by the Nominated Facility, or where costs or damages are payable due to Contamination of the delivered Recyclable Waste or due to over compaction, Council will be responsible for the payment to the Nominated Facility unless the rejection of the Recyclable Waste collected by the Contractor or the costs or damages payable, are a result of the Contractor's negligence or due to the Compaction Level exceeding the Maximum Compaction Level, in which case:

- (a) the Contractor will be responsible for all associated costs and charges; and
- (b) without limiting Council's other rights, Council may set-off the amount owing from any amount payable by Council to the Contractor.

### 5.9 Only Recyclables from the Service Area

The Contractor must ensure, and enable the Council to verify, that only Recyclable Waste collected in the course of providing the Services to Recyclable Service-Entitled Premises within the Service Area under this Agreement are taken to the Nominated Facility for Recyclables or Alternative Facility for Recyclables in the Collection Vehicles.

# 6. Compaction and Quality Management

The Contractor must in carrying out the Services ensure that the quality of the collected Recyclables is not degraded during:

- (a) collection;
- (b) transport including compaction; and
- (c) unloading.

The Contractor is expected to work with Council throughout the Term to ensure that optimum value is obtained for the Recyclables collected.

The Compaction Level in each Collection Vehicle transporting Recyclable Waste must not exceed the Maximum Compaction Level. The basis and methodology for calculating and monitoring the Compaction Level shall be agreed between the Council and Contractor prior to the Services Commencement Date.

### 6.1 Rejection of Recyclables due to Over Compaction

Where Recyclable Waste collected as part of the Recyclables Collection Services is rejected by the Nominated Facility due to the Recyclable Waste in a Collection Vehicle exceeding the Maximum Compaction Level, the Contractor will be liable for all additional fees or payment to the MRF by Council.

Such fees or payment may be set off by Council against any amount payable to the Contractor under this Agreement.

### 7. Contamination Management for Recyclables

### 7.1 Contamination Management Strategy and Operations for Recyclables

The Contractor will be responsible for developing, implementing, monitoring, evaluating and reviewing a Contamination Management Strategy and associated procedures for managing Contamination within Recyclable Waste.

The strategy and procedures will ultimately form a chapter of the Quality Plan specified under clause 13 of the General Specification but also must be suitable to act as a stand-alone operational document.

A draft Contamination Management Strategy and Procedures Program must be submitted to Council for Endorsement under clause 7.3 of the Operative Terms.

#### 7.2 Supporting Materials to be Developed

Council will be responsible for producing any supporting materials required to implement the Contamination Management Strategy and Procedures Program such as stickers and brochures and letters to Customers. Council must give final approval to any supporting materials and changes to supporting materials that is provided by the Contractor during the Term.

All supporting materials must be developed in conjunction with educational resources developed under clause 18 of the General Specification to ensure an integrated approach and consistent messages. All letters used as a component of the strategy will be produced by Council, on Council's letterhead.

The Contractor must specify all details of the supporting material types in the Contamination Management Strategy and Procedures Program.

### 7.3 Contamination Procedures for Recyclables Material

In developing the Contamination Management Strategy and Procedures Program, the Contractor must undertake the minimum requirements and procedures detailed in clause 7.4 of this Recyclables Collection Specification.

These minimum requirements will form the basis of the procedures to be developed by the Contractor and the Contractor is expected to expand on and improve the minimum procedures detailed under clause 7.4 of this Recyclables Collection Specification.

The procedures must clearly specify all operational details including responsibilities for tasks, timeframes, specific supporting materials to be utilised and variations between strategy and procedures for single and multi-occupancy Service-Entitled Premises.

#### 7.4 Minimum Contamination Requirements and Procedures

#### 7.4.1 Gross Contamination – Visible at the Kerbside

The Contractor must not empty any Mobile Bin where it is evident upon visual inspection that it contains Gross Contamination.

The Contractor must notify the Customer of the Gross Contamination either by way of letter being placed in the letterbox of the Premise or sticker attached to the Mobile Bin. Customers must be notified prior to 5:00 p.m. on the day that the incident occurred.

The Customer must be given the opportunity to rectify the problem within one (1) Working Day and contact the Customer Service Centre to request another Service. The Contractor must return to the premises within one (1) Working Day of the Customer request for the Service being notified to the Contractor and provide the Service at no additional charge to Council.

#### 7.4.2 Contamination – Visible at the Kerbside

If the Contractor finds Contamination, not considered to be Gross Contamination, on visual inspection of a Mobile Bin, the Contractor may empty the Mobile Bin if deemed acceptable. The Contractor must notify the Customer of the problem and clarify the acceptable Recyclables.

The Customer must be notified of the problem within two (2) Working Days of the incident occurring.

#### 7.4.3 Contamination – Visible via Camera in Hopper

If the Contractor becomes aware of Contamination or Gross Contamination within a Mobile Bin in the process of emptying its contents into the Collection Vehicle, the Contractor must provide the Customer with notification, specifying the problem and clarifying the acceptable Recyclables.

The Customer must be notified of the problem within two (2) Working Days of the incident occurring.

#### 7.4.4 Multiple Occurrences – Second Occurrence

On the second occurrence, over a time period agreed upon by the Contractor and Council, of any incident at a Recyclables Service-Entitled Premises as specified under clauses 7.4.1, 7.4.2 and 7.4.3 of this Recyclables Collection Specification, the Contractor must follow the procedure as outlined in the relevant Clause (i.e. 7.4.1, 7.4.2 or 7.4.3).

#### 7.4.5 Multiple Occurrences – Third Occurrence

On the third occurrence, over a time period agreed upon by the Contractor and Council, of any incident, or combination of incidents as specified under clauses 7.4.1, 7.4.2 and 7.4.3 of this Recyclables Collection Specification, the Contractor must follow the procedure as outlined in the relevant clause (i.e. 7.4.1, 7.4.2 or 7.4.3).

In addition, the Contractor must notify the Council of the situation and request that a letter be issued by Council advising of the possible removal of services after any further incident over a time period agreed upon by the Contractor and Council.

#### 7.4.6 Multiple Occurrences – Fourth Occurrence

If a further Contamination incident occurs, over a time period agreed upon by the Contractor and Council, or a combination of incidents as specified under clauses 7.4.1, 7.4.2 and 7.4.3 of this Recyclables Collection Specification, the Contractor must follow the same procedure as outlined in the relevant Clause (i.e. 7.4.1, 7.4.2 or 7.4.3).

In addition, the Contractor must notify the Council of the situation and provide a brief outline of the history and severity of the incidents at that Services-Entitled Premise.

### 7.4.7 Multiple Occurrences – Cessation of Service

The Council may request that the Contractor cease the Recyclables Collection Service, as specified in clause 6.3 of the General Specification, for a period of time determined by the Council at that Service-Entitled Premise to which clause 7.4.6 of this Recyclables Collection Specification applies. Council will notify the Customer in writing after removal of the service.

### 7.5 Reporting and Documenting Contamination Incidents

The Contractor must document and maintain database(s) of all addresses and other appropriate details for all Contamination incidents including a description of the severity of the incident.

The Contractor must provide photographic evidence of contamination via cameras and make it available to Council via online portal.

This information must be collated, compiled and reported to Council as detailed in the Quality Plan at clause 13 of the General Specification.

### 7.6 Council Contamination Approach for Recyclables

The Council will provide the Contractor with details of any changes to Council's approach and process in relation to Contamination management and cessation of Services after repeated Contamination incidents.

If these changes impact on the Contractor Contamination Management Strategy and Procedures Program, Council will compensate the Contractor for any additional cost incurred in the review of the strategy or procedures and development of supporting materials. The Contractor must be given reasonable notice to effect changes to the Contamination Management Strategy and Procedures Program.

### 7.7 Review of Contamination Management Strategy and Program for Recyclables

The Contamination Management Strategy and Procedures Program for Recyclables must be reviewed, and if necessary updated, by the Contractor from time to time, at least on an annual basis. All changes must be agreed between the Council and the Contractor and approved by Council prior to implementation.

# Part 4: Garden Organics Collection Specification

### Part 4: Garden Organics Collection Specification

#### 1. Introduction

This part defines explicit requirements for the collection of Garden Waste from Garden Organics Service-Entitled Premises in the Service Area. It must be read in conjunction with the General Specification, to form the complete specification in relation to the Garden Organics Collection Service.

The Contractor must ensure that Garden Organics Collection Services provided under this Agreement address the requirements of this the General Specification as well as this Garden Organics Collection Specification. In respect of the Garden Organics Collection Services, to the extent of any inconsistency between the General Specification and this Garden Organics Collection Specification, the Garden Organics Collection Specification shall have precedence.

### 2. Service Requirements

Commencing on the Services Commencement Date and finishing on the Expiry Date or at the end of Service Period A, the Contractor must provide Garden Organics Collection Service from Garden Organics Service-Entitled Premises and at specified frequencies within the Service Area, in accordance with this Agreement. Garden Organics Service-Entitled Premises include nominated single and multi-occupancy premises, in addition to other Garden Organics Service-Entitled Premises.

#### 2.1 Collection Service and Frequency for Single Premises

The Garden Organics Collection Service involves the collection of Garden Waste from single Service-Entitled Premises (Single Unit Dwellings) in approved 240 Litre Mobile Bins on a weekly basis.

Additional service(s) shall be available to Customers. If requested by Council, the Contractor will make available additional 240L green lid Mobile Bins, as specified in clause 2.3 of this Garden Organics Collection Specification.

All collections will be from the Kerbside or an Alternate Collection Point, with the exception of Infirm Services as specified in Clause 4.5.2 of the General Specification.

#### 2.2 Collection Service and Frequency for Multi-occupancy Premises

Unless otherwise specified, multi-occupancy Service-Entitled Premises must be provided with one 240L green lid Mobile Bin per unit block to be collected weekly.

Council will provide the Contractor with a list of Garden Organics Mobile Bins for the multioccupancy Service-Entitled Premises.

#### 2.3 Variable Garden Organics Collection Service

It is expected that the majority of Service-Entitled Premises will utilise the base service level as specified in clauses 2.1 and 2.2 of this Garden Organics Collection Specification. However, additional base level service(s) (240L Mobile Bin) must be available to Customers in accordance with clause 6.1 of the General Specification.

When instructed by Council, the Contractor must supply additional Garden Organics Mobile Bins to Premises where Customers have chosen to increase the number of Garden Organics Mobile Bins used for provision of the Garden Organics Collection Service.

### 3. Additional Mobile Bin

### 3.1 Mobile Bins for Garden Organics

In addition to the requirements for Mobile Bins under clause 9.1 of the General Specification, all Mobile Bins supplied by the Contractor to meet its obligation under this Garden Organics Collection Specification must:

- (a) have a lime green lid; and
- (b) have a dark green body (as per the AS4123.7).

Upon placing the order for the new Mobile Bins for Garden Organics, the Contractor must provide written evidence to Council including copies of the order placed for the supply of the Mobile Bins for Garden Organics.

### 4. Additional Requirements for Vehicles

For the purposes of monitoring Contamination and vehicle loads, each Collection Vehicle must be fitted with effective hopper mounted colour cameras. Colour monitors must be mounted within the cabin to allow the driver and other staff riding in the vehicle to view material as it enters the Collection Vehicle's hopper.

### 5. Garden Organics Ownership and Delivery

### 5.1 Council Ownership of Garden Organics

Council retains ownership of all Garden Organics collected as part of the Garden Organics Collection Service. Council will remain responsible for paying all processing costs following the delivery of Garden Waste to the Nominated Facility and will retain any income from materials sold through provision of this Service.

The Contractor must provide the Council with evidence, as required, in the form of weighbridge dockets or the equivalent, to the satisfaction of the Council, of the separate amounts of all Garden Waste collected in the course of providing the services.

Sorting, processing and composting of Garden Organics or sale of material derived from Garden Organics is not part of this Agreement.

#### 5.2 Nominated Facility for Garden Organics

The material collected by the Contractor in the course of performing the Garden Organics Collection Service must be delivered to the Nominated Facility for Garden Organics.

Specific requirements of the Nominated Facility for Garden Organics and any relevant contractual obligations will be provided to the Contractor at least 20 Working Days prior to the Services Commencement Date or the date that an Alternative Facility is to be used for the delivery of material to the Nominated Facility under this Agreement.

Council may nominate an Alternative Facility for Garden Organics during the Term as specified in clause 5.3 of this Garden Organics Collection Specification.

#### 5.3 Alternative Facilities

During the Term, Council may from time to time nominate Alternative Facilities for receiving Garden Waste under this Agreement instead of a Nominated Facility. Once nominated, the Alternative Facility will be deemed to be the Nominated Facility.

### 5.4 Payment for Transport to Alternative Facility

#### 5.4.1 General

For various reasons, it may be necessary to move from the Nominated Facility for any of the services, to an Alternative Facility at some time during the Term.

#### 5.4.2 Payment for Use of Alternative Facility

If Council changes the Nominated Facility for Garden Organics under this Agreement, and it is further or less in distance from the defined Approximate Centroid than the Nominated Facility for Garden Organics for that service, then the Contractor will be entitled to an additional payment or reduction in payment (as the case may be) based on the Agreement Prices for different zones in which the Nominated Facility for Garden Organics or the Alternate Facility for Garden Organics falls in.

The payment for the collection, transportation and the delivery of Garden Organics will be based on the Agreement Prices for the location of the Nominated Facility for Garden Organics or the Alternative Facility for Garden Organics as defined in the Agreement Prices.

To avoid doubt, delivery of Garden Waste by the Contractor to a facility that is not a Nominated Facility or Alternative Facility, will be a breach of this Agreement.

#### 5.5 Unloading of Garden Organics

Garden Waste must be unloaded from the Collection Vehicles by the Contractor at the Nominated Facility for Garden Organics or Alternative Facility for Garden Organics. The Contractor must, and must ensure that its Contractor's Staff, comply with all instructions issued by Council, or the person in charge of the Nominated Facility for Garden Organics or the Alternative Facility for Garden Organics.

The Contractor will be responsible for ensuring that all materials collected comply with the requirements for receipt of materials at the Nominated Facility for Garden Organics.

#### 5.6 Only Materials from the Service Area

The Contractor must ensure, and enable Council to verify, that only Garden Organics collected in the course of providing the Services to Garden Organics Service-Entitled Premises within the Service Area under this Agreement are taken to the Nominated Facility for Garden Organics or Alternative Facility for Garden Organics in the Collection Vehicles.

### 6. Contamination Management for Garden Organics

# 6.1 Contamination Management Strategy and Operations for Garden Organics

The Contractor will be responsible for developing, implementing, monitoring, evaluating and reviewing a Contamination Management Strategy and associated procedures for managing Contamination within Garden Organics.

The strategy and procedures will ultimately form a chapter of the Quality Plan specified under clause 13 of the General Specification but also must be suitable to act as a standalone operational document.

A draft Contamination Management Strategy and Procedures Program must be submitted to Council for Endorsement under clause 7.3 of the Operative Terms.

### 6.2 Supporting Materials to be Developed

Council will be responsible for producing any supporting materials required to implement the Contamination Management Strategy and Procedures Program such as stickers and brochures and letters to the residents. Council must give final approval to any supporting materials and changes to supporting materials that is provided by the Contractor during the Term.

All supporting materials must be developed in conjunction with educational resources developed under clause 18 of the General Specification to ensure an integrated approach and consistent messages. All letters used as a component of the strategy will be produced by Council on Council letterhead.

The Contractor must specify all details of the supporting material types in the Contamination Management Strategy and Procedures Program.

### 6.3 Contamination Procedures for Garden Organics

In developing the Contamination Management Strategy and Procedures Program, the Contractor must undertake the minimum requirements and procedures detailed in clause 6.4 of this Garden Organics Collection Specification.

These minimum requirements will form the basis of the procedures to be developed by the Contractor and the Contractor is expected to expand on and improve the minimum procedures detailed under clause 6.4 of this Garden Organics Collection Specification.

### 6.4 Minimum Contamination Requirements and Procedures

#### 6.4.1 Gross Contamination - Visible at the Kerbside

The Contractor must not collect any Mobile Bin where it is evident upon visual inspection that it contains Gross Contamination.

The Contractor must notify the Customer of the Gross Contamination either by way of letter being placed in the letterbox of the Premise or sticker attached to the Mobile Bin. Customers must be notified prior to 5:00 p.m. on the day that the incident occurred.

The Customer must be given the opportunity to rectify the problem within one (1) Working Day and contact the Customer Service Centre to request another Garden Organics Collection Service. The Contractor must return to the premises within one (1) Working Day of the Customer request for the Service and provide the Service at no additional charge to Council.

#### 6.4.2 Contamination – Visible at the Kerbside

If the Contractor finds Contamination, not considered to be Gross Contamination, on visual inspection of a Mobile Bin, the Contractor may empty the bin if deemed acceptable. The Contractor must notify the Customer of the problem and clarify what is deemed acceptable presentation. The Customer must be notified of the problem within two (2) Working Days of the incident occurring.

#### 6.4.3 Contamination – Visible via Camera in Hopper

If the Contractor becomes aware of Contamination or Gross Contamination within a Mobile Bin in the process of emptying its contents into the Collection Vehicle, the Contractor must provide the Customer with notification, specifying the problem and clarifying what is deemed acceptable presentation.

The Customer must be notified of the problem within two (2) Working Days of the incident occurring.

#### 6.4.4 Multiple Occurrences - Second Occurrence

On the second occurrence, over a time period agreed upon by the Contractor and Council, of any incident at a Service-Entitled Premise as specified under clauses 6.4.1, 6.4.2 and 6.4.3 of this Garden Organics Collection Specification, the Contractor must follow the procedure as outlined in the relevant clause (i.e. 6.4.1, 6.4.2 and 6.4.3).

#### 6.4.5 Multiple Occurrences – Third Occurrence

On the third occurrence, over a time period agreed upon by the Contractor and Council, of any incident, or combination of incidents as specified under clauses 6.4.1, 6.4.2 and 6.4.3 of this Garden Organics Collection Specification, the Contractor must follow the procedure as outlined in the relevant clause (i.e. 6.4.1, 6.4.2 and 6.4.3).

In addition, the Contractor must notify the Council of the situation and request that a letter be issued by Council advising of the possible removal of services after any further incident over a time period agreed upon by the Contractor and Council.

#### 6.4.6 Multiple Occurrences – Fourth Occurrence

If a further Contamination incident occurs, over a time period agreed upon by the Contractor and Council, or a combination of incidents as specified under clauses 6.4.1, 6.4.2 and 6.4.3 of this Garden Organics Collection Specification, the Contractor must follow the same procedure as outlined in the relevant clause (i.e. 6.4.1, 6.4.2 and 6.4.3).

In addition, the Contractor must notify the Council of the situation and provide a brief outline of the history and severity of the incidents at that Service-Entitled Premise.

#### 6.4.7 Multiple Occurrences - Cessation of Service

The Council may request that the Contractor cease the Garden Organics Collection Service, as specified in clause 6.3 of the General Specification, for a period of time determined by the Council at that Service-Entitled Premise to which clause 6.4.6 of this Garden Organics Collection Specification applies. Council will notify the Customer in writing after removal of the service.

#### 6.5 Reporting and Documenting Contamination Incidents

The Contractor must document and maintain database(s) of all addresses and other appropriate details for all Contamination incidents including a description of the severity of the incident.

The Contractor must provide photographic evidence of contamination via cameras and make it available to Council via online portal.

This information must be collated, compiled and reported to Council as detailed in the Quality Plan at clause 13 of the General Specification.

### 6.6 Council Contamination Approach for Garden Organics

The Council will provide the Contractor with details of any changes to Council's approach and process in relation to Contamination management and cessation of Services after repeated Contamination incidents.

If these changes impact on the Contractor Contamination Management Strategy and Procedures Program, Council will compensate the Contractor for any additional cost incurred in the review of the strategy or procedures and development of supporting materials. The Contractor must be given reasonable notice to effect changes to the Contamination Management Strategy and Procedures Program.

# 6.7 Review of Contamination Management Strategy and Program for Garden Organics

The Contamination Management Strategy and Procedures Program for Garden Organics must be reviewed, and if necessary updated, by the Contractor from time to time, at least on an annual basis. All changes must be agreed between the Council and the Contractor and approved by Council prior to implementation.

# Part 5: FOGO Collection Specification

# Part 5: FOGO Collection Specification

#### 1. Introduction

This part defines explicit requirements for the collection of FOGO Waste from FOGO Service-Entitled Premises in the Service Area. It must be read in conjunction with the General Specification, to form the complete specification in relation to the FOGO Collection Service.

The Contractor must ensure that FOGO Collection Services provided under this Agreement address the requirements of the General Specification as well as the FOGO Collection Specification. In respect of the FOGO Collection Services, to the extent of any inconsistency between the General Specification and this FOGO Collection Specification, this FOGO Collection Specification shall have precedence.

#### 1.1 Commencement and Term of FOGO Collection

The FOGO Collection Service will commence on the FOGO Commencement Date if Council notifies the Contractor that Council adopts FOGO Option for Service Period B in accordance with clause 1.2 of this FOGO Collection Specification.

If Council does not adopt FOGO Option for Service Period B, then the Contractor will be required to continue to provide the Garden Organics Collection Service for the remainder of the Term, and the Contractor is not required to comply with this FOGO Collection Specification.

If Council adopt FOGO Option for Service Period B, then the Contractor is not required to perform the Garden Organics Collection Service during Service Period B.

### 1.2 Notification of Option by Council

At least one year prior to the FOGO Commencement Date, Council may notify the Contractor in writing:

- (a) whether Council elects to adopt FOGO Option;
- (b) if Council elects to adopt FOGO Option, the commencement date of FOGO Collection Service; and
- (c) the Nominated Facility for FOGO Processing,

provided that Council must not issue a notice under this clause prior to 1 December 2024.

### 2. Service Requirements

On and from the FOGO Commencement Date, the Contractor must provide FOGO Collection Service from nominated FOGO Service-Entitled Premises and at specified frequencies within the Service Area, in accordance with this Agreement. FOGO Service-Entitled Premises include nominated single and multi-occupancy Service-Entitled Premises, in addition to other FOGO Service-Entitled Premises.

The FOGO Collection Service must include:

- (a) an education program leading to the introduction of FOGO Collection Service;
- (b) changes to Garden Organics Mobile Bins to FOGO Mobile Bins;
- (c) planning and approval from Council of new route and collection schedule for the introduction of FOGO Collection Service:
- (d) supply and delivery of additional 240L green lid Mobile Bins to Multi Unit Dwellings; and
- (e) providing the FOGO Collection Service to all FOGO Service-Entitled Premises during Service Period B.

### 2.1 Collection Service and Frequency for Single Premises

The FOGO Collection Service involves the collection of FOGO Waste from single Service-Entitled Premises in approved 240 Litre Mobile Bins on a weekly basis.

Additional service(s) shall be available to Customers. If requested by Council, the Contractor will make available additional 240L Mobile Bins, as specified in clause 2.3 of this FOGO Collection Specification.

All collections will be from the Kerbside or an Alternate Collection Point, with the exception of Infirm Services as specified in Clause 4.5.2 of the General Specification.

### 2.2 Collection Service and Frequency for Multi-occupancy Premises

Unless otherwise specified, multi-occupancy Service-Entitled Premises must be provided with a weekly FOGO Collection Service on a shared arrangement whereby an appropriate combination of 240 Litre Mobile Bin will be provided for each unit in a multi-occupancy development.

#### 2.3 Variable FOGO Collection Service

It is expected that the majority of Service-Entitled Premises will utilise the base service level as specified in clauses 2.1 and 2.2 of this FOGO Collection Specification. However, additional base level service(s) (240L Mobile Bin) shall be available to Customers in accordance with clause 6.1 of the General Specification.

When instructed by Council, the Contractor must supply additional FOGO Mobile Bins to Premises where Customers have chosen to increase the number of FOGO Mobile Bins used for provision of the FOGO Collection Service.

# 3. Mobile Bin and Kitchen Caddy Requirements

#### 3.1 Additional Requirements for FOGO Mobile Bins

In addition to the requirements for Mobile Bins under clause 9.1 of the General Specification, all Mobile Bins supplied by the Contractor to meet its obligation under this FOGO Collection Specification must:

- (a) have a lime green lid; and
- (b) have a dark green body (as per the AS4123.7).

Upon placing the order for the new Mobile Bins for FOGO, the Contractor must provide written evidence to Council including copies of the order placed for the supply of the Mobile Bins for FOGO.

#### 3.2 Additional Mobile Bins

To enable the ratio of Mobile Bins required by Council after the conversion of the 240L Red Lid Mobile Bins at the Multi Unit Dwellings, the Contractor must supply and deliver additional 240L FOGO Mobile Bins as required by Council prior to the FOGO Commencement Date.

The Contractor will be compensated for the supply and delivery of 240L FOGO Mobile Bins required by Council based on the Agreement Prices for the supply and delivery of 240L FOGO Mobile Bins.

To avoid doubt, payment for individual 240L FOGO Mobile Bins is only for the 240L FOGO Mobile Bins delivered prior to the FOGO Commencement Date as required by Council and does not include the replacement, maintenance and additional Mobile Bins delivered during the Term.

#### 3.3 Kitchen Caddies

The Kitchen Caddies must be free standing and have the following specification:

- (a) have a capacity of approximately 7 litres;
- (b) be enclosed (not vented);
- (c) have approximate dimensions of: (Height) 350mm x (Width) 265mm x (Depth) 225mm;
- (d) made of plastic and includes a percentage of post manufacturer recycled content;
- (e) can be recycled;
- (f) where possible manufactured in Australia;
- (g) be of neutral cream colour; and
- (h) have the following information on the lid:

Kitchen Organic Bin				
For emptying into Green-lid bin				
✓ Breads, cereal, rice, grains nuts	✓ Meat scraps and bones			
✓ Fruit and vegetable scraps/peels	✓ Seafood scraps and bones  ✓ Teabags/coffee grounds  ✓ Pet food scraps  ✓ Paper, tissues, paper towel (no cleaning chemicals)			
✓ Food scraps/leftovers				
✓ Dairy products				
✓ Egg shells				

The Contractor must provide samples of the kitchen caddies including the method of delivery to Service-Entitled Premises to Council for approval prior to the distribution to the Service-Entitled Premises.

#### 3.4 Kitchen Caddy Liners

The compostable caddy liners bags supplied under this Agreement must have the following minimum requirements:

- (a) have a capacity of 8 litres;
- (b) be 100% compostable;
- (c) comply with relevant Australian Standard applicable for compostable bags;
- (d) be able to be delivered to households in sufficient quantities and frequency to ensure availability of caddy liner bags to the household at all times; and
- (e) be delivered in a timely manner from the time of manufacturing so as to avoid the deterioration of the bags before the use by the residents.

The Contractor must provide samples of caddy liners including the method of delivery to Council for approval prior to the distribution to the Service-Entitled Premises.

Council may undertake random audits of the caddy liners to determine compliance with this Agreement and the Contractor must provide all reasonable assistance to Council in conducting any such audits.

#### 3.5 Kitchen Caddy and Caddy Liners Distribution Plan

Prior to the commencement of Service Period B, the Contractor must develop a Kitchen Caddy and Kitchen Caddy Liners Distribution Plan for approval by Council.

The plan must include, at a minimum, full details of Kitchen Caddies proposed to be supplied as required by this Agreement and in line with this Part 5 of the Services Specification, details of procedures, timelines and responsibilities for delivery of Kitchen Caddies and Kitchen Caddy Liners.

#### 3.6 Mode of Delivery of Kitchen Caddies and Caddy Liners

The Contractor must deliver required Kitchen Caddies and Caddy Liners to all FOGO Service-Entitled Premises by:

- (a) wherever possible, placing the Kitchen Caddies and Caddy Liners within the boundaries of the Premise in a safe and secure manner; or, placing the Kitchen Caddies and Caddy Liners as close to the boundary or letterbox of the Premise as possible;
- (b) leave a notification with the Customer the next scheduled Day of Service, including the frequency of Collection Services (Waste, Recyclables and FOGO Collection frequency), together with any other material that is required by Council to be distributed to the Service-Entitled Premises; and
- (c) provide an information pack regarding the provision of the service, containing information approved by the Council's Representative and including information provided by the Council.

#### 3.6.1 Initial Supply and Delivery of Kitchen Caddies and Caddy Liners

Not less than five (5) Working Days prior to the FOGO Commencement Date, the Contractor must supply and distribute Kitchen Caddies and Caddy Liners to each FOGO Service-Entitled Premises nominated by Council.

The Contractor must supply and deliver the Kitchen Caddies and Caddy Liners to all FOGO Service-Entitled Premises in accordance with the Kitchen Caddy and Kitchen Caddy Liners Distribution Plan required under clause 3.5 this FOGO Collection Specification. The Contractor must:

- (a) supply and deliver one Kitchen Caddy each to all FOGO Service-Entitled Premises;
- (b) supply and deliver to each FOGO Service-Entitled Premises a pack of Kitchen Caddy Liners containing a minimum of 52 Kitchen Caddy liners; and
- (c) supply and distribute any education material and or instructions to all FOGO Service-Entitled Premises.

The payment to the Contractor for the initial supply and delivery of Kitchen Caddies and Bin Liners to all FOGO Service-Entitled Premises will be based on the Agreement Prices for the supply and delivery of Kitchen Caddy and Caddy Bin Liners.

The Contractor must provide Council with evidence of the order for the supply of Kitchen Caddies and Kitchen Caddie Liners at least 10 Business Days prior to the FOGO Commencement Date.

#### 3.6.2 Supply and Delivery of Kitchen Caddies for New Commencement

Where Council instructs the Contractor to provide the FOGO Collection Service to a new FOGO Service-Entitled Premises, the Contractor must provide new Kitchen Caddy to the new FOGO Service-Entitled Premises within two (2) Working Days of receiving the instruction from Council.

The cost of supply and delivery of Kitchen Caddies to new or additional FOGO Service-Entitled Premises must be factored into the cost of providing the FOGO Collection Service to the FOGO Service-Entitled Premises.

#### 3.6.3 Replacement of Broken Kitchen Caddies

Where requested by Council, the Contractor must provide replacement Kitchen Caddy to a Service-Entitled Premises. The replacement Kitchen Caddy must be new and have the same specification and branding as specified in clause 3.3. The Contractor must maintain sufficient quantities of Kitchen Caddies in stock to provide the replacement Kitchen Caddies to FOGO Service-Entitled Premises within two (2) Working Days of receiving the instruction from Council.

The Contractor will be compensated for the supply and delivery of the Kitchen Caddy to the FOGO Service-Entitled Premises for broken or replacement Kitchen Caddies based on the Agreement Prices for the supply and delivery of the Kitchen Caddies to the FOGO Service-Entitled Premises.

#### 3.6.4 Supply and Delivery of Kitchen Caddy Liners for New Commencement

Where Council instructs the Contractor to provide the FOGO Collection Service to a new FOGO Service-Entitled Premises, the Contractor must provide a pack of Kitchen Caddy liners containing a minimum of 52 Kitchen Caddy liners to the new FOGO Service-Entitled Premises along with the Kitchen Caddy within two (2) Working Days of receiving the instruction from Council.

The Contractor acknowledges and agrees that the cost of supply and delivery of Kitchen Caddy liners to new or additional FOGO Service-Entitled Premises has been incorporated into the Agreement Prices applicable for providing the FOGO Collection Service to FOGO Service-Entitled Premises.

#### 3.6.5 Ongoing Supply and Delivery of Kitchen Caddy Liners (Optional)

In this clause 3.6.5:

- (a) 'Option 1' will apply during Service Period B following the initial supply and delivery of Kitchen Caddies and Kitchen Caddy liners under clause 3.6.1, unless otherwise directed by the Council's Representative in writing; and
- (b) 'Option 2' will apply if the Council's Representative provides a written notice to that effect to the Contractor, on the date that is 3 months after issue of that notice.

The Contractor acknowledges and agrees that at any time during the Services Term Council may, by written notice to the Contractor, direct the Contractor to cease providing Kitchen Caddy liners under this Agreement. If Council issues such notice:

- (c) the Contractor must cease providing the Service required by Option 1 and Option 2 below on the date that is 6 months following the date of the notice; and
- (d) Council may either itself or through an alternative contractor supply and deliver Kitchen Caddy liners to Service-Entitled Premises.

#### Option 1 – Supply and Delivery to all Service Entitled Premises on a regular basis

The Contractor must supply and deliver Kitchen Caddy liners to the FOGO Service-Entitled Premises or at location(s) within the Service Area provided by Council.

The Kitchen Caddy liners must be supplied and delivered in the following formats:

- (a) individual packs of 52 Kitchen Caddy liners directly to each FOGO Service-Entitled Premises as required by Council; and
- (b) in bulk packs of 52 Kitchen Caddy liners to location(s) nominated by Council within the Service Area.

## Option 2 – Supply and Delivery to Service Entitled Premises on demand via online order or phone

The Contractor must:

- (a) provide an online ordering system for residents of the Service-Entitled Premises to order individual packs of 52 Kitchen Caddy liners online or via telephone; and
- (b) supply and deliver the Kitchen Caddy liner packs to Service Entitled Premises that order the Kitchen Caddy liners.

For the supply and delivery of Kitchen Caddy liners via online order or phone, the Contractor must as a minimum provide the following:

- (a) online order system and telephone order for Kitchen Caddy liners;
- (b) an auditable data system to capture all Service Entitled Premises that have ordered the received the Kitchen Caddy liners;
- (c) allow a maximum of four (4) orders of packs of 52 Kitchen Caddy liners in a calendar year by any individual Service Entitled Premises identified by their address (pro rata for new services that commence during the year: and
- (d) deliver packs of 52 Kitchen Caddy liners to the Service Entitled Premises within 1 week from the date of order online or via telephone.

## 4. Pre Service and Start Up Education for FOGO

#### 4.1 Pre Service and Start Up Contribution for FOGO

The Contractor must contribute a minimum amount of \$120,000 for development, implementation and evaluation of pre service and start up education for the FOGO Collection Service. This education will be in addition to the education undertaken by Council on an ongoing basis.

The financial contribution and the development of the education plan must commence at least six months prior to the FOGO Commencement Date and be expended by the FOGO Commencement Date.

Any education provided by the Contractor must be approved by Council and must have the consistent message for all Contract Waste streams, in particular the introduction of the FOGO Collection Service.

Should Council require involvement of the Contractor in Council's education campaign, the Contractor must make available:

- (a) Contractor's relevant employees;
- (b) Collection Vehicles; and
  - (c) any other material as reasonably required for the education purpose.

## 4.2 Contractor to Develop and Deliver Pre Service and Start Up Education

Within the above financial contribution required under clause 4.1 of this FOGO Collection Specification, the Contractor will nominate and provide appropriately qualified and experienced personnel to develop, implement and evaluate the pre service and start up education program on behalf of Council.

The pre service and start up education phase will cover the period prior to the FOGO Commencement Date and include the first twelve (12) months of the FOGO Collection Service.

### 4.3 Purchase of Environmentally Preferable Goods

The Contractor must purchase environmentally preferable goods, where possible, for the development of the pre service and start up education. This would include goods that are either recycled, recyclable or biodegradable with preference given to locally sourced and produced goods. Printed materials comply with AS14021 (NSW Government Resource Efficiency Policy). Non-recycled paper must be sourced from sustainable sources accredited under the FSC, PEFC, with preference given to locally sourced and produced goods.

#### 4.4 Pre Service and Start Up Education Plan

Nine (9) months prior to the FOGO Commencement Date, the Contractor must provide a draft Pre Service and Start Up Education Plan to the value of the contribution outlined in clause 4.1 of this FOGO Collection Specification for approval by Council.

At a minimum, this plan must include:

- (a) objectives, outcomes and deliverables;
- (b) details of the development, design and production of education materials and collateral
   i.e. bin stickers, pre-service information materials e.g. flyers and resident information
   packages (days of service calendar information brochure; Council letter; envelope; delivery
   methods);
- (c) other education initiatives to assist Customers to correctly use the Services;
- (d) proposed environmentally preferable goods to be purchased;
- (e) detailed costing of materials and labour for all works;
- (f) detailed timeline and responsibilities for activities;
- (g) details on how the plan will be evaluated including useful, feasible key performance indicators for the objectives and outcomes; and
- (h) roles and responsibilities for development, approvals and delivery.

Council may direct that the Contractor make any amendments or additions to the Pre Service and Start Up Education Plan that it considers appropriate. A final amended version of the Pre Service and Start Up Education Plan is to be submitted by the Contractor at least three (3) months prior to the FOGO Commencement Date unless the parties agree otherwise.

#### 4.5 Dedicated Education Officer for FOGO

On and from the FOGO Commencement Date the Contractor must provide at its own cost, one (1) fulltime employee dedicated to Council's education and contamination reduction program dedicated to education related to FOGO Collection Service for a period of two (2) years.

The Dedicated Education Officer provided by the Contractor will be in addition to:

- the education contributions required under clauses 18.1 and 18.2.1 of the General Specification; and
- Dedicated Education Officer required under clause 18.3 of the General Specification

The Contractor acknowledges and agrees that the cost of providing the Dedicated Education Officer for FOGO has been incorporated in the Agreement Prices for the provision of FOGO Collection Services under this Agreement.

The Education Officer(s) must:

- (a) be employed by the Contractor and available for work on and from the FOGO Commencement Date;
- (b) work closely with Council to develop the work program for the education required at the FOGO Commencement Date;
- (c) implement the work program for the commencement of the FOGO Collection Service;
- (d) implement the annual work program as required by Council;

- (e) provide relevant reporting related to the work program developed and implemented by the Education Officer; and
- (f) attend regular meetings with Council to discuss the progress against the annual work program and any other matter deemed necessary for the development and implementation of the of the work program.

#### 4.6 Verification and Approval of Materials and Timing

All education initiatives and collateral and the timing of education must be approved by Council prior to distribution to Customers.

## 5. Changes Required for Introduction of FOGO

#### 5.1 Collection Days and Routes

At least three months prior to the FOGO Commencement Date, the Contractor must provide Council with:

- (a) collection zones for Waste, Recyclable Waste, Bulky Waste and FOGO Collection Service;
- (b) expected collection routes for each of the collection zones;
- the collection days for each of the Waste, Recyclable Waste, Bulky Waste and FOGO Collection Service; and
- (d) Any other likely changes that may be required for the introduction of FOGO Collection Service.

The Contractor must work with Council to ensure that the transition for the introduction of FOGO is delivered with minimum disruption to the community. The Contractor must work collaboratively with Council to develop the information pack that will be distributed to the residents informing them of the introduction of FOGO Collection Service and any changes to the collection days of their Waste, Recyclable Waste, Bulky Waste and FOGO Collection Service.

The Contractor must deliver the education material developed for the introduction of FOGO Collection Service to all Service-Entitled Premises.

#### 5.2 Changes to the Mobile Bins

From the FOGO Commencement Date, the Garden Organics Mobile Bins will be used as FOGO Mobile Bins. To facilitate the change, the Contractor must:

- (a) at least 5 Working Days prior to the FOGO Commencement Date, place a sticker on all Green Lid Mobile Bin (including the new and converted Mobiles bins at Multi Unit Dwellings) with the education message related to the use of that Mobile Bin for FOGO;
- (b) replace the lids of selected 240L Red Lid Waste Mobile Bins at Multi Unit Dwellings to Green Lid to be utilised as FOGO Mobile Bins;
- (c) provide additional FOGO Mobile Bins to the Multi Unit Dwellings if required by Council in accordance with clause 3.2 of this FOGO Collection Specification; and
- (d) configure the Mobile Bins at the Multi Unit Dwellings as required by Council.

## 6. Additional Requirements for Vehicles

For the purposes of monitoring Contamination and vehicle loads, each Collection Vehicle must be fitted with effective hopper mounted colour cameras. Colour monitors must be mounted within the cabin to allow the driver and other staff riding in the vehicle to view material as it enters the collection vehicle's hopper.

#### 7. FOGO Ownership and Delivery

#### 7.1 Council Ownership of FOGO

Council retains ownership of all FOGO collected as part of the FOGO Collection Service. Council will remain responsible for paying all processing costs following the delivery of FOGO Waste to the Nominated Facility and will retain any income from materials sold through provision of this Service.

The Contractor must provide the Council with evidence, as required, in the form of weighbridge dockets or the equivalent, to the satisfaction of the Council, of the separate amounts of all FOGO Waste collected in the course of providing the Services.

Sorting, processing and composting of FOGO or sale of material derived from FOGO is not part of this Agreement.

#### 7.2 Nominated Facility for FOGO

The material collected by the Contractor in the course of performing the FOGO Collection Service must be delivered to the Nominated Facility for FOGO, located either in:

- Zone 1 to Artarmon:
- Zone 2 to Anzac Street, Chullora; or
- Zone 3 to Wallgrove Rd, Eastern Creek NSW 2766.
- Zone 4 to 1725 Elizabeth Drive, Kemps Creek NSW 2178.

Specific requirements of the Nominated Facility for FOGO and any relevant contractual obligations will be provided to the Contractor at least 20 Working Days prior to delivery of material to the Nominated Facility under this Agreement.

Council may nominate an Alternative Facility for FOGO during the Term as specified in clause 7.3 of this FOGO Collection Specification.

#### 7.3 Alternative Facilities

During the Term, Council may from time to time nominate Alternative Facilities for receiving FOGO Waste under this Agreement instead of a Nominated Facility. Once nominated, the Alternative Facility will be deemed to be the Nominated Facility.

Where an Alternative Facility is utilised for the delivery of FOGO collected under this Agreement, the Contractor will be compensated based on the Agreement Prices for the Zone the Alternative Facility is located in.

#### 7.4 Payment for Transport to Alternative Facility

#### 7.4.1 General

For various reasons, it may be necessary to move from the Nominated Facility for any of the services, to an Alternative Facility at some time during the Term.

#### 7.4.2 Payment for Use of Alternative Facility

If Council changes the Nominated Facility for FOGO under this Agreement, and it is further or less in distance from the defined Approximate Centroid than the Nominated Facility for FOGO for that service, then the Contractor will be entitled to an additional payment or reduction in payment (as the case may be) based on the Agreement Prices for different zones in which the Nominated Facility for FOGO or the Alternate Facility for FOGO falls in.

The payment for the collection, transportation and the delivery of FOGO will be based on the Agreement Prices for the location of the Nominated Facility for FOGO or the Alternative Facility for FOGO as defined in the Agreement Prices.

To avoid doubt, delivery of FOGO Waste by the Contractor to a facility that is not a Nominated Facility or Alternative Facility, will be a breach of this Agreement.

#### 7.5 Unloading of FOGO

FOGO Waste must be unloaded from the Collection Vehicles by the Contractor at the Nominated Facility for FOGO or Alternative Facility for FOGO. The Contractor must ensure that its Contractor's Staff, comply with all instructions issued by Council, or the person in charge of the Nominated Facility for FOGO or the Alternative Facility for FOGO.

The Contractor will be responsible for ensuring that all materials collected comply with the requirements for receipt of materials at the Nominated Facility for FOGO.

#### 7.6 Only Materials from the Service Area

The Contractor must ensure, and enable Council to verify, that only FOGO Waste collected in the course of providing the services to FOGO Service-Entitled Premises within the Service Area under this Agreement are taken to the Nominated Facility for FOGO or Alternative Facility for FOGO in the Collection Vehicles.

## 8. Contamination Management for FOGO

#### 8.1 Contamination Management Strategy and Operations for FOGO

The Contractor will be responsible for developing, implementing, monitoring, evaluating and reviewing a Contamination Management Strategy and associated procedures for managing Contamination within FOGO.

The strategy and procedures will ultimately form a chapter of the Quality Plan specified under clause 13 of the General Specification but also must be suitable to act as a standalone operational document.

A draft Contamination Management Strategy and Procedures Program must be submitted to Council for Endorsement under clause 7.3 of the Operative Terms.

#### 8.2 Supporting Materials to be Developed

Council will be responsible for producing any supporting materials required to implement the Contamination Management Strategy and Procedures Program such as stickers and brochures and letters to the residents. Council must give final approval to any supporting materials and changes to supporting materials that is provided by the Contractor during the Term.

All supporting materials must be developed in conjunction with educational resources developed under clause 18 of the General Specification to ensure an integrated approach and consistent messages. All letters used as a component of the strategy will be produced by Council, on Council's letterhead.

The Contractor must specify all details of the supporting material types in the Contamination Management Strategy and Procedures Program.

#### 8.3 Contamination Procedures for FOGO

In developing the Contamination Management Strategy and Procedures Program, the Contractor must undertake the minimum requirements and procedures detailed in clause 8.4 of this FOGO Collection Specification.

These minimum requirements will form the basis of the procedures to be developed by the Contractor and the Contractor is expected to expand on and improve the minimum procedures detailed under clause 8.4 of this FOGO Collection Specification.

#### 8.4 Minimum Contamination Requirements and Procedures

#### 8.4.1 Gross Contamination – Visible at the Kerbside

The Contractor must not collect any Mobile Bin where it is evident upon visual inspection that it contains Gross Contamination.

The Contractor must notify the Customer of the Gross Contamination either by way of letter being placed in the letterbox of the Premise or sticker attached to the Mobile Bin. Customers must be notified prior to 5:00 p.m. on the day that the incident occurred.

The Customer must be given the opportunity to rectify the problem within one (1) Working Day and contact the Customer Service Centre to request another FOGO Collection Service. The Contractor must return to the premises within one (1) Working Day of the Customer request for the Service and provide the Service at no additional charge to Council.

#### 8.4.2 Contamination - Visible at the Kerbside

If the Contractor finds Contamination, not considered to be Gross Contamination, on visual inspection of a Mobile Bin, the Contractor may empty the bin if deemed acceptable. The Contractor must notify the Customer of the problem and clarify what is deemed acceptable presentation. The Customer must be notified of the problem within two (2) Working Days of the incident occurring.

#### 8.4.3 Contamination – Visible via Camera in Hopper

If the Contractor becomes aware of Contamination or Gross Contamination within a Mobile Bin in the process of emptying its contents into the Collection Vehicle, the Contractor must provide the Customer with notification, specifying the problem and clarifying what is deemed acceptable presentation.

The Customer must be notified of the problem within two (2) Working Days of the incident occurring.

#### 8.4.4 Multiple Occurrences - Second Occurrence

On the second occurrence, over a time period agreed upon by the Contractor and Council, of any incident at a Service-Entitled Premise as specified under clauses 8.4.1, 8.4.2 and 8.4.3 of this FOGO Collection Specification, the Contractor must follow the procedure as outlined in the relevant Clause (i.e. 8.4.1, 8.4.2 and 8.4.3).

#### 8.4.5 Multiple Occurrences – Third Occurrence

On the third occurrence, over a time period agreed upon by the Contractor and Council, of any incident, or combination of incidents as specified under clauses 8.4.1, 8.4.2 and 8.4.3 of this FOGO Collection Specification, the Contractor must follow the procedure as outlined in the relevant clause (i.e. 8.4.1, 8.4.2 and 8.4.3).

In addition, the Contractor must notify the Council of the situation and request that a letter be issued by Council advising of the possible removal of services after any further incident over a time period agreed upon by the Contractor and Council.

#### 8.4.6 Multiple Occurrences – Fourth Occurrence

If a further Contamination incident occurs, over a time period agreed upon by the Contractor and Council, or a combination of incidents as specified under Clauses 8.4.1, 8.4.2 and 8.4.3 of this FOGO Collection Specification, the Contractor must follow the same procedure as outlined in the relevant clause (i.e. 8.4.1, 8.4.2 and 8.4.3).

In addition, the Contractor must notify the Council of the situation and provide a brief outline of the history and severity of the incidents at that Service-Entitled Premise.

#### 8.4.7 Multiple Occurrences – Cessation of Service

The Council may request that the Contractor cease the FOGO Collection Service, as specified in clause 6.3 of the General Specification, for a period of time determined by the Council at that Service-Entitled Premise to which clause 8.4.6 of this FOGO Collection Specification applies. Council will notify the Customer in writing after removal of the service.

#### 8.5 Reporting and Documenting Contamination Incidents

The Contractor must document and maintain database(s) of all addresses and other appropriate details for all Contamination incidents including a description of the severity of the incident.

The Contractor must provide photographic evidence of contamination via cameras and make it available to Council via online portal.

This information must be collated, compiled and reported to Council as detailed in the Quality Plan at Clause 15 of the General Specification.

#### 8.6 Council Contamination Approach for FOGO

The Council will provide the Contractor with details of any changes to Council's approach and process in relation to Contamination management and cessation of Services after repeated Contamination incidents.

If these changes impact on the Contractor Contamination Management Strategy and Procedures Program, the Council will compensate the Contractor for any additional cost incurred in the review of the strategy or procedures and development of supporting materials. The Contractor must be given reasonable notice to effect changes to the Contamination Management Strategy and Procedures Program.

## 8.7 Review of Contamination Management Strategy and Program

The Contamination Management Strategy and Procedures Program for FOGO must be reviewed, and if necessary updated, by the Contractor from time to time, at least on an annual basis. All changes must be agreed between the Council and the Contractor and approved by Council prior to implementation.

## Part 6: Bulky Waste Collection Service

## Part 6: Bulky Waste Collection Specification

#### 1. Introduction

This part defines explicit requirements for:

- (a) Bulky Waste Collection Service from Service-Entitled Premises;
- (b) Dumped Waste Collection Service from within the Council LGA; and
- (c) Bulk Green Waste Collection Service from Service-Entitled Premises.

It must be read in conjunction with the General Specification, to form the complete specification in relation to Bulky Waste Collection Service.

The Contractor must ensure that Bulky Waste Collection Services provided under this Agreement address the requirements of the General Specification as well as the Bulky Waste Collection Service Specification. To the extent of any inconsistency between the General Specification and this Bulky Waste Collection Specification, the Bulky Waste Collection Specification shall have precedence.

## 2. Bulky Waste and Bulk Green Waste Collection Service

#### 2.0 Notification of Bulky Waste Collection Option

Prior to 1 October 2023, Council must notify the Contractor in writing whether Council elects to adopt:

- (a) Bulky Waste and Bulk Green Waste Service Requirement (Booked Service) (Option 1); or
- (b) Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booked Service) (Option 2).

If Council elects to adopt Option 1, then:

- (a) Option 1 of clause 2.1 will apply;
- (b) Option 2 of clause 2.1 will not apply; and
- (c) Option 1 of Table 4 in Schedule 2 of the Agreement will apply.

If Council elects to adopt Option 2, then:

- (a) Option 2 of clause 2.1 will apply;
- (b) Option 1 of clause 2.1 will not apply; and
- (c) Option 2 of Table 4 in Schedule 2 of the Agreement will apply.

#### **Bulky Waste Collection Option 1: Booked Service Only**

# 2.1 Bulky Waste and Bulk Green Waste Service Requirement (Booked Service)

The Contractor must provide the booked Bulky Waste and Bulk Green Waste Collection Service to the Bulky Waste Service-Entitled Premises as outlined in this clause 2.

#### The Contractor must:

- (a) provide an online booking service for Customers to book Bulky Waste and Bulk Green Waste Collection Service in accordance with the General Specification;
- (b) take booking over the telephone for Bulky Waste and Bulk Green Waste Collection Service from the Customers;
- (c) send standard letter and or email out to Customers explaining the requirements of Bulky Waste Collection Service or Bulk Green Waste including the date of collection and the collection protocol to all services booked for collection via online booking and telephone booking. The general contents of the letter/notification shall be approved by Council prior to its use for this purpose;
- (d) provide a reminder to the Customer in electronic format where available at least two (2) days prior to the nominated collection date;
- (e) undertake collection of Bulky Waste and Bulk Green Waste in a safe manner from the Kerbside and transport the Bulky Waste and Bulk Green Waste to the respective Nominated Facility for Bulky Waste or Bulk Green Waste.

The Contractor must apply the following limit to each Service-Entitled Premises:

- (a) a maximum of approximately two (2) cubic metres of Bulky Waste or Bulk Green Waste presented by the Customer at a Service-Entitled Premise is considered one service; and
- (b) a maximum of four (4) services allowed for a Service-Entitled Premise per calendar year. The maximum of four (4) services can either be:
  - i. Bulky Waste only;
  - ii. A combination of Bulky Waste and Bulk Green Waste (e.g. 3 Bulky Waste and 1 Bulk Green Waste); or
  - iii. Bulk Green Waste only

The Contractor must manage the process from the time it receives the booking via telephone or online booking to the time it collects and disposes of the Bulky Waste and Bulk Green Waste to the respective Nominated Facility for Bulky Waste or Bulk Green Waste.

Payment for this service will be made at the Agreement Prices stated in Schedule 2 to the Agreement for 'Bulky Waste Collection Service'. All cost associated with the Bulky Waste Collection and Bulk Green Waste Collection is deemed to be included in the Agreement Prices for Bulky Waste Collection Services.

#### Bulky Waste Collection Option 2: Scheduled Service and Booked Service

# 2.1 Bulky Waste and Bulk Green Waste Service Requirement (Scheduled and Booked Service)

The Contractor must provide booked and scheduled Bulky Waste and Bulk Green Waste Collection Service to the Bulky Waste Service-Entitled Premises as outlined in this clause 2. Under this clause 2 the Contractor is required to provide:

 a scheduled service that will include three (3) scheduled Bulky Waste collections for all Service Entitled Premises in each calendar year; and  a booked service that includes one (1) booked Bulky Waste or Bulk Green Waste collection service per Service Entitled Premises in each calendar year.

For the scheduled Bulky Waste Collection service, the Contractor must:

- (a) At least two weeks prior to the commencement of each calendar year, provide Council for approval a plan and schedule of collection zones and times for the scheduled Bulky Waste Collection Service to allow for three (3) collections per year for all Service Entitled Premises that is spread over the calendar year;
- (b) Schedule Bulky Waste Collection Service in accordance with the zones and times approved by Council;
- (c) undertake collection of Bulky Waste in a safe manner from the Kerbside and transport the Bulky Waste and Bulk Green Waste to the Nominated Facility for Bulky Waste.

For the booked Bulky Waste or Bulk Green Waste Collection service, the Contractor must:

- (a) provide an online booking service for Customers to book Bulky Waste and Bulk Green Waste Collection Service in accordance with the General Specification;
- (b) take booking over the telephone for Bulky Waste and Bulk Green Waste Collection Service from the Customers;
- (c) send standard letter and or email out to Customers explaining the requirements of Bulky Waste Collection Service or Bulk Green Waste including the date of collection and the collection protocol to all services booked for collection via online booking and telephone booking. The general contents of the letter/notification shall be approved by Council prior to its use for this purpose;
- (d) provide a reminder to the Customer in electronic format where available at least two (2) days prior to the nominated collection date;
- (e) undertake collection of Bulky Waste and Bulk Green Waste in a safe manner from the Kerbside and transport the Bulky Waste and Bulk Green Waste to the respective Nominated Facility for Bulky Waste or Bulk Green Waste.

The Contractor must apply the following limit for booked collection service to each Service-Entitled Premises:

- (a) a maximum of approximately two (2) cubic metres of Bulky Waste or Bulk Green Waste presented by the Customer at a Service-Entitled Premise is considered one service; and
- (b) only one booked service is allowed for a Service-Entitled Premise per calendar year. The one services can either be:
  - i. one Bulky Waste collection service; or
  - ii. one Bulk Green Waste collection service

The Contractor must manage the process from the time it receives the booking via telephone or online booking to the time it collects and disposes of the Bulky Waste and Bulk Green Waste to the respective Nominated Facility for Bulky Waste or Bulk Green Waste.

Payment for this service will be made at the Agreement Prices stated in Schedule 2 to the Agreement for 'Bulky Waste Collection Service'. All cost associated with the Bulky Waste Collection and Bulk Green Waste Collection is deemed to be included in the Agreement Prices for Bulky Waste Collection Services.

#### 2.2 Bulky Waste or Bulk Green Waste to be Collected

The Contractor must only collect the material defined as Bulky Waste or Bulk Green Waste and NOT collect such items as:

- (a) liquid waste (including paint, oil or chemicals);
- (b) bricks, concrete, rubble, excavation material, dirt or stones and other waste resulting from renovation or demolition of buildings;
- (c) car bodies either whole or dismantled;
- (d) hazardous and/or offensive waste, including asbestos;
- (e) household putrescible waste;
- (f) refrigerators (gassed);
- (g) domestic recyclables collectable under Councils recycling collection service;
- (h) oil heaters;
- (i) television, computers, computer monitors, printers; and
- (j) waste from industrial or commercial premises.

#### 2.3 Non-Collection of Bulky Waste or Bulk Green Waste

If the Contractor does not remove a booked Bulky Waste or the Bulk Green Waste, because it is not in compliance with the Services Specification or limits included in the Services Specification, then:

- (a) the Contractor must leave notification materials in the relevant Customer's letterbox or in another conspicuous place a notice stipulating why the Bulky Waste, or the Bulk Green Waste was not removed; and
- (b) the Contractor must prepare a daily report to Council of those premises or locations where the booked Bulky Waste or the Bulk Green Waste was not collected including digital photographs supporting the non-compliance.

#### 2.4 Collection of Dumped Waste

From time to time, after its investigation of the Dumped Waste, Council will direct the Contractor to collect the Dumped Waste from locations within the LGA and transport it to the Bulky Waste and Dumped Waste processing facility.

The Contractor must collect and transport Dumped Waste to the Nominated Facility for Processing. For the purpose of this Agreement, Dumped Waste will be treated as the Bulky Waste Collection Service.

## 3. Disposal and Delivery

#### 3.1 Disposal and Treatment Costs

Council shall retain ownership of materials collected as part of the Bulky Waste, Dumped Waste and Bulk Green Waste Collection Service and will remain responsible for paying all disposal, and processing charges following delivery of the Bulky Waste, Dumped Waste and Bulk Green Waste to the respective Nominated Facility.

The Contractor must provide Council with evidence, in the form of weighbridge dockets or equivalent, to the satisfaction of the Council, of the separate amounts of all Bulky Waste, Dumped

Waste and Bulk Green Waste collected in the course of providing the Services, with the monthly progress payment claim.

#### 3.2 Nominated Facility for Bulky Waste and Dumped Waste

The material collected by the Contractor in the course of performing the Bulky Waste and Dumped Wase Collection Service must be delivered to the Nominated Facility for Bulky Waste.

Specific requirements of the Nominated Facility and any relevant contractual obligations will be provided to the Contractor at least 20 Working Days prior to Services Commencement Date or the date that an Alternative Facility is to be used for the delivery of Bulky Waste under this Agreement.

Council may nominate an Alternative Facility for Bulky Waste as specified in Clause 4.3 of this Bulky Waste Collection Specification.

#### 3.3 Nominated Facility for Bulk Green Waste

The material collected by the Contractor in the course of performing the Bulk Green Waste Collection Service must be delivered to the Nominated Facility for Bulk Green Waste.

#### 3.4 Alternative Facilities

During the Term, Council may from time to time nominate an Alternative Facility for receiving Bulky Waste or Bulk Green Waste under this Agreement instead of a Nominated Facility. Once nominated, the Alternative Facility will be deemed to be the Nominated Facility.

## 3.5 Payment for Transport to Nominated Facility or Alternative Facility

#### 3.5.1 General

For various reasons, it may be necessary change the Nominated Facility or to move from the initial Nominated Facility to an Alternative Facility or Facilities at some time(s) during the Term.

#### 3.5.2 Payment for Use of Alternative Facility

If Council changes the Nominated Facility for Bulky Waste or Bulk Green Waste or approves an Alternative Facility for Bulky Waste under this Agreement, and it is further or less in distance from the defined Approximate Centroid than the Nominated Facility for Bulky Waste for that service, then the Contractor or Council will be entitled to an additional payment or reduction in payment (as the case may be) based on the Agreement Prices for different zones in which the Nominated Facility or the Alternate Facility for Bulky Waste and Bulk Green Waste falls in.

The payment for the collection, transportation and the delivery of Bulky Waste and the Bulk Green Waste will be based on the Agreement Prices for the location of the Nominated Facility for Bulky Waste or the Alternative Facility for Bulky Waste as defined in the Agreement Prices.



## Schedule 5 Approved form of security

#### Approved form of Security

At the request of J.J. Richards & Sons Pty Ltd ACN 000 805 425 ABN 40 000 805 425 (the Contractor) and in
consideration of Willoughby City Council ABN 47 974 826 099 (the Council) accepting this undertaking in respect
of the Waste, Recyclables, Organics and Bulky Waste Collection Services Agreement (the Agreement)
ACN
undertakes to pay on demand any sum or sums which may from time to time be demanded by the Council to a
maximum aggregate sum of seven hundred and fifty thousand dollars (\$ 750,000.00).
The undertaking is to continue until notification has been received from the Council that the sum is no longer
required by the Council or until this undertaking is returned to the Financial Institution or until payment to the
Council by the Financial Institution of the whole of the sum or such part as the Council may require.
Should the Financial Institution be notified in writing, purporting to be signed for and on behalf of the Council
that the Council 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 Council 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 Council
the sum of seven hundred and fifty thousand dollars (\$750,000.00) 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 Council and
thereupon the liability of the Financial Institution hereunder shall immediately cease.



## Schedule 6 Draft Contract Program



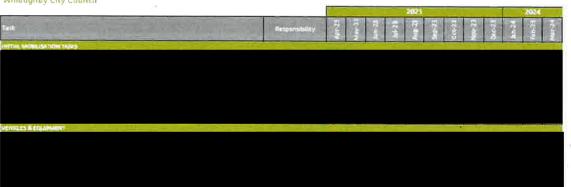
## Maddocks

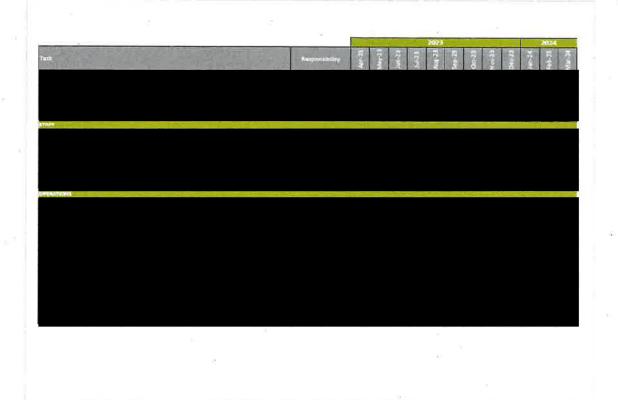
## **CONTRACT PROGRAM**

Schedule 22: Contract Program

TIME TABLE: April 2023 to March 2024

Willoughby City Council







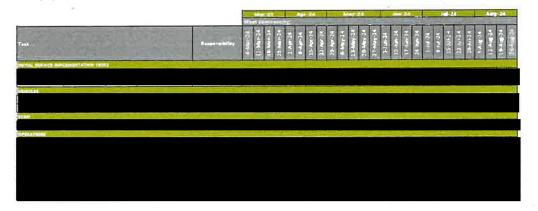
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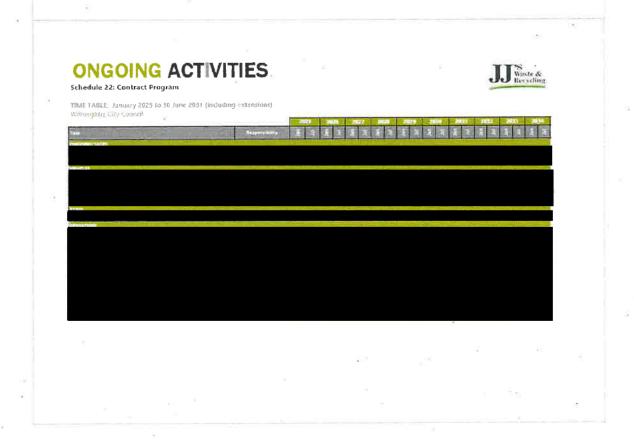
## **SERVICE IMPLEMENTATION PROGRAM**



Schedule 22: Contract Program

TIME TABLE: March 2024 to August 2024 Willoughby City Conneil







## Schedule 7 Depot Lease

Form: 07L Release: 4·7

### LEASE

Leave this space clear. Affix additional pages to the top left-hand corner.

New South Wales Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

	STAMP DUTY	Insert Duties Assessment No. as issued by Revenue NSW Office.				
	on many	Duties Assessment No.				
(4)	TORRENS TITLE					
(A)	TORRENS THEE	Property leased	1			
		2/25667	1			
			. 1			
	18					
(B)	LODGED BY	Document Name, Address or DX, Telephone, and Customer Account Number if any.	٦			
		Collection PIKES & VEREKERS LAWYERS	١			
	*	BOX Customer No. 123507A	1			
		Tel: (02) 9262 6188	1			
	a		1			
	o ==	Email: kprobert@pvlaw.com.au Reference: KP:TTT:220265				
(C)	LESSOR		=			
		WILLOUGHBY CITY COUNCIL (ABN 47 974 826 099)				
Ü						
(D)		The lessor leases to the lessee the property referred to above.				
(D)		Encumbrances (if applicable):				
(E)	LESSEE	SSEE				
		J.J. RICHARDS & SONS PTY LTD (ACN 000 805 425)				
(F)		TENANCY:				
(G)	1 TEPM CENT	ZN (7) VEADC				
(0)	1. TERM SEVEN (7) YEARS 2. COMMENCING DATE 4 MARCH 2024 3. TERMINATING DATE 3 MARCH 2031					
	4. With an OPTION TO RENEW for a period of N.A.  set out in clause N.A. of N.A.					
	<ul> <li>5. With an OPTION TO PURCHASE set out in clause N.A. of N.A.</li> <li>6. Together with and reserving the RIGHTS set out in clause N.A. of N.A.</li> </ul>					
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	7. Incorporates the provisions or additional material set out in ANNEXURE(S) "A" hereto.					
		the provisions set out in N.A.				
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	9. The RENT is	set out in clause No. 5 of ANNEXURE "A"				

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<sup>\*</sup> As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply. \*\* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS Page 2 of 37 2005

- WILLOUGHBY CITY COUNCIL (ABN 47 974 826 099)
   of Level 4, 31 Victor Street, Chatswood NSW 2088
   ("the Lessor")
   of the first part.
- J.J. RICHARDS & SONS PTY LTD (ACN 000 805 425)
   of 3 Grant Street, Cleveland QLD 4163
   ("the Lessee")
   of the second part.

Pikes & Verekers Lawyers Level 2, 50 King Street SYDNEY NSW 2000

DX 521 SYDNEY

Tel: (02) 9262 6188 Fax: (02) 9262 6175 Ref: KP:220265

#### **INDEX**

REF	ERENCE SCHEDULE	5
1.	INTERPRETATION	6
2.	GRANT AND TERM	12
3.	PROPERTY LEASED	12
4.	OPTION FOR RENEWAL	13
5.	RENT	14
6.	GOODS AND SERVICES TAX	14
7.	RENT REVIEW	14
8.	OUTGOINGS	18
9.	SERVICES PAID FOR LESSEE	18
10.	SECURITY	19
11.	OTHER MONIES AND LEGAL COSTS PAYABLE BY THE LESSEE	19
12.	INTEREST	19
13.		
14.	RISK AND INDEMNITY	21
15.	MAINTENANCE, REPAIR AND REDECORATION	22
16.	ALTERATIONS	22
17.		
18.	INSURANCE	24
19.	LESSOR'S RIGHT OF ACCESS AND POWER TO REMEDY LESSEE'S DEFAULT	25
20.	DAMAGE AND DESTRUCTION	25
21.	TRANSFER AND SUBLETTING BY THE LESSEE	27
22.	LESSOR'S RESERVATIONS	
23.	RULES	
24.	QUIET ENJOYMENT	
25.	TERMINATION	28
26.	GRANT OF NEW LEASES UPON EXTENSION OF WASTE AGREEMENT	
27.		
28.	HOLDING OVER	
29.	RETAIL LEASES ACT 1994 (NSW) DOES NOT APPLY	
30.	SUBDIVISION	
31.	LICENCE TO USE WASH BAY	
32.	MODERN SLAVERY	
33.	INTERDEPENDENT DOCUMENTS	
EXE	CUTION	37

## REFERENCE SCHEDULE

ITEM 1	Term (Clause 2.1)	Seven (7) years
ITEM 2	Commencing Date (Clause 2.1)	4 March 2024
ITEM 3	Terminating Date (Clause 2.1)	3 March 2031
ITEM 4	Property Leased (Clause 3.1)	4 McLachlan Street, Artarmon NSW 2064 (being Lot 2 in Deposited Plan 25667)
ITEM 5	Options for Renewal (Clause 4)	Nil <u>– however, the parties note the provisions of Clause 26 of this Lease.</u>
ITEM 6	Rent (Clause 5.1)	\$235,500.00 per annum plus GST
ITEM 7	Rent Payment Method (Clause 5.3)	Monthly in advance via Direct Debit from the Lessee's nominated bank account initiated by the Lessor.
ITEM 8	Rent Review Dates (Clause 7.1)	Each anniversary of the Commencing Date
ITEM 9	Rent Review Method (Clause 7.1)	CPI Rent Review
ITEM 10	Permitted Use (Clause 13)	Garaging, cleaning, repairs and maintenance of vehicles associated with the Lessor's waste collection services and commercial offices
ITEM 11	Public Liability Insurance (Clause 18)	\$20,000,000.00
ITEM 12	Guarantor (Clause 33)	Not applicable.

#### INTERPRETATION

#### 1.1 Reference Schedule

In this Lease the words and expressions contained in the Reference Schedule have the meanings specified in the Reference Schedule but as further defined (if applicable) in clause 1 and elsewhere in the Lease.

#### 1.2 Definitions

In this Lease (unless the context otherwise requires) the following words and expressions have these meanings:

**Anti-slavery Commissioner** means the Anti-slavery Commissioner appointed under the Modern Slavery Act 2018 (NSW);

**Authority** includes a Council, statutory or public authority, government department, regulatory body and a service or utility-supplier;

Commencing Date means the date in Item 2 of the Reference Schedule.

**Conduits** means sewers, drains, gutters, ducts, pipes, wires, cables, watercourses, and other conducting media and also manholes, inspection chambers, tanks and apparatus used in conjunction with them;

CPI means the Consumer Price Index for Sydney (All Groups) published by the Australian Bureau of Statistics;

FOGO Collection Service has the same meaning as in the Waste Agreement.

**Front Page** means the Real Property Act prescribed form to which these Lease terms are annexed;

**Guarantor** means the person(s) named in the Reference Schedule (and any other person who guarantees any or all of the Lessee's Obligations in this Lease) and including any personal representative of them;

**Information** may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals;

**Insolvency Event** occurs where any of the following happens in relation to a person:

(a) An order is made (or an application for such order is presented) for windingup (whether compulsorily or voluntarily);

- (b) An Official Manager, Receiver, Liquidator or Controller (whether or not provisional) is appointed;
- (c) Entry into a scheme of arrangement or composition for the benefit of creditors;
- (d) Execution is levied against any assets;
- (e) An application is made for a declaration of bankruptcy;
- (f) A Trustee in Bankruptcy is appointed;
- (g) A meeting is called of creditors to consider a resolution for winding-up; or
- (h) It ceases to exist or is dissolved or deregistered as a company,

but does not include a voluntary winding up for the purposes of an amalgamation or re-construction;

**Lessor** includes any person from time to time entitled to the immediate reversion to this Lease and a reference to an act or right of the Lessor includes the Lessor doing that act or exercising that right by its agents and employees;

Lessor's Costs means all costs, charges and expenses properly incurred by the Lessor, including legal costs on an indemnity basis;

**Lessor's Fixtures** means all the plant, equipment and chattels which have been or become permanently or securely affixed to the Property Leased and are the Lessor's property;

**Law** includes an Act or Parliament, statutory instrument, regulation, by-law, requirement of a competent Authority, statutory body, utility company or Authority, common law or regulation;

Lease means this lease as varied from time to time;

Lease Year means a period 12 months commencing on either the Commencing Date or an anniversary or it;

**Lessee** includes the Lessee's successors in title and assigns and (if an individual) his personal representative and a reference to an act or omission of the Lessee includes an act or omission of any sublessee and any other person deriving title under the Lessee and includes an act or omission of their respective employees, agents and visitors and anyone at the Property Leased with the express or implied authority of any one or more of them;

**Lessee's Default** means an act or omission of the Lessee including a breach by the Lessee of a term, condition, covenant, warranty or obligation in this Lease;

Lessee's Obligation means a covenant or obligation of the Lessee;

**Liability** means all actions, proceedings, costs, claims, demands, losses, expenses and liabilities:

Maintain includes repairing, renewing or replacing;

**Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children;

Modern Slavery Laws means, as applicable, the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth);

**Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW);

**Modern Slavery Statement** means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth);

**Month** means a calendar month; and **monthly** and **month's** refers to a calendar month, being either the period of time between a day in a calendar month or from the first to the last day inclusive within a calendar month as the case may be;

Normally means subject to any other provision of this Lease;

Obtain includes "maintain and comply with";

**Option Lease** means a lease arising pursuant to the exercise of an Option for Renewal;

**Outgoings** includes but is not limited to:

- Council rates:
- water rates:
- charges for sewage and drainage;
- land tax levied on the Lessor or Lessee in respect of the Property Leased;
- fees and charges in respect of security or fire services for the building;
- charges associated with Maintenance of the buildings including the wash bay facility and the degreasing pit (excluding structural repairs), electrical wiring and outlets, globes and lamps and locks, keys and proxy cards;
- charges and fees associated with Maintenance of automatic roller doors;

- charges associated with the use and Maintenance of any air conditioning (whether for heating or cooling) plant and equipment; and
- water usage.

Plan means the plan(s) annexed to this Lease (if any);

**Redecorate** means to restore and update the surfaces of the property Leased in a style and to a standard of finish originally used (eg, repainting the surfaces previously painted and repapering those previously papered) so that the finishes look clean and new and of current fashion;

Reference Schedule means the Reference Schedule to this Lease.

**Related Offence Provisions** means those provisions of the Crimes Act 1900 (NSW), the Human Tissue Act 1983 (NSW) and the Commonwealth Criminal Code which create slavery and associated offences, as listed from time to time in Schedule 2 to the Modern Slavery Act 2018 (NSW);

**Rent** means the initial Rent and the Reviewed Rent;

Rent Review refers to the review of the Rent under clause 7;

Reviewed Rent means the Rent calculated pursuant to a Rent Review;

**Security** means the performance security identified in clause 15.1 of the Waste Agreement.

**Services** includes but is not limited to all charges for and costs in relation to the supply of electricity, gas, telephone, internet and water to the Property Leased;

**Sign** includes notice, display, flagpole, hoarding, aerial, satellite dish and advertisement (whether illuminated or not);

**Subcontractor** means a contractor (or sub-contractor of any tier) that is used by the Lessee.

**Subcontract** means an agreement between the Lessee and a Subcontractor, or a Subcontractor and another Subcontractor, under which a Subcontractor is engaged to deliver or perform services on behalf of the Lessee.

Terminating Date means the date in Item 3 of the Reference Schedule

**Term** means the term stated on the Front Page commencing from and including the Commencing Date, and any period of continuation, holding-over or extension of it; and

Wash Bay means the wash bay which forms part of the Property Leased and all appurtenances thereto.

**Waste Agreement** means the Waste, Recyclables, Organics and Bulky Waste Collection Services Agreement executed by the Lessor and Lessee expiring on 3 March 2031.

#### 1.3 Construction

In this Lease (unless the context otherwise requires):

- (a) "Include", "includes" and "including" are deemed to be followed by the words "without limitation", and general words introduced by "other" do not have a restrictive meaning, and "for example" is not to be interpreted as if there are not other examples nor to limit or restrict the ordinary meaning of the words preceding it;
- (b) Statutes: A reference to an Act of Parliament includes all derivative instruments, orders, regulations and other matters and in each case any reenactment, amendment, consolidation or modification from time to time of that Act and any derivative instruments, orders, regulations or other matters;
- (c) **Joint and several**: An obligation owed by more than one person is owed by them jointly and severally and a reference to the Lessee or a Guarantor includes a reference to each person comprising them;
- (d) "Not" includes "not permit": An obligation by the Lessee not to do something includes an obligation not to permit or allow it to be done;
- (e) Clauses: A reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Lease;
- (f) End of Term: A reference to the end of the Term is to the end of the Term however it ends or terminates;
- (g) Written Consent: A consent or approval of the Lessor to be valid must be in writing;
- (h) Written Notice: Any notice given to the Lessor to be valid must be in writing and must (unless the Lessor or this Lease specifies otherwise) be given before the event or action to which it relates;
- (i) Consent not to be unreasonably withheld: Where the Lessor's consent is required then, unless it is stated to the contrary, that consent must not be unreasonably withheld or delayed but the Lessor is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior Lessor until it obtains that consent but nothing in this Lease implies

- any obligation on those persons not unreasonably to refuse their consent or approval except where such obligation is imposed on the mortgagee or the superior Lessor under the mortgage or the superior Lease;
- (j) Extension of access rights: A right of the Lessor or anyone else to have access to or entry upon the Property Leased extends to any superior Lessor and any mortgagee of the Property Leased and to anyone authorised by the Lessor or the superior Lessor or mortgagee and includes a right of entry with workmen, equipment and materials;
- (k) Headings only for convenience: The table of contents and headings to clauses, paragraphs and schedules do not affect the construction of this Lease;
- (I) Limit on power to grant a right: A right granted by the Lessor is granted only so far as the Lessor can lawfully grant it and is granted in common with all other persons entitled to it and/or authorised by the Lessor to exercise it;
- (m) Third Party Obligations: Nothing entitles the Lessee to enforce any obligation owed by anyone to the Lessor;
- (n) Void Provisions: A provision of this Lease which is void or unenforceable shall (to that extent) be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect;
- (o) Reading-down: If a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law, the provision is deemed to be varied so as not to extend beyond the limitations;
- (p) **Plurals and Genders:** Words importing the singular or plural number include the plural and singular number respectively and words importing the masculine gender include the feminine or neutral gender and references to a person or corporation or person respectively;
- (q) Definitions: Where a word is defined then other grammatical forms of that word are to be interpreted in the same manner with the necessary grammatical change;
- (r) Conveyancing Act: To the extent that sections 84, 84A and 85 of the Conveyancing Act 1919 (NSW) or any other legislative provisions are excluded, varied, inconsistent with or duplicated in the Lease, expressly or impliedly, they do not apply (to that extent that such exclusion is permissible);
- (s) Common Demands: The rules applying to common demands do not apply to any demand made under this Lease;

- (t) **Deed:** This Lease is a Deed (even if it is not registered);
- (U) **Service**: Anything relating to this Lease that is to be served:
  - (i) may be served in accordance with s.170 of the Conveyancing Act 1919 (NSW);
  - (ii) may be served on the Lessee by leaving it at the Property Leased; and
  - (iii) may be served by facsimile transmission and will be considered to have been received (if the sender's facsimile machine produces a transmission report indicating that transmission was error-free) at the time of transmission except that a transmission on a day that is not a Business Day will be considered to be received on the next Business Day and a transmission sent after 17:00 hours at the place of receipt will be considered to have been received at 9:00 hours the following Business Day, and

a notice given by a party to this Lease may be signed on behalf of a party to this Lease by its solicitor, officer or agent and if a party to this Lease consists of more than one person then it will be sufficient for one of those persons to sign;

- (v) Complete: By returning this signed Lease to the Lessor (or the Lessor's solicitor or Agent) the Lessee authorises the Lessor to date and complete this Lease including completing any blanks;
- (w) Entire Agreement: This Lease contains the complete agreement of the parties and supersedes and excludes all previous discussions and correspondence and the Lessee warrants that it does not rely on any representations made by or on behalf of the Lessor other than those contained in the Lease;
- (x) Contra Proferentem: In the interpretations of covenants and obligations under this Lease no rules of constructions shall apply to the disadvantage of one party on the basis that that party put forward the Lease or any part of it.

#### 2. GRANT AND TERM

The Lessor leases the Property Leased to the Lessee for the Term, commencing on the Commencing Date and terminating on the Terminating Date.

#### PROPERTY LEASED

The Property Leased is described in the Reference Schedule and includes any Lessor's Fixtures.

#### 4. OPTION FOR RENEWAL

- 4.1 If the Reference Schedule stated there is an Option for Renewal then the Lessee has an Option for Renewal of this Lease for the Option Term commencing immediately after the Terminating Date of this Lease.
- 4.2 The Lessee can only exercise the Option for Renewal if:
  - (a) The Lessee serves a notice of exercise of option on the Lessor at least three
     (3) calendar months before the Terminating Date of this Lease (but not more than six (6) calendar months before the Terminating Date); and
  - (b) at the time of service of that notice and at the Terminating Date of this Lease no monies payable by the Lessee to the Lessor are overdue and all of the Lessee's Obligations under this Lease have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the Lessor.
- 4.3 The Option Lease will be on substantially the same terms as this Lease except that:
  - (a) the initial Rent for the Option Lease will be the current rent increased by reference to the Consumer Price Index, such rent to be decided as if this Lease and the Option Lease were one continuous lease and the Commencing Date of the Option Lease was a Rent Review Date with a CPI Rent Review.
  - (b) the appropriate adjustments will be made to update such information as is appropriate including:
    - (i) the Commencing Date;
    - (ii) the Terminating Date;
    - (iii) the Rent Review Dates;
    - (iv) omitting any clause making the Option Lease subject to a Development Consent for the Permitted Use;
  - (c) the Option for Renewal will be omitted where the Lessee was granted one Option for Renewal under this Lease; and
  - (d) where the Lessee was granted more than one Option for Renewal then the number of remaining Options for Renewal will be reduced by one.
- 4.4 Where the Lessee has more than one Option for Renewal:
  - (a) the failure to exercise the Option of Renewal means that all Options for Renewal lapse; and

(b) each Option for Renewal can only be exercised consecutively, one during each Lease term.

#### 5. RENT

- 5.1 The Lessee must pay the Rent to the Lessor without deduction or set-off.
- 5.2 The initial Rent is GST exclusive. All Reviewed Rent is GST exclusive.
- 5.3 The Rent is payable in accordance with the Rent Payment Method stated in the Reference Schedule.

#### GOODS AND SERVICES TAX

- 6.1 All monetary amounts stated in this Lease are quoted as GST-exclusive (that is, if GST is payable then it must be paid on top of the amount).
- 6.2 If a party makes a taxable supply in connection with this Lease to the other party, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as for the taxable supply, the amount of GST payable in respect of the taxable supply.
- 6.3 Each party warrants that at the time it makes any taxable supply under this Lease, it will be registered under the GST Law and it will provide evidence of registration and advise its ABN to the requesting party immediately upon receipt of a request.
- 6.4 The right of a party ("the Supplier") to receive payment of the GST from the other party ("the Payer") is subject to the Supplier providing a valid tax invoice to the Payer.
- 6.5 The Supplier must issue a tax invoice to the Payer no later than the date on which payment is made for the taxable supply to which the tax invoice relates. Each party agrees that if it requests the other to issue a tax invoice in respect of any taxable supply then that request will not be made any earlier than 28 days before the date that the party makes payment for the taxable supply to which the requested tax invoice relates.
- 6.6 Italicised words in this clause have the same meaning given in s.195.1 of the A New Tax Systems (Goods and Services Tax) Act 1999 ("the GST Law") and their various grammatical forms have a corresponding meaning.

#### 7. RENT REVIEW

#### 7.1 General

(a) The Rent is to be reviewed on each of the Rent Review Dates stated in the Reference Schedule.

- (b) The Lessee must continue to pay the Rent at the rate then current until the Reviewed Rent has been calculated after which the Lessee must pay the Reviewed Rent on the next Rent Payment Date together with any shortfall between the new and old rates for the period since the rent Review Date.
- (c) Failure to initiate a rent review does not prevent the Lessor from initiating a rent review at any time prior to the next rent review or termination of this Lease (as the case may be) backdated to the appropriate Rent Review Date.
- (d) If a Rent Review would cause the Rent to decrease no change is to be made at that Rent Review.
- (e) Any rent free period granted by the Lessor is not to be taken into account when reviewing rent.

# 7.2 Method 1: Fixed Rent Review

- (a) This clause applies when the Reference Schedule indicates the Rent is to be reviewed by a fixed amount or percentage.
- (b) On each Rent Review Date the Reviewed Rent will be calculated by increasing the Rent by the fixed amount or percentage stated in the Reference Schedule.

#### 7.3 Method 2: CPI Rent Review

- (a) This clause applies when the Reference Schedule indicates a CPI rent review applies.
- (b) On the Rent Review Date, or as soon thereafter as is practicable, the Lessor should notify the Lessee in writing of the new Rent.
- (c) The Reviewed Rent is calculated as follows:

old rent/old CPI x new CPI = Reviewed Rent

#### where:

"old rent" means the annual rent payable immediately before the Rent Review Date. On the first Rent Review Date (i.e. the first anniversary of the Commencing Date) the old rent is the Initial Rent less the GST component included;

"old CPI" means the CPI number for the quarter ended immediately before the previous Rent Review Date (or the Commencing Date as the case may be);

- "new CPI" means the CPI number for the quarter ended just before the current Rent Review Date
- (d) If the Australian Bureau of Statistics changes the reference base of the CPI then the required conversion shall be made to preserve the intended continuity of the calculations by making the appropriate arithmetical adjustment, but if it is not possible to make an arithmetical adjustment, or if there is a fundamental change in the basis of assessment of the CPI or its calculation has been suspended or discontinued, then the Rent will be reviewed to market rent instead.

### 7.4 Method 3: Current Market Rent Reviews

- (a) This clause applies whenever this Lease indicates that a current market rent review applies.
- (b) If the parties agree on a Reviewed Rent then that will be the Rent applying from the Rent Review Date and the parties must sign a statement to record their agreement.
- (c) If the parties have not agreed on a Reviewed Rent at least 30 days before the Rent Review Date then the market rent will be decided by a valuer.
- (d) The parties may agree on a valuer otherwise either of them may ask the President for the time being of the Australian Property Institute (NSW) or the Real Estate Institute (NSW) to nominate an expert valuer (who is a member of the Australian Institute of Valuers and Land Economists (NSW Division) Inc with at least 5 years experience) and each party must pay half of the valuer's costs.
- (e) The valuer will act as an expert and not an arbitrator and the valuer's decision is final but the valuer must state how he reached his decision and specify the matters to which he had regard. The parties may take written submissions to the valuer within 14 days of their being notified of the valuer's appointment (but the valuer may extend that time) and the valuer must promptly pass details of one party's submissions to the other party inviting comments in reply to matters raised in the initial submissions to the other party inviting comments in reply to matters raised in initial submissions of each party within 14 days (and the valuer may ignore submissions and comments not submitted within time).
- (f) If the valuer:
  - (i) fails to accept the nomination to act;
  - (ii) fails to determine the market rent within three (3) months after accepting the nomination to act;

- (iii) becomes incapacitated or dies; or
- (iv) resigns,

then another valuer must be appointed in the same way.

- (g) "Market Rent" means the best yearly rent at which the Property Leased might reasonably be expected to be let at the Rent Review Date without a premium in the open market by a willing lessor to a willing lessee with vacant possession on a lease containing the same provisions as those contained in this Lease (except as later mentioned in this definition and except as to the amount of Rent) calculated in accordance with usual commercial lease valuation practice and assuming:
  - the property Leased is fully fitted out and available for immediate occupation and use for the Permitted Use and could and would be immediately occupied by the willing Lessee;
  - (ii) no work has been carried out to the Property Leased which has diminished its rental value;
  - (iii) the Property Leased is in a good state of repair and decorative condition;
  - (iv) if the Property Leased has been damaged or destroyed it has been fully restored;
  - (v) the services the Property Leased are fully operational and access to the Property Leased is fully available;
  - (vi) all covenants in this Lease have been performed and observed;
  - (vii) the willing lessee has all consents under all applicable Laws for the use of the Leased Property Leased for the Permitted Use;

# but disregarding:

- (viii) the Lessee's occupation of the Property Leased;
- (ix) goodwill attached to the Property Leased by reason of the Lessee's business;
  - (1) any increase in rental value attributable to an improvement to the Property Leased carried out with consent (where required) by the Lessee during the Term unless carried out under an obligation to the Lessor or its predecessors in title or where the Lessor or its predecessors in title contributed to the cost:

- (2) any obligation of the Lessee to reinstate the Property Leased to their condition or design as it existed before the carrying out of any works;
- (3) any adverse effect on the rental value of the Property Leased of any temporary works; and
- (4) that part of the Term has expired or an Option for Renewal has expired.
- In ascertaining the Market Rent, no discount, reduction or allowance must be made either to reflect or to compensate the Lessee for the absence of any rent-free or concessionary rent period or other inducement (whether or not it is of a capital or revenue nature) which it is then the practice in open market lettings for a willing lessor to offer to a willing lessee so that the Market Rent is that payable after any such period has expired and after any such inducement has been received.

# 7.5 Method 4: Greater of CPI or Fixed Amount – Combined Rent Review

- (a) This clause applies when the Reference Schedule indicates that the Rent is to be reviewed by the greater of CPI or a fixed amount.
- (b) On the Rent Review Date, or as soon thereafter as is practicable, the Lessor should notify the Lessee in writing of the new Rent.
- (c) The Reviewed Rent is the greater of the rent calculated by applying Method 1 (utilising the fixed increase referred to in the Reference Schedule) and Method 2.

# 8. OUTGOINGS

- 8.1 The Lessee must pay Outgoings or promptly reimburse the Lessor for Outgoings paid by the Lessor on behalf of the Lessee within 14 days of demand by the Lessor.
- 8.2 The Lessor discloses and the Lessee acknowledges the Lessee will be liable for land tax in respect of the Property Leased in accordance with section 21C of the Land Tax Management Act 1956 and if land tax is payable, such land tax will be levied directly on the Lessee. The Lessee acknowledges this clause is a land tax disclosure statement within the meaning of and for the purposes of section 21CA of the Land Tax Management Act 1956.

# 9. SERVICES PAID FOR LESSEE

The Lessee shall be responsible for all charges associated with the Services.

#### 10. SECURITY

- 10.1 The Lessor and Lessee acknowledge the provisions of clause 15.1 of the Waste Agreement and agree the Security ensures the due and proper performance of the Lessee's obligations under this Lease and the Waste Agreement.
- 10.2 The Lessor and Lessee acknowledge the provisions of clause 15.4 of the Waste Agreement and agree the Lessor may, through Council's Representative (as defined in the Waste Agreement) call on, or otherwise have recourse to, any or all of the Security at any time, without notice to the Lessee, including in respect of any money for which the Lessee is or may be liable to the Lessor under this Lease.
- 10.3 Should the Lessor call on, or otherwise use any part of the Security in accordance with the provisions of clause 15.4 of the Waste Agreement, that application will not waive any breach of any Lessee's Obligation under this Lease.
- 10.4 This clause 10 survives termination of this Lease.

#### 11. OTHER MONIES AND LEGAL COSTS PAYABLE BY THE LESSEE

- 11.1 The Lessee must pay to the Lessor the Lessor's Costs of:
  - (a) remedying a Lessee's Default;
  - (b) dealing with any application by the Lessee for the Lessor's consent (whether or not that consent is given); and
  - (c) preparing, stamping, registering and varying this Lease.
- 11.2 The Lessor may require the Lessee to prepay such amount as the Lessor may estimate to be the cost or expense of any thing the cost or expense of which the Lessee is required in accordance with this Lease to pay the Lessor. If the actual cost or expense of such thing as certified by the Lessor shall be greater than the said estimated cost or expense the Lessee shall pay the Lessor on demand the amount of the excess and if such actual cost or expense shall be less than the said estimated cost or expense the Lessor shall refund to the Lessee the amount of the difference.

# 12. INTEREST

- 12.1 If any monies due under the Lease are unpaid by the Lessee for a period of more than 14 days then the Lessee must pay interest to the Lessor on demand from and including the due date until payment.
- 12.2 If the Lessor refuses to accept any monies so as not to prejudice its rights of re-entry in this Lease, the Lessee must pay interest on those monies for the period from and including the due date until acceptance by the Lessor.

- 12.3 The provisions of this clause apply whether the monies due are formally demanded or not.
- 12.4 Interest is calculated at the Prescribed Rate (both before and after judgment) accruing on a daily basis and compounded with monthly rests.
- The Prescribed Rate is the rate from time to time charged by Westpac Banking Corporation Limited on standard commercial overdrafts of \$100,000.00 plus a margin of 2% but if no such rate exists, then such rate as is set from time to time pursuant to Rule 36.7 of the Uniform Civil Procedure Rules 2005 or equivalent legislation for payment of interest on a post-judgment debt.
- 12.6 The Lessor and the Lessee acknowledge that the interest stated in this clause is a genuine pre-estimate of loss and not a penalty.

#### 13. USE

#### 13.1 The Lessee must:

- (a) use the Property Leased for the Permitted Use, and no other;
- (b) keep the Property Leased open for business at times usual for the Lessee's kind of business;
- obtain all necessary consents and licences and registrations to conduct the Lessee's business from the Property Leased and to carry out any fit-out of the Property Leased;
- (d) comply with all laws regulating how the Property Leased may be used;
- (e) comply with the directions of the Insurer of the Property Leased (or any larger Property Leased of which the Property Leased form a part);
- (f) supply the Lessor with a copy of all development approvals relating to the Lessee's use of the Property Leased;
- (g) if the Lessor requires, before the end of the Term, complete any works authorised under the Lessee's development approval which the Lessee has not completed;
- (h) comply with all consents, Licences and registrations and any notices given by any governmental or regulatory authorities in respect of the Lessee's use of the Property Leased.

#### 13.2 The Lessee must not:

 (a) allow any encroachment or claims for new easements to be made against the Property Leased;

- do anything which causes a nuisance, to the Lessor or any owner or occupier of a neighbouring property;
- (c) do anything that is illegal or dangerous; or
- (d) allow to be brought into the Property Leased any inflammable, dangerous or explosive substances unless the sale or use of such constitutes proper conduct of the Lessee's business for the Permitted Use and the substance is stored and used in accordance with all appropriate safety measures.
- 13.3 The Lessor does not make any representation that the Property Leased may be used for, or is fit for, any particular purpose or are in any particular condition. In particular, the Lessor does not represent that the Property Leases is suitable for the purposes of the Lessee's performance of its obligations under the Waste Agreement including in respect of any FOGO Collection Service.
- 13.4 This Lease will not, as between the Lessor and the Lessee, be void of unenforceable by virtue only of the Lessee having failed to obtain or comply with development approval from the relevant consent authority but will be voidable at the option of the Lessor.

#### 14. RISK AND INDEMNITY

- 14.1 The Lessee uses and occupies the Property Leased at its own risk.
- 14.2 The Lessee indemnifies the Lessor against Liability arising directly or indirectly from:
  - (a) the Lessee's use and occupation of the Property Leased;
  - (b) unsuitability of the Property Leased for the Permitted Use;
  - (c) the Lessee's acts and omissions; and
  - (d) the Lessee's Default.
- 14.3 The Lessee releases the Lessor and its officers, employees and agents from any loss, claim, obligation or duty to the Lessee whatsoever in respect of or in connection with any or all of:
  - (a) the Lessee's use and occupation of the Property Leased;
  - (b) unsuitability of the Property Leased for the Permitted Use;
  - (c) the Lessee's acts and omissions; and
  - (d) the Lessee's Default.

#### 15. MAINTENANCE, REPAIR AND REDECORATION

- 15.1 Normally the Lessor must Maintain the roof and external walls and floors of the Property Leased in a structurally-sound and watertight condition, but the Lessor may recover from the Lessor the cost of any works necessitated because of any negligent or wilful act or omission by the Lessee.
- 15.2 Otherwise, the Lessee must:
  - (a) keep the Property Leased clean and tidy at all times; and
  - (b) Maintain the Property Leased in good condition, including the Maintenance and servicing of the air-conditioning system and alarm systems.
- 15.3 Normally, when Maintaining the Property Leased the Lessee is not required to:
  - (a) fix inherent structural defects;
  - (b) undertake structural repairs; and
  - (c) repair fair wear or tear;

but the Lessee's obligation of Maintenance will extend to structural repairs, capital improvements and reconstruction to the extent that the damage is caused or contributed to by the Lessee.

- 15.4 When Maintaining the Property Leased regard is to be had to its condition at the Commencing Date of this Lease, or where the Lessee (or its predecessor-in-title) has been in occupation earlier under an earlier lease or otherwise, then the first date of occupation.
- 15.5 The Lessee must immediately notify the Lessor of the necessity for any maintenance or repair which is properly the Lessor's responsibility.
- 15.6 In the event that the Lessee fails to carry out maintenance or repair works pursuant to clause 15.1 and/or 15.2, the Lessor reserves the right to enter the Property Leased and carry out the works and recover the cost of such works from the Lessee as a liquidated debt.

#### 16. ALTERATIONS

- 16.1 The Lessee must:
  - (a) not damage or alter the Property Leased other than allowed or set out in this Lease:

- (b) not make any alteration or addition to the Property Leased or install, or make any additions or alterations to, any electrical, gas, water, plumbing and other services, fixtures, or appliances, or any other equipment or appliances for heating, cooling, ventilating or air conditioning the Property Leased, without the Lessor's written consent which will not be unreasonably withheld (but no consent is required for the Lessee to install, alter or remove non-structural demountable partitioning which complies with the remaining provisions of this clause).
- (c) not without the Lessor's consent carry out any alteration or addition which hinders access to a Conduit;
- (d) do the work to the Property Leased required by any Authority (even if it involves structural work or additions or improvements) because of the way the Lessee uses the Property Leased or the number or sex or physical impairment of the Lessee's employees or invitees;
- supply to the Lessor all plans and specifications and reports and expert advices that the Lessor may require to identify any proposed alterations or additions;
- (f) carry out all alterations and additions:
  - only in accordance with the plans and specifications consented to by the Lessor;
  - (ii) to the reasonable satisfaction of the Lessor;
  - (iii) in a good and workmanlike manner using new materials;
  - (iv) in accordance with all laws and approvals and any conditions that the Lessor has reasonably set;
  - (v) using tradesman that are qualified, licensed, experienced and who the Lessor has approved; and
  - (vi) in accordance with relevant Law and the requirements of any relevant Authority.
- 16.2 After commencing any permitted alteration or addition the Lessee must complete them by the earliest of:
  - (a) any date the Lessor reasonably requires;
  - (b) a date which is a reasonable period after they have been commenced;
  - (c) the end of the Term (howsoever it ends).

#### 17. SIGNS

- 17.1 The Lessee must not exhibit any sign on the exterior of the Property Leased without first obtaining the Lessor's written consent which shall not be unreasonably withheld.
- 17.2 During the last (3) months of this Lease the Lessee must permit the Lessor to fix and retain on any part of the exterior of the Property Leased appropriate signs advertising the availability of the Property Leased for letting provided they do not unreasonably interfere with the Lessee's business or the Lessee's signs.
- 17.3 Whenever the Lessor wishes to sell the Property Leased the Lessee must permit the Lessor to fix and retain on any part of the exterior of the property Leased appropriate signs advertising their sale provided they do not unreasonably interfere with the Lessee's business or the Lessee's signs.

#### 18. INSURANCE

- 18.1 The Lessee must keep current the following insurance policies:
  - (a) public liability for at least the amount stated in the Reference Schedule in respect of each single event;
  - (b) damage to plate glass and windows, and
    - insurance required by the Workers Compensation Act 1987 (NSW),

and the first two named policies must be effected in the Lessee's name for its interest as Lessee and in the Lessor's name for its interest as Lessor.

- 18.2 The minimum amount of public liability insurance stated in the Reference Schedule may be increased annually by the Lessor (by reasonable amount) by notice served on the Lessee.
- 18.3 The Lessee must produce evidence of insurance reasonably acceptable to the Lessor upon request.
- 18.4 The Lessee must not do or omit to do anything that would cause the Lessor's insurance premiums in respect of building or fire insurance for the Property Leased or any adjoining Property Leased owned by the Lessor or any part thereof to increase and if the Lessee breaches this clause then the Lessee must pay the amount of the increase to the Lessor on demand as a liquidated debt (an increase in a premium includes any loading or additional amounts charged due to the use to which the Lessee puts the Property Leased or due to the items stored in the Property Leased).
- The Lessor covenants with the Lessee that it will insure the Property Leased against loss or damage by the Insured Risks for their Full Reinstatement Cost, excepting any fixtures, fittings or any other property belonging to the Lessee.

18.6 Any insurance policy may be subject to such excesses, exclusions, limitations and conditions as the Lessor agrees with the Insurers and the Lessor is not obliged to insure Lessee's fixtures, fittings, alterations or additions unless and until the Insurers have accepted the risk.

#### 18.7 In this clause:

"Full Reinstatement Cost" means the amount determined by the Lessor from time to time as representing the cost (including shoring-up, demolition and site clearance, professional fees and expenses, which would be likely to be incurred in reinstating the Property Leased at the time when reinstatement is likely in the Lessor's opinion to take place.

"Insured Risk" means fire, storm, tempest, lightning, aircraft and articles falling from them except in times of war, riot, civil commotion, malicious damage, impact by road vehicles, flood, burst and overflow of water pipes and such other risks as the Lessor may insure against from time to time (subject in each case to such exclusions limitations conditions but excesses as the Lessor from time to time agrees with the Insurers) but excluding any risk against which the Lessor does not insure because cover is not ordinarily available in the insurance market of the nearest capital city or is only available in that market subject to conditions or at a premium which the Lessor (acting reasonably) considers unacceptable.

# 19. LESSOR'S RIGHT OF ACCESS AND POWER TO REMEDY LESSEE'S DEFAULT

- 19.1 The Lessor may at any time on reasonable notice to the Lessee (except in case of an emergency when no notice is required) enter the Property Leased to:
  - show them to any interested party including a mortgagee or prospective purchaser or prospective lessee;
  - (b) exercise any right that is reserved to the Lessor in this Lease;
  - (c) inspect the Property Leased or ascertain whether the Lessee is complying with this Lease; and
  - (d) remedy a Lessee's Default including carrying out maintenance and repair (but without thereby waiving the Lessee's Default).
- 19.2 When exercising its right under this clause the Lessor must use reasonable efforts to minimise disruption to the Lessee and the Lessor must make good any damage caused to the Property Leased and the Lessee's fixtures and fittings.

#### 20. DAMAGE AND DESTRUCTION

20.1 In this clause "damaged" (which term includes "destroyed") means damage to the Property Leased (or to larger Property Leased of which the Property Leased forms a

- part) such that the Lessee cannot use or gain access to the Property Leased or such that the useability is substantially reduced.
- 20.2 If the Property Leased is damaged the Lessee must immediately notify the Lessor and:
  - (a) for such period as the Property Leased cannot be used under this Lease or is inaccessible the Lessee is not liable to pay the Rent and Outgoings; and
  - (b) for such period as the useability of the Property Lease is reduced under this Lease the Lessee's liability for Rent and Outgoings is reduced proportionately.
- 20.3 If the Property Leased is damaged the Lessor may notify the Lessee that the Lessor does not intend to repair the damage and either party may then terminate this Lease by 14 days' notice to the other and no compensation or damages are payable in respect of that termination (but without prejudice to any other rights or liability in respect of any breach of this Lease).
- 20.4 If the Property Leased is damaged and the Lessor has not repaired the damage within a reasonable time after the Lessee has requested the Lessor to do so in writing then the Lessee may terminate this Lease by giving the Lessor one (1) month's notice and no compensation or damages are payable in respect of that termination (but without prejudice to any other rights or liability in respect of any breach of this Lease).
- 20.5 Nothing in this clause prevents the Lessor from recovering damages from the Lessee in respect of any damage for which the Lessee is liable.
- 20.6 There will be no abatement of Rent or Outgoings, nor right of the Lessee to terminate, where the destruction or damage is caused by or contributed to by the wilful or negligent act or omission of the Lessee.
- 20.7 Where the damage to the Property Leased is not covered by a policy of insurance but would have been but for the Lessee's Default there will be no abatement in Rent or Outgoings under this clause.
- 20.8 Nothing obliges the Lessor to rebuild the Property Leased after destruction or to repair it if repair is uneconomic in the Lessor's reasonable opinion.
- 20.9 In the event of any dispute arising as to the amount by which Rent and Outgoings are to abate such dispute shall be determined by a loss assessor who is a member of the Insurance Council of Australia. The parties may agree on a loss assessor otherwise either of them may ask the President for the time being of the Insurance Council of Australia to nominate one. Each party must pay half of the loss assessor's costs. The loss assessor will act as an expert and not as an arbitrator and his decision is final but he must state how he reached his decision and the matters he

relied upon. The parties may make written submissions to the loss assessor within 14 days of their being notified of his appointment (but the loss assessor may extend that time) and the loss assessor must promptly pass details of one party's submissions to the other party inviting comments in reply to matters raised in the initial submissions of each party within 14 days (and the loss assessor may ignore submissions and comments not submitted within time). If the loss assessor refuses to accept or resigns his appointment to act or fails to make a determination within one (1) month then either party may seek the appointment of a new loss assessor under this clause.

#### 21. TRANSFER AND SUBLETTING BY THE LESSEE

- 21.1 In this clause a reference to a Transfer and Proposed Transferee includes an assignment and proposed assignee respectively and, with the necessary changes, a Subletting and Proposed SubLessee (in which case a reference to the Lease will mean the proposed sublease).
- 21.2 Where the Lessee is a corporation, any change in the majority shareholding in the Lessee or change that causes a change in the effective control of the corporation, will be deemed to be a Transfer.
- 21.3 The Lessee must not Transfer the Lease without first obtaining the Lessor's written consent which shall not be unreasonably withheld. A request for the Lessor's consent to the Transfer of the Lease must be in writing and the Lessee must provide the Lessor with such information as the Lessor reasonably requires concerning the proposed Transferee and the Transfer.
- 21.4 Consent by the Lessor to the Transfer (but not a subletting) will be deemed to include the following (unless the Lessor waives them in writing) and it is agreed that the following conditions are reasonable:
  - (a) the Proposed Transferee enters into a Deed with the Lessor covenanting to comply with the terms of the Lease and any other covenants reasonable to secure performance of the Lease;
  - (b) where the proposed Transferee is a private corporation, that its directors provide a personal guarantee of the corporation's performance of the Lease;
  - (c) unless the Proposed Transferee pays a new Security Bond, the existing Security Bond is transferred so that it constitutes the Security Bond payable by the proposed Transferee; and
  - (d) where the Lessor holds a Bank Guarantee from the Lessee that the Proposed Transferee pay a new Security Bond or provide a new Bank Guarantee on or before the Transfer.

- 21.5 The Lessee must not mortgage or charge or encumber the Lessee's interest in the Lease or the Lessee's fixtures or fittings without the prior written consent of the Lessor which may be granted or refused or conditionally granted in the absolute discretion of the Lessor.
- 21.6 In the event of a sub lease (although not a transfer) the sub Lessee is to pay to the Lessee who shall then be liable to the Lessor.

#### 22. LESSOR'S RESERVATIONS

- 22.1 The Lessor reserves the right to grant a lease or licence to a third party over the airspace above the Property Leased or on any roof or exterior wall to a telecommunications carrier (or a related body corporate) for the affixing of mobile phone network apparatus, and provided that such leases or licences do not substantially interfere with the Lessee's enjoyment of the Property Leased.
- 22.2 The Lessor reserves the right to grant a lease or licence to a third party over any exterior wall of the Premises for the installation of advertising.

#### 23. RULES

- 23.1 The Lessor may make rules for the use of the Property Leased, or to elaborate upon or clarify any clause in this Lease and rules shall have effect as if they were conditions in this Lease.
- 23.2 Rules must be reasonable and must not be inconsistent with the terms of this Lease and to the extent of any inconsistency then this Lease prevails.
- 23.3 The Lessee must be given notice of the rules and any change to them before they apply to the Lessee and rules cannot operate retrospectively.

# 24. QUIET ENJOYMENT

- 24.1 Provided the Lessee complies with this Lease the Lessor must allow the Lessee to use and possess the Property Leased without interference by the Lessor or anyone claiming title through or superior to the Lessor.
- 24.2 Nothing in this clause affects the Lessor's rights of access or reservations.

#### 25. TERMINATION

- 25.1 This Lease ends automatically on the Terminating Date stated in the Reference Schedule or if it is otherwise terminated.
- 25.2 The Lessor may terminate this Lease if:
  - (a) the Lessee has repudiated this Lease; or

- (b) Rent or any other money due under this Lease is 14 days overdue irrespective of whether or not the Lessor has made any formal demand for it; or
- (c) the Lessee has failed to comply with a Lessor's notice under s.129 of the Conveyancing Act 1919 (NSW); or
- (d) a Lessee's Default (not requiring a notice under s.129 of the Conveyancing Act 1919 (NSW)) occurs (and the Lessor has given a termination notice of at least 14 days); or
- (e) an Insolvency Event has occurred in respect of the Lessee.
- 25.3 The Lessor may terminate this Lease by re-entering the Property Leased and taking possession or attempting to do so or by an unequivocal demand for possession (and a termination notice will be deemed to be an unequivocal demand for possession).
- 25.4 If there is a breach of an essential term of this Lease then the Lessor may recover damages for the Lessor's losses (including loss of rent) for the whole Term but the Lessor must take reasonable steps to mitigate and reduce its loss. The Lessor's right to recover damages is not prevented by the Lessor accepting the Lessee's repudiation of this Lease or the Lessor's re-entry.
- 25.5 Essential terms include the provisions of this Lease covering Lessee's Obligations as to:
  - (a) payment of Rent within 14 days of this date it is due (even if the Lessor accepts late payment);
  - (b) payment of GST;
  - (c) payment for Outgoings;
  - (d) payment of the monies due;
  - (e) only using the Property Leased for the Permitted Use;
  - (f) maintaining the Property Leased;
  - (g) not carrying out any alterations without the Lessor's consent;
  - (h) effecting the insurances required under this Lease;
  - (i) not transferring or subletting or dealing with the Lease other than as permitted under this Lease;
  - failure to comply with any notice from any Authority; and

(k) the agreement that the Retail Leases Act does not apply.

25.6

# 26. GRANT OF NEW LEASES UPON EXTENSION OF WASTE AGREEMENT

- 26.1 Should the Waste Agreement be extended in accordance with clause 2.2 of the Waste Agreement, the Lessor and Lessee must enter into a lease with a term equivalent to the period by which the Waste Agreement is extended on each occasion (New Lease).
- 26.2 The Lessor and Lessee agree the New Lease must be on the same terms as this Lease but for Rent as noted in Item 6 of the Reference Schedule which shall be calculated in accordance with clause 26.3.
- 26.3 Rent as noted in Item 6 of the Reference Schedule to the New Lease (New Rent) shall be:

old rent/old CPI x new CPI = New Rent

where:

"old rent" means the annual rent payable under this Lease immediately before the Commencing Date of the New Lease.

"old CPI" means the CPI number for the quarter just before the date which is one year prior to the Commencing Date of the New Lease;

"new CPI" means the CPI number for the quarter ended just before the Commencing Date of the New Lease.

#### 27. PROCEDURE AT END OF LEASE

- 27.1 When this Lease ends, then unless the Lessee enters into a new lease over the Property Leased the Lessee must:
  - (a) remove all its equipment and stock and Lessee's fixtures (but not the Lessor's fixtures);
  - (b) make good any damage the Lessee causes to the Property Leased by that removal;
  - (c) restore the Property Leased to the state and condition they were in before the Lessee carried out any alterations (unless the Lessor notifies the Lessee that the Lessor requires any alterations to remain); and
  - (d) return all keys to the Lessor and advise the Lessor of the combination number or code for any safes and alarms.

- 27.2 If the Lessee fails to remove its goods and stock and Lessee's fixtures (called "Lessee's belongings") at the end of the Lease then they will be deemed to have been abandoned by the Lessee and irrespective of any objection from the Lessee the Lessor may keep them, store them, destroy them, hire them out and/or sell them (called "dealings") and the Lessee cannot make any claim against the Lessor (including trespass and conversion) nor claim the proceeds of any sale and the Lessee indemnifies the Lessor from any claim by any person claiming any interest (including mortgagee, charge, bailor and owner) in the Lessee's belongings.
- 27.3 The Lessor is not obliged to seek any price when dealing with the Lessee's belongings and the Lessee must reimburse the Lessor on demand for the Lessor's Costs incurred in dealing with them (but can claim a set-off against any monies the Lessor makes in dealing with them).
- 27.4 Notwithstanding clause 27.1, in the event this Lease will end on the Terminating Date, the Lessee must ensure that at least two (2) weeks prior to the Terminating Date the Lessee's obligations pursuant to clause 27.1(a), (b) and (c) are satisfied. Nothing in this clause 27.4 requires the Lessee to remove vehicles from the Property Leased prior to the end of the Lease.
- 27.5 The Lessee acknowledges performance of its obligations under this clause 27 within the timeframes set out in this clause are critical for the continuity of the Lessor's waste management arrangements.

#### HOLDING OVER

If at the end of this Lease the Lessor agrees to the Lessee continuing to occupy the Property Leased (other than under a new lease) then the Lessee becomes a monthly Lessee and the terms of this Lease will continue (except for the Term and any Option for Renewal) and the monthly tenancy will end upon either party giving to the other at least one (1) month's written notice expiring at any time.

# 29. RETAIL LEASES ACT 1994 (NSW) DOES NOT APPLY

The parties agree that the Retail Leases Act ("the Act") does not apply to this Lease and the parties have entered into this Lease on the basis that the Act does not apply. This is an essential term of this Lease and each party is stopped from alleging that the Act applies.

#### 30. SUBDIVISION

30.1 The Lessor reserves the right to subdivide or consolidate the land or larger building or larger lot of which the Property Leased forms a part by a plan of consolidation or subdivision (whichever shall apply).

- 30.2 The Lessee must consent to the plan of subdivision or consolidation (and will sign and do all things necessary to give effect to this clause) but the Lessee may refuse consent if the plan would:
  - (a) reduce the size of the Property Leased;
  - (b) detrimentally affect the Lessee's use of the Property Leased; or
  - (c) detrimentally affect the Lessee's access to the Property Leased,

to a substantial degree (a reduction in size of the Property Leased of 5% or less is deemed to be insubstantial).

30.3 Upon registration of the relevant plan such consequential changes as are necessary to reflect the effect of the plan will be made to this Lease and the parties will sign a Deed or a Variation accordingly.

#### 31. LICENCE TO USE WASH BAY

- 31.1 In consideration of and upon the Lessor entering this Lease, the Lessee licences to the Lessor the Wash Bay on the terms set out in this clause.
- 31.2 The Lessor, its contractors, employees and agents (**Authorised Parties**) may use the Wash Bay at all times for the purpose of washing and cleaning vehicles in the ownership or control of the Authorised Parties
- 31.3 The Lessor agrees to pay to the Lessee an amount equivalent to half of the reasonable costs borne by the Lessee:
  - (a) to clean the Wash Bay; and
  - (b) in respect of services and utilities associated with the operation of the Wash Bay including but not limited to electricity and water usage.
- 31.4 The Lessor must, after use of the Wash Bay, leave the Wash Bay in a clean and tidy state.
- 31.5 The use of the Wash Bay by the Lessor is at its own risk and the Lessee will not be liable to the Lessor for any loss or damage in respect of the Lessor's use of the Wash Bay except to the extent that the loss or damage is caused or contributed to by the act or omission of the Lessee, its employees, agents or contractors.
- This licence commences on the Commencing Date of the Lease and terminates on the Terminating Date of the Lease or upon earlier termination of the Lease.
- 31.7 Upon any assignment of this Lease by the Lessee, the Lessee shall do all things necessary to ensure that the rights granted to the Lessor pursuant to this licence are acknowledged, affirmed and, if necessary, granted to the Lessor by the assignee.

#### 32. MODERN SLAVERY

#### 32.1 Compliance

- (a) The Lessee warrants that, as at the date of its execution of this Lease:
  - (i) any Information it has provided to the Lessor in relation to Modern Slavery is, to the best of its knowledge, complete and accurate;
  - (ii) neither the Lessee, any entity that it owns or controls or, to the best of its knowledge, any Subcontractor of the Lessee, has been convicted of a Modern Slavery Offence; and
  - (iii) the Lessee is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- (b) The Lessee must comply, and take reasonable steps to ensure that any entity that it owns or controls complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

#### 32.2 Information

- (a) The Lessee must:
  - (i) subject to any restrictions under any applicable laws by which it is bound, provide to the Lessor, within 30 days of a request by the Lessor, any Information and other assistance, as reasonably requested by the Lessor, to enable the Lessor to meet its obligations under the Modern Slavery Act 2018 (NSW) and associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Lessor (including by a third party on behalf of the Lessor) or the NSW Audit Office and providing reasonable access to the Lessor's/Audit Office's auditors to interview the Lessee's staff and, so far as these matters are known to the Lessee, disclosing the source, place and country of origin of goods and services being supplied;
  - (ii) within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Lessor; and

- (iii) notify the Lessor in writing as soon as it becomes aware of either or both of the following:
  - (1) a material change to any of the Information it has provided to the Lessor in relation to Modern Slavery; and
  - (2) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- (b) Without limiting clause 33.2, in providing Information to the Lessor as to any actual or suspected occurrence of Modern Slavery in the Lessee's operations or supply chains (or in those of any entity that it owns or controls), the Lessee must provide sufficient Information:
  - to identify where the occurrence has arisen in those operations or supply chains and its scale and severity; and
  - (ii) to enable the Lessor to be satisfied, acting reasonably, that the Lessee is taking reasonable steps to respond to and address that occurrence in accordance with any internal Modern Slavery policy and procedures of the Lessee and any relevant code of practice/conduct or other guidance issued by the Anti-slavery Commissioner or (if the Lessor notifies the Lessor that it requires the Lessor to comply with the relevant NSW Procurement Board code/guidance) by the NSW Procurement Board.
- (c) In providing any requested information to the Lessor, the Lessee must:
  - (i) make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response; and
  - (ii) communicate openly about the extent to which the Information it provides is complete and accurate (including a statement as to the limitations of the Information provided).
- (d) The Lessee must, during the term of this Lease and for a further period of seven (7) years:
  - (i) maintain; and
  - (ii) upon the Lessor's reasonable request, give the Lessor access to, and/or copies of,

a complete set of records in the possession or control of the Lessee to trace, so far as practicable, the supply chain of all goods and services provided by the Lessee and to enable the Lessor to assess the Lessee's compliance with this clause 33.

# 32.3 Modern Slavery due diligence

The Lessee must take reasonable steps to ensure that:

- (a) Modern Slavery is not occurring in the operations and supply chains of the Lessee and any entity that it owns or controls; and
- (b) it does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery.

#### 32.4 Subcontractors

The Lessee must take reasonable steps to ensure that all Subcontracts of the whole or part of this Lease contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 33, having regard to the nature of the procurement.

# 32.5 Response to Modern Slavery incident

- (a) If the Lessee becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Lessee must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Lessee and any relevant code of practice/conduct or other guidance issued by the Anti-slavery Commissioner or (if the Lessor notifies the Lessee that it requires the Lessee to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.
- (b) Any action taken by the Lessor under clause 33.5(a) will not affect any rights of Lessee under this Lease.

# 32.6 Termination on ground of Modern Slavery

In addition to any other right or remedy of the Lessor under this Lease or at law, including rights of termination, or rights to damages, the Lessor may, in its sole discretion, terminate this Lease, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination, on any one or more of the following grounds:

(a) The Lessee has failed to disclose to the Lessor, prior to execution of this Lease, that the Lessee, or any entity owned or controlled by the Lessee, has been convicted of a Modern Slavery Offence;

- (b) The Lessee, or any entity owned or controlled by the Lessee, is convicted of a Modern Slavery Offence during the term of this Lease;
- (c) In the Lessor's reasonable view, the Lessee has failed to notify the Lessor as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
- (d) In the Lessor's reasonable view, the Lessee has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or
- (e) In the Lessor's reasonable view, the Lessee has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause 33.1 (Compliance) or clause 33.2 (Information)

#### 33. INTERDEPENDENT DOCUMENTS

- 33.1 This Lease and the Waste Agreement are interdependent.
- 33.2 If this Lease or the Waste Agreement terminates for any reason then this Lease and the Waste Agreement automatically terminate at the same time.
- 33.3 The termination of this Lease and the rights of the Lessor under this Lease upon termination do not limit the rights of the Lessor under the Waste Agreement.

# **EXECUTION**

We certify this dealing correct for the purposes of the Real Property Act 1900 (NSW).

#### <u>Lessor</u>

Executed by the local government body named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Local Gov.: Authority: WILLOUGHBY CITY COUNCIL (ABN 47 974 826 099)
section 377 of the Local Government Act 1993

25			
Signature of Witne	28	Debra Kay Just Chief Executive Officer	
		CHICLE EXCESSIVE STREET	
Full name of Witne	255	* * * * * * * * * * * * * * * * * * *	
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Address of Wilness			
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Executed on signature(s) of	behalf of the corporation nar appear(s) below pursuant to the	med below by the authorised pe he authority specified.	ison(s) whose
Company: Authority:	J.J. RICHARDS & SONS PTY L section 127 of the Corpora		2.
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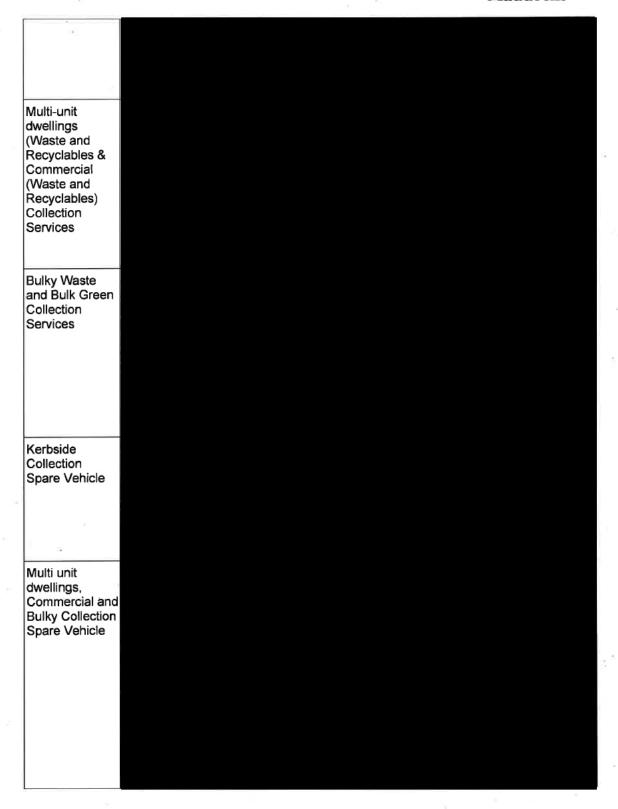
# Schedule 8 Plant and Equipment

# **Description of Collection Vehicles**

Description of Services	Make and Model of Cab/Chassis (Indicate whether New or Used)	Number	Make and Type of Body (Include Capacity and Compactor Maximum Noise Level, also indicate whether New or Used)	Reason for Selection and Suitability (For Recyclables Collection, include Vehicle Design features to optimise Material Quality and Compaction Rates)
Waste Collection Services				
2: *				
: · · · · · · · · · · · · · · · · · · ·				
Recyclables Collection Services				
*				
Garden Organics Collection Services				

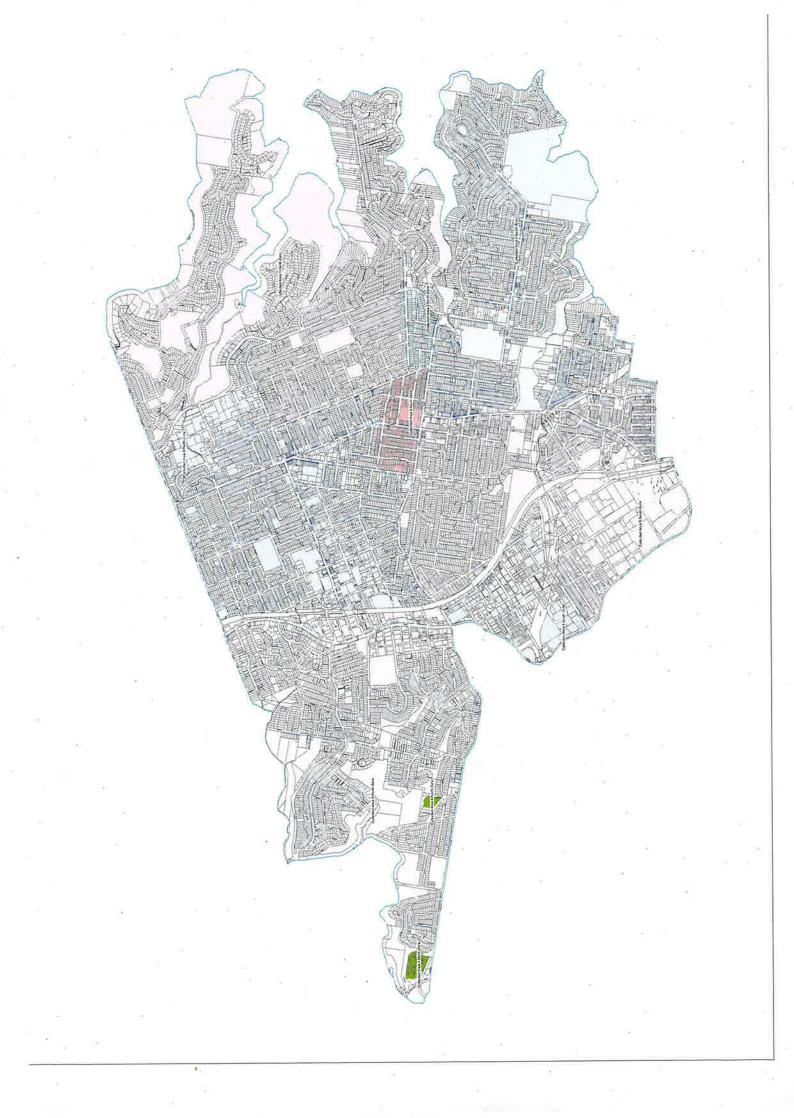


# Maddocks





# Schedule 9 Service Area Maps





# Schedule 10 Transition of existing workforce, plant, equipment and property

The Contractor will continue to employ all personnel providing services under the collection contract in force between the Contractor and Council immediately prior to the Commencement Date, and will employ any additional personnel required for this Agreement as required (e.g. drivers and education officers).

All drivers and operators are paid over-Award rates as well as performance bonuses. These rates are reviewed annually and are also adjusted when Award variations occurred.