

Procurement Form (Waste Services)

Part A

This Member Contract for Services is made pursuant to the Panel Agreement with agreement number **PSP007 (Panel Agreement)** between:

1 Western Australian Local Government Association
ABN: 28 126 945 127 (**WALGA**)

and

2 **[Insert Contractor's name and details]** (Contractor)

Procurement Form Number: **[Insert Procurement Form Number]**

Member: **[Insert description of Member.]**

It is agreed as follows:

- (a) WALGA and the Contractor entered into the Panel Agreement;
- (b) under the Panel Agreement, the Member is entitled to enter into individual contracts with the Contractor for the performance of the Services up until expiry of the term of the Panel Agreement by executing a Procurement Form;
- (c) by executing the Procurement Form, the Member and the Contractor are entering into a contract for the performance of the Services described in this Procurement Form, formed pursuant to the terms of, but separate from, the Panel Agreement. The Member Contract comprises of:
 - (1) the terms and conditions of this Procurement Form, including any schedules, annexures or attachments to this Procurement Form; and
 - (2) the Member Contract Conditions (Waste Services) as set out in Part E of this Procurement Form;
- (d) if there is any inconsistency between the documents referred to in paragraph (c), the documents will prevail in the order of precedence set out in paragraph (c) of this Procurement Form;
- (e) any term which is not defined in this Procurement Form has the meaning given to it in the Panel Agreement;
- (f) the Contractor represents and warrants to the Member that the execution of this Procurement Form has been properly authorised; and
- (g) for clarity, additional purported 'Member Contracts' may not be issued pursuant to this Member Contract.

Version 3 (July 2023)

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Procurement Form Details

	Item	Detail
1	Panel Agreement Number	PSP007
2	Party Details	[Insert details of Member] [Insert details of Contractor]
3	<u>Controlling Party</u>	[Insert Controlling Party. See Definitions and Clause 11.10(a) for additional detail]
4	Date of Request for Services	[Insert date that the Request for Services is issued to the Contractor]
5	Procurement Form Number and Title	[Insert Procurement Form number and succinct title]
6	Fee	The Fee determined in accordance with Schedule 3 of the Waste Services Conditions in Part E.
7	Security Amount	[Parties to consider value of Services and financial substance of Contractor to deliver on Services when considering the Form and amount of Security required. If no Security is to be provided, insert "Not applicable"]
8	Start Date	[Insert the start date for the Services]
9	Date for Completion	[Insert the date by which all the Services in this Procurement Form must be performed. If there is no particular Completion Date and the Services are to be performed until they are finished, insert "Not applicable"]
10	End date	[Insert the anticipated end date of the engagement]
11	Services	[Select the following Services which will be provided] <input type="checkbox"/> Collection Service <input type="checkbox"/> Bin Service/Supply <input type="checkbox"/> Verge Collection and Receptacle Services <input type="checkbox"/> Landfill Management and Transfer Station Services <input type="checkbox"/> Recyclables Sorting and Organic Waste Processing Services
12	Member Resources	As set out in Part C.
13	Member Approvals	[Insert details of approvals the Member is responsible for obtaining. If none to be provided, insert "Not applicable"]
14	Approved Subcontractor	[Insert the details of any subcontractors approved to carry out the Services. If none, insert "Not applicable"]

15	Insurance	[Insert any insurances the Contractor is required to take out for the Services (if any) in addition to any insurances under the Panel Agreement or Schedule 4 of the Waste Services Conditions. If none, insert “Not applicable”]
16	Recyclable Materials	[insert list of recyclable materials accepted by the Contractor’s MRF for processing.]
17	Container Deposit Scheme (Recyclables Sorting Service only)	50% of CDS revenue for eligible containers net of costs and revenue losses deducted in accordance with DWER Local Government Sharing Protocol. [if other revenue sharing arrangement, specify here.]
18	Maximum Liability Amount	[Insert] [Drafting Note: If this item is left blank, the Maximum Liability Amount will be an amount equal to the total of the Fees payable by the Principal to the Contractor during the Services Term.]
19	Contamination	<p>[Drafting Note: Implementation of the Contamination Levels and associated Levy’s are largely defined by Clause 12 and Annexure 4 and should be populated in conjunction with consideration of this Clause.]</p> <p>Baseline Contamination Level</p> <ul style="list-style-type: none"> (1) Recyclable Materials - [Insert]% (2) Garden Organics (GO) - [Insert]% (3) Food Organics Garden Organics (FOGO) – [Insert]% <p>Maximum Contamination Level</p> <ul style="list-style-type: none"> (4) Recyclable Materials - [Insert]% (5) Garden Organics (GO) - [Insert]% (6) Food Organics Garden Organics (FOGO) – [Insert]% <p>Contamination Levy [Insert mechanism or amount]</p> <p>Gross Contamination Levy [Insert mechanism or amount]</p> <p>Audit Frequency [Insert frequency of Audit where applicable (see clauses 11.8, 11.10 and 11.11)]</p>
20	Maximum Compaction Rate	[Insert details of a Maximum Compaction Rate. If none to be provided, insert “Not applicable”]
21	Public Place Collection Days	[Insert details of the days on which the Contractor will collect Public Place Bins. If not relevant, insert “Not applicable”]

Specifications

[For each Procurement Form insert the Procurement Form Scope. Describe the specific and detailed Services required in full under this Procurement Form for each Waste Service selected in Item 11, covering items such as:

- background / context;
- relevant standards;
- documentation / deliverables;
- Member Resources (Member-supplied resources);
- Member Approvals (relevant approvals to be obtained); and
- indicate key dates that will impact the Procurement Form.]

1 Collection Service

[Insert Collection Service Specification] or insert ["Not applicable"]

2 Bin Service/Supply

[Insert Bin Service/Supply Specification] or insert ["Not applicable"]

3 Vergé Collection and Receptacle Services

[Insert Vergé Collection and Receptacle Services Specification] or insert ["Not applicable"]

4 Landfill Management and Transfer Station Services

[Insert Landfill Management and Transfer Station Services Specification] or insert ["Not applicable"]

5 Recyclables Sorting and Organic Waste Processing Services

[Insert Recyclables Sorting and Organic Waste Processing Services Specification] or insert ["Not applicable"]

Special Conditions

[Drafting Note: Insert any Special Conditions, if any. If no Special Conditions are required insert "Not used" under this heading.]

The format and content of the signature block can be amended by Members to satisfy standard internal policies, procedures and formatting requirements. There may be occasions for a corporate entity where a Member Contract should be executed in accordance with section 127(1) of the Corporations Act 2001 (Cth). Guidance should be sought where appropriate. Members may also have electronic signature functionality and protocols to overwrite the signature block format below.

Executed as an agreement

Principal (insert Member Name)

Signed by
Insert Name of Principal
By its representative

sign here ►

Representative
By executing this Contract the signatory warrants that they are authorised to execute this Contract for **(insert name of Principal)**

Full name _____

Title _____

Contractor

Signed by
[Insert Contractor Name]
By its representative

sign here ►

Representative
By executing this Contract the signatory warrants that they are authorised to execute this Contract for **(insert name of Contractor)**

Full name _____

Title _____

Member Contract Conditions (Waste Services)

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1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in the Contract are set out below.

Term	Meaning
Acceptable Receptacle Waste	Waste that may be placed in a Receptacle in accordance with: <ol style="list-style-type: none"> 1 the Principal's policy; or 2 a Legal Requirement, in relation to Waste that may be collected from a Receptacle.
Acceptable Verge Waste	Hard Waste or Bulk Garden Organics that may be placed on the verge for collection in accordance with: <ol style="list-style-type: none"> 1 the Verge Collection Service; and 2 the Principal's policy, or a Legal Requirement, in relation to Waste that may be collected from a verge.
Additional Term	the period of [insert] years from the End Date.
Affected Obligation	has the meaning given in clause 35.
Approval	each approval, certificate, licence, authority, waiver, exemption, registration, consent, permit or authorisation required to perform the Services in accordance with all applicable Laws.
Approved Institution	a financial institution that: <ol style="list-style-type: none"> 1 has an office open for business in Perth; 2 is registered in Australia; and 3 is an Australian trading bank registered under the <i>Banking Act 1959</i> (Cth), with a current Standard & Poor's rating of not less than A- or a similar rating from another financial institution acceptable to the Principal and approved in writing by the Principal.
Approved Subcontractor	a subcontractor listed as an "Approved Subcontractor" in the Procurement Form (if any).

Term	Meaning
Audits	has the meaning given in clause 11.10.
Authority	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.
Baseline Contamination Level	the baseline contamination level set out in Item 19.
Bin	a mobile garbage bin or receptacle approved by the Principal for use in the collection of Waste, Recyclables or Organics under the Contract.
Bin Delivery Point	the place to which a Bin is to be delivered by the Contractor.
Bin Register	where the Bin Service is not being provided, the Principal's bin register containing a complete record of Bin information, including the type and number of Bins at each Collection Point, as regularly updated by the Contractor in accordance with the Collection Service Specification.
Bin Service	the service described in section 2 of Part C.
Bulk Garden Organics	Waste that is vegetative Waste.
Bulk Waste	Waste that may be collected from a verge or a Receptacle in accordance with the Verge Collection Service or any Legal Requirement regarding Waste that may be so collected but excludes Bulk Garden Organics.
Business Day	a day that is not a Saturday, Sunday, or a public holiday in the place where the Principal has its head office, or 27, 28, 29, 30 or 31 December.
Carbon Scheme	any requirement imposed by Law or any Authority relating to greenhouse gas emissions, including the <i>National Greenhouse and Energy Reporting Act 2007</i> (Cth) and the <i>Carbon Credit (Carbon Farming Initiative) Act 2011</i> (Cth).
Change of Law	any one or more of the following: 1 a change in, or repeal of, an existing Environmental Law or Waste Law;

Term	Meaning
	<p>2 the enactment or making of a new Environmental Law or Waste Law;</p> <p>3 a change in the way an Environmental Law or Waste Law is applied or is interpreted as a result of a decision of a court of competent jurisdiction; or</p> <p>4 the introduction of a price on carbon under any Carbon Scheme, but does not include:</p> <p>5 a change in, or enactment of a new, Environmental Law or Waste Law which was not in force at the date of the Contract but which:</p> <ul style="list-style-type: none"> – had been published prior to the date of the Contract in the Government Gazette by way of bill, draft bill or draft statutory instrument, had been introduced prior to the date of the Contract as a bill into the Parliament of Western Australia or the Parliament of Australia or of which public notice had been given prior to the date of the Contract in a form which is substantially the same as the change in, or enactment of a new, Environmental Law or Waste Law; – a party experienced and competent in undertaking services similar to the Services would have reasonably foreseen or anticipated prior to the date of the Contract; or – is substantially the same as an Environmental Law or Waste Law in force prior to the date of the Contract; or <p>6 a change in Law relating to Taxes.</p>
Claim	a claim, demand, action or proceeding of any nature, whether actual or threatened, arising out of, or in connection with, the Contract or otherwise arising in any way whatsoever.
Collected Material	the Waste collected in the course of the Collection Services, Verge Collection Services or Receptacle Services.
Collection Area	the area described in the Procurement Form, as may be updated in accordance with clause 9.3(a).
Collection Day	Monday to Friday excluding Christmas Day, New Year’s Day and Good Friday.
Collection Point	has the meaning given in clause 7.2(a).
Collection Schedule	has the meaning given in clause 7.3(c).

Term	Meaning
Collection Service	the collection of Waste other than as part of Verge Collection Services or Receptacle Services.
Collection Service Specification	the service described in section 1 of Part C.
Collection Vehicle	the vehicles used by the Contractor to collect Materials under the Contract.
Confidential Information	<p>the terms of the Contract and in respect of a party, all information in connection with the party's business, operations, finances or customers regardless of its form which is disclosed to, or acquired by, the other party directly or indirectly (whether before or after the date of the Contract) and which:</p> <ol style="list-style-type: none"> 1 is, by its nature, confidential; or 2 is treated or designated as confidential by the party or the receiving party knows, or ought to know, is confidential, <p>but does not include information which:</p> <ol style="list-style-type: none"> 3 is or becomes public knowledge other than by a breach of the Contract; or 4 has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.
Container Deposit Scheme	the scheme implemented under the <i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019 (WA)</i> .
Contamination	the presence of a material, impurity or some other undesirable element that spoils, corrupts or infects any of the material collected in the delivery of the Services.
Contamination Level	the percentage of Contamination contained in material delivered to the Facility for or on behalf of the Principal.
Contamination Levy	a levy imposed and applied to the calculation of the Fee in instances of Contamination.
Contract	<p>the agreement formed between the parties regarding the performance of the Services by:</p> <ol style="list-style-type: none"> 1 with respect to the Services, either: <ul style="list-style-type: none"> – the relevant Procurement Form; or

Term	Meaning
	<ul style="list-style-type: none"> – the details in VendorPanel; and 2 the Services Contract Conditions, <p>with the documents forming part of the Contract prevailing in the order of precedence set out in this definition.</p>
Contractor	the party defined as the “Contractor” in the Procurement Form.
Contractor Default	has the meaning given in clause 37.1.
Contractor IP	<p>any Intellectual Property of the Contractor (or Intellectual Property licensed to the Contractor by a third party) which:</p> <ul style="list-style-type: none"> 1 is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract or the provision of the Services; and 2 the Contractor makes available, contributes, brings to or uses in connection with the Contract.
Contractor’s Depot	the Contractor’s site for accommodating the Contractor’s Plant.
Contractor’s Obligations	all of the Contractor’s obligations under the Contract.
Contractor’s Personnel	the Contractor’s officers, employees, agents and subcontractors and their respective employees and agents.
Contractor’s Plant	vehicles (including the Collection Vehicles), plant, implements, appliances, apparatus, facilities, equipment, tools and machinery used by the Contractor for providing the Services.
Controlling Party	the party identified in the Procurement Form as having operational control of the Facility (Controlling Party), (as defined in the National Greenhouse and Energy Reporting Act 2007 (Cth)), including the greatest authority to introduce and implement operating, health and safety and environmental policies for the Facility.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Critical Default	where:

Term	Meaning
	<ol style="list-style-type: none"> 1 the Contractor: <ul style="list-style-type: none"> – is the subject of an Insolvency Event; – substantially breaches any Environmental Laws; – substantially breaches any Workplace Health and Safety Requirements; – breaches clause 23.1(a); – has made a statement or representation to the Principal, which is proved to be false, untrue, misleading or incorrect to a material extent; 2 any of the Contractor's Personnel: <ul style="list-style-type: none"> – fails to allow the Principal, or the Principal's nominated auditor, to conduct an audit in accordance with clause 5.4; – are involved with criminal activities which can reasonably be shown to affect the Principal or the provision of the Services; 3 if WALGA suspends or terminates the Panel Agreement in accordance with the terms of the Panel Agreement; or 4 any other event which is deemed to be a Critical Default under the Contract.
Customer Satisfaction Survey	has the meaning given in clause 23.3.
Customer Service Centre	has the meaning given in clause 23.2.
Date for Completion	the date specified as the "Date for Completion" in the Procurement Form.
Defect	any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Services.
Delivered Material	<ol style="list-style-type: none"> 1 Collected Material where the Contractor is providing the Collection Services, Verge Collection Services or Receptacle Services in respect of the material; or 2 Waste delivered by the Principal's Waste collection service provider where the Contractor is not providing Collection Services, Verge Collection Services or Receptacle Services in respect of the material.
Dispute	a difference, dispute or issue arising at any time between the parties arising out of, or in connection with, the Contract.

Term	Meaning
Dispute Notice	a notice in respect of a Dispute given under clause 39.1(b).
Effective Date of Termination	for the purposes of clause 38: 1 midday on the date on which the Services begin to be provided by the Principal or any contractor appointed by the Principal; or 2 midday on any other date as may be agreed by the parties.
EMP	Environmental Management Plan for each of the relevant Services.
EMS	Environmental Management System.
End Date	the date specified as the "End Date" in the Procurement Form.
Environment	has the meaning given to that term in the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth).
Environmental Contamination	any event that arises in connection with the Services which has resulted in, or has the potential to result in, land, water or a site becoming 'Contaminated' as that term is defined under the <i>Contaminated Sites Act 2003</i> (WA).
Environmental Law	1 all present and future legislation, regulations and local Laws in Western Australia and the Commonwealth concerning Environmental matters including the <i>Environmental Protection Act 1986</i> (WA), <i>Conservation and Land Management Act 1984</i> (WA), <i>Rights in Water and Irrigation Act 1914</i> (WA), <i>Dangerous Goods Safety Act 2004</i> (WA), <i>Contaminated Sites Act 2003</i> (WA), <i>Planning and Development Act 2005</i> (WA), relevant local and regional planning schemes, <i>Aboriginal Heritage Act 1972</i> (WA) and <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth); 2 Approvals issued under the items listed in paragraph 1; and 3 any common law relating to the Environment.
Excluded Loss	loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature and loss of opportunities.
Excluded Waste	any Waste that a Facility is not allowed to accept either under an Approval that applies to the Facility or by operation of Law.

Term	Meaning
Execution Date	the date the Contract is executed by the parties or, if executed in counterparts, the date the Contract is executed by the last party to do so.
Extraordinary Gross Contamination	where the contents of a Collection Vehicle used for the collection of Recyclables or Organics have become so contaminated, that the Recyclables or Organics in the Collection Vehicle cannot reasonably be expected to be sorted or recovered and the whole or major part thereof of the load needs to be disposed to landfill.
Facility	each of a Landfill Facility, Transfer Station, Material Recovery Facility, Organic Waste Facility or Waste to Energy Facility or any combination of them, as applicable.
Facility Operator	operator of a Facility.
Fee	the payment calculated in accordance with the Contract and Schedule 3.
Force Majeure Event	<p>any of the following occurring in Australia:</p> <ol style="list-style-type: none"> 1 act of God, including lightning, storm, cyclone, flood, earthquake, explosion, tsunami and wave conditions associated with a cyclone, fire, volcanic activity, landslide and sandstorm; 2 strike, lockout or other labour difficulty which applies in respect of state or Australia wide industrial disputes; 3 epidemic or quarantine by order of an Authority; 4 war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any Authority; 5 ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; and 6 industrial action or dispute which affects Western Australia or Australia generally and is not directed at the affected party or any of its personnel or Related Bodies Corporate, <p>to the extent it:</p> <ol style="list-style-type: none"> 7 was not caused by an act or omission of the affected party, its personnel or Related Bodies Corporate; 8 was beyond the reasonable control of the affected party, its personnel and Related Bodies Corporate; and 9 could not have been avoided or overcome by the affected party, its personnel or Related Bodies Corporate taking reasonable precautions or steps.

Term	Meaning
Good Industry Practice	<ol style="list-style-type: none"> 1 the exercise of the degree of skill, diligence, prudence and foresight that reasonably would be expected from an experienced contractor in performing services similar to the Services and under conditions comparable to those applicable to the Services; 2 compliance with applicable standards and codes, being the standards and codes specified in the Contract or, if the Contract does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied by a prudent contractor in the circumstances; and 3 compliance with any applicable Legal Requirements.
Government Agency	any government or governmental, local governmental, semi-governmental, judicial, quasi-judicial or administrative entity, agency, department, commission, authority or Minister in Western Australia or the Commonwealth of Australia.
Gross Contamination Levy	a levy imposed and applied to the calculation of the Fee in instances of Extraordinary Gross Contamination.
GST	has the meaning given in section 195-1 of the GST Act.
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act, ordinance, regulation, public binding ruling or subordinate legislation relating to the imposition of GST.
Hard Waste	[insert].
Hazardous Waste	<p>Waste that poses a threat or risk to public health, safety or the environment, including substances which are toxic, infectious, mutagenic, carcinogenic, teratogenic, explosive, flammable, corrosive, oxidising and radioactive.</p> <p>For clarity, this includes waste which would meet the Department of Water and Environmental Regulation (DWER) Landfill Waste Classification and Waste Definitions, as amended, where applicable.</p>
Initial Term	the period from the Start Date until the End Date.
Insolvency Event	<p>in respect of the Contractor:</p> <ol style="list-style-type: none"> 1 the appointment of an administrator, a liquidator, a provisional liquidator or a controller (including any receiver or receiver and manager);

Term	Meaning
	<ol style="list-style-type: none"> 2 any compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors (including a deed of company arrangement), insolvency, bankruptcy; or 3 any similar procedure or situation which involves a moratorium or the suspension of the payment of any debts or, where applicable, changes in the constitution of any partnership or person, or death.
Intellectual Property	<p>all intellectual and industrial property rights, including trade marks, copyright (including future copyright), Moral Rights, inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.</p>
Item	<p>an item of Part B of the Procurement Form.</p>
Kerbside Bins	<p>[insert].</p>
Kerbside Services	<p>all services required to complete and support the collection, emptying and disposal of material from Kerbside Bins.</p>
Key Performance Indicators (or KPIs)	<p>the key performance indicators as set out in Schedule 2, as they apply to each relevant Service.</p>
Landfill Facility	<ol style="list-style-type: none"> 1 if the Contractor is not providing Landfill Management Services, the landfill facility to which the Contractor must deliver Delivered Material or Residue (or both) as may be directed by the Principal from time to time; or 2 if the Contractor is providing Landfill Management Services, the landfill facility identified in the Procurement Form that the Contractor must operate and manage.
Landfill Management and Transfer Station Services Specification	<p>the specification described in section 4 of Part C.</p>
Landfill Management Service	<p>landfill waste management services performed by the Contractor at a Landfill Facility either:</p> <ol style="list-style-type: none"> 1 operated and managed on behalf of the Principal at a Principal-owned landfill facility; or

Term	Meaning
	2 at a landfill facility operated and managed by the Contractor.
Laws	any act, ordinance, regulation, subordinate legislation, by-law or award of the local, State, Territory or Commonwealth (as applicable) government.
Legal Requirements	includes: <ol style="list-style-type: none"> 1 Laws; 2 Approvals; and 3 fees, levies and charges payable in connection with those Laws and Approvals and otherwise in connection with the Services including all training payments and levies.
Licensed Area	the area or areas described as such in the Landfill Management and Transfer Station Services Specifications.
Loss	any liability, cost, expense, loss, personal injury (including illness), death or damage, amounts payable on a Claim (whether or not the Claim is successful), suit, charge, diminution in value, action, statutory or equitable compensation, demand, legal costs and disbursements.
Main Road	has the meaning given to that term in the <i>Main Roads Act 1930 (WA)</i> .
Material	Waste, Recyclables or Organics (or any combination of those, as the context requires).
Material Recovery Facility	<ol style="list-style-type: none"> 1 if the Contractor is not providing Recyclables Sorting Services, the resource recovery facility to which the Contractor must deliver Recyclables as directed by the Principal from time to time; or 2 if the Contractor is providing Recyclables Sorting Services, the resource recovery facility owned or operated by the Contractor at which the Recyclables Sorting Services are performed.
Maximum Capacity	the maximum capacity of the Landfill Facility to accept Delivered Material, as permitted by any Legal Requirement.
Maximum Compaction Rate	the maximum compaction rate specified in the Procurement Form.

Term	Meaning
Maximum Contamination Level	the maximum contamination level set out in Item 19.
Maximum Liability Amount	by reference to each party: <ol style="list-style-type: none"> 1 the amount in the Procurement Form; or 2 where no amount is provided in the Procurement Form, an amount equal to the total of the Fees payable by the Principal to the Contractor during the Services Term.
Member	the member identified in the Procurement Form.
Moral Rights	has the meaning given in the <i>Copyright Act 1968</i> (Cth).
Nominated Disposal Facility	the location specified by the Principal for the disposal of Waste and Non-Recyclable Material.
Nominated Material Recovery Facility	the Facility where the collected Recyclable Material is initially delivered and then either: <ol style="list-style-type: none"> 1 separated and prepared for end users; or 2 aggregated prior to transportation to a separate processing facility.
Non-Acceptance Notice	has the meaning given in clause 12(c).
Non-Compostable Material	material within an Organics Bin which is not suitable for composting.
Non-Recyclable Material	material within a Recyclables Bin that is not suitable for recycling.
Notifiable Incident	any act, event or circumstance which occurs in connection with the performance of the Services which: <ol style="list-style-type: none"> 1 is required by the Work Health and Safety Legislation or Environmental Laws (or both) to be notified to a regulator; or 2 results in, could have resulted in or still has the potential to result in, a serious injury to a person or the environment.

Term	Meaning
OH&S	occupational health and safety and has the same meaning as workplace health and safety.
OH&S Management System	an occupational health and safety management system to identify hazards in respect of health and safety, assess risks associated with those hazards and implement measures to eliminate or mitigate those risks.
Opening Hours	the hours that a Facility is open for the receipt of Delivered Material as set out in the Collection Service Specification or the Landfill Management and Transfer Station Services Specification, as applicable.
Organics Bin	a mobile garbage bin or receptacle approved by the Principal for use in the collection of Organic Waste under the Contract.
Organics or Organic Waste	Waste that is biodegradable and comes from either a plant or animal, and includes Bulk Garden Organics, food waste and other organic matter from households.
Organic Waste Facility	<ol style="list-style-type: none"> 1 if the Contractor is not providing Organic Waste Processing Services, the resource recovery facility to which the Contractor must deliver Organic Waste as may be directed by the Principal from time to time; or 2 if the Contractor is providing Organic Waste Processing Services, the resource recovery facility owned or operated by the Contractor at which the Organic Waste Processing Services are performed.
Organic Waste Processing Services	the processing of Organic Waste and derivation of products from Organic Waste.
Over-compaction Charge	the charge specified as such in the Recyclables Sorting and Organic Waste Processing Services Specification.
Panel Agreement	the agreement between WALGA and the Contractor, regarding the panel pursuant to which the Contractor is providing the Services to the Principal.
Party Details	the details of each party set out in the Procurement Form.
Personnel	the Principal's Personnel or Contractor's Personnel, as the case may be.

Term	Meaning
PMS	has the meaning given in clause 5.3.
Policies and Guidelines	all of the policies and guidelines of the Principal made available to the Contractor, as amended from time to time.
Principal	the party defined as the “Principal” in the Procurement Form, being an entity within the definition of “Member” (as that term is defined in the Panel Agreement).
Principal Data	information and materials of the Principal in respect of which the Contractor has custody or control for the purpose of providing the Services or which are accessed, transmitted or stored using the Contractor’s information systems or equipment under the Contract.
Principal IP	any Intellectual Property of the Principal (or licensed to the Principal by a third party) which the Principal makes available, contributes, brings to or uses in connection with the Contract.
Principal’s Personnel	the Principal’s Representative and the Principal’s officers, employees, delegates, subcontractors and agents (excluding the Contractor and the Contractor’s Personnel).
Principal’s Representative	the representative of the Principal, as may be replaced by the Principal from time to time, and will include any person notified to the Contractor as the representative of the Principal for the purposes of the Contract.
Principal-Supplied Plant and Equipment	the plant and equipment identified in the Procurement Form that the Principal will supply for the Contractor’s use in providing the Services in accordance with clause 19.
Procurement Form	as appropriate: <ol style="list-style-type: none"> 1 the form of that title, order or requisition issued by the Principal to the Contractor from time to time, which provides for the specifics, execution and creation of the Contract for the provision of the Services; or 2 where a Contract is to be created in VendorPanel, the specifics contained on that system, by reference to the Services, necessary for a Contract to be created.
Product Payment Rate	the rate payable for Products, as set out in Annexure 2 to Schedule 3 and updated in accordance with Schedule 3.

Term	Meaning
Products	Organic Waste or Recyclable Material sold by the Contractor to a third party.
Professional Contractor	a contractor with skill and experience in, and the expertise and resources necessary to complete, the performance of services the same as, or similar to, the Services.
Project IP	has the meaning given in clause 27.1(b).
Public Place Bins	Bins located within the Collection Area specifically for the deposition of Waste generated in public places, which may be collected on Public Place Collection Days.
Public Place Collection Days	the days on which the Contractor will collect Public Place Bins, as specified in the Procurement Form.
Receptacle	a receptacle for the storage of Hard Waste.
Receptacle Service	the provision of Receptacles and collection of Receptacles and Bulk Waste within the same, as further described in the Verge Collection and Receptacle Services Specification.
Records	<p>records and information of any kind, including originals and copies of all accounts, financial statements, bank statements, books, files, reports, records, correspondence, documents, drawings, diagrams, graphs, photographs, videos, computer models, design models and other materials created for, or relating to, or used in connection with, the Services or the performance of any of the obligations under the Contract, and however those records and information are held, stored or recorded. Records includes:</p> <ol style="list-style-type: none"> 1 all purchase orders, invoices, accounts, payment claims and records (insofar as they relate to the Services or the performance of the Contractor's Obligations under the Contract) relevant to the performance of the Contractor's Obligations under the Contract; 2 all correspondence, minutes of meetings, notes, reports, drawings and all other documentation associated with the Services or the performance of the Contractor's Obligations under the Contract; 3 any electronic communication in any format; and 4 anything which is a 'record' under the <i>State Records Act 2000</i> (WA).
Recyclable Sorting and Organic Waste	the specification described in section 5 of Part C.

Term	Meaning
Processing Services Specification	
Recyclables or Recyclable Materials	any material that is discarded or unwanted and typically recyclable through a Kerbside Service, or as specified in the Procurement Form.
Recyclables Bin	a mobile garbage bin or receptacle approved by the Principal for use in the collection of Recyclables under the Contract.
Recyclables Sorting Services	services involving the separation of Recyclables from Residue and other types of Waste in the Delivered Material and the sorting of Recyclables ready for distribution to recyclables markets.
Related Body Corporate	has the meaning as that term is defined under section 50 of the Corporations Act.
Residential Tenements	a Tenement which is used for residential purposes.
Residual Material	the Non-Recyclable Material remaining following the processing of Recyclables or Organics.
Residue	any Delivered Material which is not Recyclables or Bulk Garden Organics.
Security	<p>an irrevocable and unconditional bank guarantee or alternate security serving a similar function to a bank guarantee:</p> <ol style="list-style-type: none"> 1 substantially in the form set out in Schedule 5 (or a form otherwise approved by the Principal); and 2 issued by an Approved Institution.
Security Amount	the amount identified in the Procurement Form.
Service Plan	<p>the Contractor's service plan, comprising the following sub-plans:</p> <ol style="list-style-type: none"> 1 implementation plan; 2 operational plan; 3 customer service plan; 4 quality management plan; 5 environmental management plan;

Term	Meaning
	6 OH&S plan; and 7 contingency plan.
Services	1 the performance of work and supply of materials; and 2 all other things required to be done, by the Contractor under any services set out in the Procurement Form and includes any matters reasonably to be inferred from any relevant Specification or Good Industry Practice.
Services Contract Conditions	the part of this document called 'Member Contract Conditions (Waste Services)'.
Services Requirements	that: 1 the Services meet the requirements of the Contract (including those set out in the Specifications); and 2 those tests which are required by the Contract to be carried out and passed in respect of the Services have been carried out and passed (or, where no such tests are set out in the Contract, any tests which are commonly required for services of the same nature as the Services have been carried out and passed).
Services Term	the period of time from the Start Date to last date of the Initial Term or Additional Term, as applicable.
Specifications	the specifications describing the Services to be supplied under the Contract, as set out in the Procurement Form.
Standards and Procedures	any guidelines, rules, requirements or information regarding site-specific conditions or the Principal's operations made available to the Contractor by the Principal from time to time.
Start Date	the date specified as the "Start Date" in the Procurement Form.
Step-in Event	has the meaning given in clause 34.1(b).
Step-in Right	has the meaning given in clause 34.1(a).

Term	Meaning
Sustainability Objectives	has the meaning given in clause 18.
Tax	any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.
Tax Invoice	any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.
Tenements	a property or location within the Collection Area.
Transfer Station	the transfer station identified in the Landfill Management and Transfer Station Services Specification.
Transfer Station Service	the management and operation of the Transfer Station and sorting of Delivered Material, as further described in the Landfill Management and Transfer Station Services Specification.
Variation	a decrease, increase, omission, addition, substitution or other change to any part of the Services to be performed under the Contract.
Variation Notice	a notice issued by the Principal under clause 32.1(b) directing the Contractor to carry out a Variation requested under clause 32.1(a).
Variation Quotation	a quotation from the Contractor which sets out the Contractor's additional costs or savings and the effect on the Services Date for Completion for performing a Variation requested under clause 32.1(a).
VendorPanel	WALGA's online quotation, compliance and contract management system, as updated from time to time, which includes the system formerly branded as "eQuotes".
Verge Collection and Receptacle Services Specification	the specification described in section 3 of Part C.

Term	Meaning
Verge Collection Point	has the meaning given to it in clause 9.2.
Verge Collection Program	the program run by the Principal for the collection of Hard Waste or Bulk Garden Organics from verges or other locations on or adjacent to Tenements that does not involve a Receptacle.
Verge Collection Schedule	has the meaning given to it in clause 9.3.
Verge Collection Service	the collection of Hard Waste or Bulk Garden Organics from verges of Tenements or other locations on or adjacent to a Tenement that does not involve a Receptacle in accordance with the Verge Collection Program, as further described in the Verge Collection and Receptacle Services Specification.
WALGA	the Western Australian Local Government Association (ABN 28 126 945 127) of 170 Railway Parade, West Leederville, in the State of Western Australia.
Waste	any substance that is placed into a Bin for collection and disposal or processing.
Waste Bins	a mobile garbage bin or receptacle approved by the Principal for use in the collection of Waste under the Contract.
Waste Law	<ol style="list-style-type: none"> 1 all present and future legislation, regulations and local Laws in Western Australia and the Commonwealth concerning waste management and other waste matters including the <i>Waste Avoidance and Resource Recovery Act 2007 (WA)</i> and <i>Waste Avoidance and Resource Recovery Levy Act 2007 (WA)</i>; 2 Approvals issued under the items listed in paragraph 1; and 3 any common law relating to waste management.
Waste Levy	the levy imposed under the <i>Waste Avoidance and Resource Recovery Levy Act 2007 (WA)</i> and the <i>Waste Avoidance and Resource Recovery Levy Regulations 2008 (WA)</i> .
Waste to Energy Facility	a facility which receives Waste and processes the Waste to generate energy.

Term	Meaning
Wilful Misconduct	any wrongful act or omission that was intentionally done or involved reckless disregard for the likely consequences.
Workplace Health and Safety Legislation	<p>all workplace, health and safety related:</p> <ol style="list-style-type: none"> 1 Law; 2 the National Standard for Construction Work, codes of practice, Australian Standards and compliance codes; and 3 directions, notices and the like issued by any Government Agency or in accordance with any Laws, <p>where any part of the Services is being performed.</p> <p>This includes the <i>Work Health and Safety Act 2020 (WA)</i> and the <i>Work Health and Safety (General) Regulations 2022 (WA)</i>, in addition to any other relevant legislation or regulations.</p>
Workplace Health and Safety Requirements	any and all directions, instructions, requests or requirements relevant to or associated with or necessary for compliance by the Contractor and the Principal with Workplace Health and Safety Legislation and including any such matters of which the Contractor has been informed by the Principal orally or in writing, including any relevant Policies and Guidelines.

2 Interpretation

In the Contract, unless the context suggests otherwise:

- (a) headings and bold type are for convenience only and do not affect the interpretation of the Contract;
- (b) the singular includes the plural and the plural includes the singular;
- (c) other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning;
- (d) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (e) a reference to a clause, party, schedule or attachment is a reference to a clause of, and a party, schedule or attachment to, the Contract;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a party to a document includes that party's successors and permitted assignees;

- (i) a promise on the part of 2 or more persons binds them jointly and severally;
- (j) no provision of the Contract will be construed adversely to a party because that party was responsible for the preparation of the Contract or that provision;
- (k) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;
- (l) a reference to 'consent', 'approved' or 'approval' will be deemed to mean 'consent to in writing', 'approved in writing' or 'approval in writing';
- (m) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year;
- (n) Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to the Contract; and
- (o) to the extent of any inconsistency between the provisions of the documents forming the Contract, the Contractor must give the Principal notice of that inconsistency, and the Principal will direct the Contractor as to the interpretation and construction to be followed.

3 Services Term

3.1 Services Term

- (a) The Contract commences on the Start Date and ends on the End Date, unless terminated under clause 37.
- (b) Subject to clause 37, the Contract continues in full force and effect notwithstanding the termination or expiry of the Panel Agreement.

3.2 Extension to the Services Term

The parties may, by agreement in writing, at any time prior to the expiry of the Initial Term, extend the Services Term of the Contract for the Additional Term.

3.3 Exclusivity

- (a) During the Services Term, the Principal will not engage any person other than the Contractor to provide the Services, except that the Principal may, in its discretion:
 - (1) engage a third party to re-perform any defective or incomplete Services where the Contractor has first been given reasonable opportunity to rectify the deficiency and has failed to do so; and
 - (2) engage a third party to assist in the provision of emergency or hazardous waste management services.
- (b) For clarity, clause 3.3(a) does not apply to:
 - (1) any services engaged by the Principal in respect of buildings or collection points other than the Collection Points the subject of the Contract; or
 - (2) a component of the Services which is removed from the scope of the Contract in accordance with the Variation regime under clause 32.

- (c) The Principal acknowledges that the Contractor may supply goods and services of a similar nature as the Services to any person other than the Principal.

4 Performance of Services

4.1 Contractor acknowledgements

The Contractor acknowledges and agrees that:

- (a) the Services are core and essential Services provided by the Principal to its residents and others within its local government area; and
- (b) the Principal has relied on the representations made by the Contractor through its offer, including that it can meet the service standards required under the Contract including the Specifications.

4.2 General obligations

- (a) The Contractor must perform the Services in accordance with clause 5 and otherwise in accordance with the Contract.
- (b) The Contractor must ensure that it and the Contractor's Personnel, in performing the Contractor's Obligations under the Contract:
 - (1) have all of the necessary skills and training and hold all of the required qualifications and licences to perform the Services in accordance with all applicable Laws and industry standards;
 - (2) obtain any Approvals required for the performance of the Services, including any approvals set out in the Specifications;
 - (3) comply with all applicable Laws, the Policies and Guidelines and any reasonable directions given by the Principal;
 - (4) do not interfere with the Principal's activities or the activities of any other person at any place where the Services are performed;
 - (5) carry out the Contractor's Obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work;
 - (6) provide all such information and assistance as the Principal reasonably requires;
 - (7) at their own expense, supply all plant, equipment and resources required for the performance of the Services, except for any items of plant and equipment to be provided by the Principal as set out in the Specifications; and
 - (8) meet the Key Performance Indicators.

4.3 Meetings

- (a) Each month following the end of the previous quarter (or other date as reasonably directed by the Principal) the Contractor must attend a progress meeting with the Principal to address:
 - (1) the performance of the Services;

- (2) workplace health and safety;
 - (3) communications and media; and
 - (4) any other contractual matters required by the Principal.
- (b) The Contractor must attend other meetings as reasonably requested by the Principal, including information briefings with stakeholders.

5 Quality of Services

5.1 General performance obligations

The Contractor must ensure that:

- (a) the Services match the description of the Services set out in the Procurement Form and comply with the requirements in the Contract;
- (b) the Services are performed with the professional skill, care and diligence expected of a skilled and experienced Professional Contractor;
- (c) any goods, materials, supplies, equipment or other items the Contractor uses or supplies as part of the Services are either new or of merchantable quality and are free from Defects in design, materials and workmanship; and
- (d) the Services are fit for the purpose stated in the Contract (including the Specifications), or the purpose which could reasonably be inferred by a Professional Contractor performing the Services.

5.2 KPIs

- (a) The objectives of the KPIs are to measure the Contractor's performance in accordance with its obligations under the Contract.
- (b) Without prejudice to the other provisions of the Contract, in performing its obligations under the Contract, the Contractor must achieve each of the requirements of, and standards set out in, the KPIs.
- (c) If the Contractor fails to achieve the requirements of, and standards set out in, a KPI, then the Contractor must:
 - (1) rectify that failure, if it is rectifiable; and
 - (2) submit to the Principal for its approval (acting reasonably) a plan outlining the steps that the Contractor will take to ensure that the relevant KPI will be complied with in future,

within 14 days of the relevant KPI failure, and must comply with the terms of any plan submitted pursuant to clause 5.2(c)(2) that has been approved by the Principal.

5.3 Performance Management System

The Contractor must develop and maintain during the Services Term a Performance Management System (**PMS**) which:

- (a) specifies how the Contractor will ensure that it will comply with; and
- (b) details the Contractor's compliance with,

the Contract in order to achieve the KPIs set out in Schedule 2.

5.4 Contractor to assist Principal

- (a) The Contractor must provide the Principal with any information required by the Principal from time to time, acting reasonably, which may be necessary for the Principal to properly monitor the performance of the Services by the Contractor.
- (b) The Contractor acknowledges and agrees that the Principal, acting reasonably, will review the PMS from time to time during the Services Term to determine whether the Services are being performed in accordance with the KPIs and Specifications.
- (c) The Principal may undertake a full audit of the performance of the Services against the Specifications and the KPIs set out in Schedule 2.
- (d) The Contractor must provide the Principal with all information, and other assistance generally, required by the Principal, acting reasonably, in order to allow the Principal to undertake any such audit.
- (e) The Principal agrees to conduct a maximum of 4 performance audits under this clause 5.4 in any 12 month period during the Services Term.

6 Security

6.1 Obligation to provide Security

- (a) If a Security Amount is specified in the Procurement Form, the Contractor must provide to the Principal the Security in accordance with this clause 6 and substantially in the form set out in Schedule 5.
- (b) The Contractor provides the Security for the purpose of:
 - (1) securing the Contractor's performance of the Contractor's Obligations (including the Services) in accordance with the Contract; and
 - (2) securing the Contractor's liability under the Contract.
- (c) Where required under the Contract, the Contractor must obtain and deliver the Security for the Security Amount to the Principal no later than the Start Date.
- (d) The Contractor is not entitled to lodge any claim for payment until it has delivered the Security in accordance with this clause 6.
- (e) The Contractor must ensure that, notwithstanding any payment made to the Principal under the Security, the Security is maintained in the Security Amount and otherwise remains valid and enforceable until expiry of the Services Term.

6.2 Recourse to Security

The Principal may have recourse to the whole or part of the Security in respect of any moneys for which the Contractor may be liable to the Principal under the Contract.

6.3 Release

The Principal must return the Security to the Contractor within 10 Business Days of the later of:

- (a) the expiry of the Services Term; and
- (b) the date the Contractor has performed all of its obligations under the Contract, including payment in full of all sums of money owed by the Contractor to the Principal under the Contract.

6.4 Duration and replacement of Security

- (a) Where:
 - (1) the Security has an expiry date; and
 - (2) the Contract requires the Security to remain in force beyond the expiry date of the Security,

at least 20 Business Days prior to the expiry date of the Security, the Contractor must provide to the Principal a replacement Security meeting the requirements of the Contract.
- (b) If the Contractor does not provide a replacement Security to the Principal on or before the date that is 5 Business Days prior to the expiry date of the existing Security, then the Principal may make a demand on the existing Security, and may hold those funds as cash security in an interest bearing account in lieu of a Security. The Contractor will own any interest earned on such cash security.

6.5 No injunction

The Contractor must not take any steps to enjoin or otherwise restrain:

- (a) any issuer of the Security provided under this clause 6 from paying the Principal under the Security; or
- (b) the Principal from taking any steps for the purpose of making a demand under the Security provided under this clause 6 or receiving payment under the Security.

7 Collection Service

7.1 Application

This clause 7 applies to the Contract where the Procurement Form specifies that the Contractor is to provide the Collection Service.

7.2 Collection Services

- (a) Subject to clauses 7.3(f) and 7.4(a)(2), Waste must be collected by the Contractor in accordance with approved Collection Schedules from all:
 - (1) Residential Tenements from Bins put out at the kerbside at the front of the Residential Tenement; and
 - (2) other Tenements identified in the Specification,
(each a **Collection Point**).
- (b) The Collection Services must not take place:
 - (1) on a day that is not a Collection Day; or

- (2) on any other days or at any other times set out in the Collection Service Specification,

without the Principal's prior written consent which may be given subject to such conditions as the Principal considers reasonably appropriate.

- (c) The Contractor must carry out Collection Services scheduled for Christmas Day, New Year's Day and Good Friday on an alternative day within 7 days of the missed day, as approved by the Principal.
- (d) On becoming aware of, or upon receiving a notification of, a missed Waste collection from a resident or from the Principal, the Contractor must attend the relevant Collection Point and collect the Waste, at its cost. If the advice or notification is received prior to 11am on a Collection Day, collection must be made on that day and at the time set out in the Collection Service Specification.

7.3 Collection Schedule

- (a) No later than 20 Business Days prior to the Start Date, the Principal will provide to the Contractor a written list in electronic format of all addresses within the Collection Area to be serviced by Collection Services and, where requested by the Contractor, a list of Bin numbers at each Tenement and any special collection requirements for those Tenements. The Principal may update this list in writing at any time.
- (b) At the same time as providing the list under clause 7.3(a), the Principal may determine, and if so, must notify the Contractor of, the Collection Day applicable to any area within the Collection Area. If the Principal does not notify the Contractor of the Collection Day, the Contractor must determine the most efficient route and Collection Days to perform the Services.
- (c) The Contractor must prepare a schedule for the performance of the Collection Services at all Tenements within the Collection Area which must be consistent with:
 - (1) the information provided to the Contractor under clauses 7.3(a) and 7.3(b);
 - (2) the frequency for the collection of Waste specified in the Collection Service Specification;
 - (3) any other information the Principal provides to the Contractor for the purposes of determining the Collection Schedule; and
 - (4) Main Roads being serviced outside of peak traffic times,

(Collection Schedule).
- (d) A draft of the Collection Schedule must be submitted by the Contractor to the Principal for approval at least 2 weeks prior to the Start Date.
- (e) Following receipt of a draft Collection Schedule, the Principal may:
 - (1) require the Contractor to provide further information regarding the proposed Collection Schedule;
 - (2) direct reasonable amendments to the proposed Collection Schedule; and
 - (3) make its approval of the proposed Collection Schedule subject to such reasonable conditions as the Principal considers appropriate.

- (f) Any alteration to, or departure from, the approved Collection Schedule by the Contractor in the performance of Collection Services can only occur with the Principal's prior written consent. Should a collection occur late or not in accordance with the Collection Schedule and the Principal's prior written consent was not obtained to such a departure, the Contractor must notify the Principal in writing as soon as practicable.

7.4 Collection of Waste

- (a) The Contractor must:
- (1) not empty a Bin and collect the Waste in or around the relevant Bin (in the Contractor's reasonable discretion) where the placement of this Waste does not comply with any policy of the Principal or any Legal Requirements; and
 - (2) not collect Waste from a Collection Point if the Principal has directed the Contractor not to do so; and
 - (3) not collect Waste from a Collection Point if Contractor is aware that any Waste placed in a Waste Bin for collection is not Recyclables or Organic Waste, or does not otherwise comply with a policy of the Principal or any Legal Requirements, unless advised otherwise by the Principal in writing.
- (b) If the Contractor does not empty a Bin in accordance with clause 7.4(a)(1), the Contractor must ensure that the driver of the Collection Vehicle:
- (1) immediately notifies the Contractor of the address of the relevant Tenement and the reason for not emptying the Bin; and
 - (2) attaches to the Bin a notification, in a form approved by the Principal, indicating:
 - (A) why the Bin was not emptied;
 - (B) the steps that must be taken to have the Bin emptied in the future; and
 - (C) a phone number for enquiries.
- (c) After the driver of the Collection Vehicle notifies the Contractor under clause 7.4(a)(2), the Contractor must notify the Principal as soon as possible of the address, the serial number of the Bin (if available) and the reason for not emptying the Bin.
- (d) The Contractor must ensure that its Personnel collect and remove any material spill:
- (1) by them in performing the Collection Services;
 - (2) from any Bin; or
 - (3) from a Collection Vehicle.
- (e) After emptying each Bin, the Contractor should endeavour to place it:
- (1) as near as practicable to the position in which it was located prior to being emptied, but not on a road or within 1 metre of a driveway; and
 - (2) in an upright position with the lid of the Bin closed.
- (f) The Contractor must ensure that Bins are:

- (1) not placed in a position hazardous to any person or property, including other Bins; and
 - (2) not dropped, dragged or thrown.
- (g) The Contractor must advise the Principal of any Tenements in respect of which the Contractor considers that special arrangements are required to provide Collection Services and take all necessary steps to implement such special arrangements unless otherwise agreed with the Principal.

7.5 Collection Vehicles

- (a) Without limiting any other clause of the Contract or the Panel Agreement, in performing Collection Services, the Contractor must:
- (1) use a sufficient number of Collection Vehicles; and
 - (2) ensure that all Collection Vehicles are roadworthy, in good repair and condition, and sufficiently equipped to perform the Collection Services.
- (b) If at any time, the Principal, acting reasonably, considers that the Collection Vehicles are inadequate to properly perform the Collection Services, the Principal may in writing direct the Contractor to address such inadequacy as the Principal considers appropriate, and the Contractor must comply with such direction.
- (c) All Collection Vehicles must be kept clean and washed down both inside and outside and disinfected at the frequencies specified in the Collection Service Specification to the Principal's reasonable satisfaction and at the Contractor's premises.
- (d) All Collection Vehicles must be fitted with a two-way communication system and the Contractor must be able to maintain effective two-way communication with all Collection Vehicles from the Contractor's office.
- (e) When any Collection Vehicles are passing along roads or left standing in any public place, they must not be left standing in such a manner as to cause an unreasonable interference to the public's use of the road or public place or present a hazard to a member of the public.
- (f) The Contractor is responsible for all maintenance, parts and other resources required to operate and maintain each Collection Vehicle.
- (g) Unless otherwise agreed by the Parties in writing, the Contractor must, at its cost, ensure that on and from the Start Date each Collection Vehicle displays the signage set out in the Collection Service Specification which must be professionally finished or affixed in the manner directed by the Principal. For clarity, the Principal may in writing direct any identification information to be affixed to the Collection Vehicles.
- (h) If the Principal requests any changes to the signage displayed on any Collection Vehicle in addition to the requirements of 7.5(g), such changes must be agreed by the Parties and the Principal will be responsible for the costs of implementing such changes.

7.6 Delivery of Waste to the Facility

- (a) Where the Contractor is not the Facility Operator and is delivering Collected Material to a Facility of a Facility Operator engaged by the Principal to receive such Collected Material, the Contractor:

- (1) must deliver the Collected Material to the Facility directed in writing by the Principal from time to time;
 - (2) must deliver only Collected Material to Facilities;
 - (3) subject to clause 7.6(a)(4), must deliver Collected Material to a Facility during its Opening Hours;
 - (4) may only deliver Collected Material to a Facility outside of its Opening Hours with the Principal's written permission, which may be given subject to conditions;
 - (5) when delivering Collected Material to the Facility must:
 - (A) not interfere with the activities of any other person at the Facility; and
 - (B) leave the Facility secure, clean, orderly and fit for immediate use having regard to the condition of the Facility immediately prior to the delivery of the Collected Material; and
 - (6) must ensure that its Personnel while at the Facility comply with any:
 - (A) reasonable directions of representatives of the Facility Operator; and
 - (B) reasonable rules or policies of which notice has been given to the Contractor by the Facility Operator or Principal, including rules about occupational health and safety.
- (b) The Contractor must:
- (1) ensure that all Collected Material delivered to a Facility is weighed at the weighbridge at the Facility or, if the Facility does not have a weighbridge, is otherwise calculated using the procedures of the Facility; and
 - (2) provide to the Principal weighbridge dockets for a specified period of time within 3 Business Days of a request being made by the Principal.
- (c) Where the Contractor is the Facility Operator or is delivering Collected Material to a Facility of a Facility Operator engaged by the Contractor to receive such Collected Material, the Contractor must ensure that the weighbridge is appropriately licensed and calibrated for accuracy in accordance with applicable Laws.
- (d) The parties acknowledge and agree that the weighbridge measurements are conclusive evidence of the amount of Collected Material received at the Facility and will be used for the purpose of calculating the Fee.
- (e) If the Contractor is not providing Recyclables Sorting Services and any Collected Material delivered to a Material Recovery Facility exceeds the Maximum Compaction Rate, the Principal may deduct the amount of any Over-compaction Charge paid by the Principal to the Facility Operator of that Facility from the Fee.
- (f) As at the Execution Date, the Principal's nominated Facility or Facilities for delivery of Collected Material are set out in the Procurement Form. If the Principal nominates an alternative facility, then the Contractor will be entitled to a variation to the Fee, to reflect the change in distance. The price variation will be based on "rate per kilometre to an alternative facility" set out in the Collection

Service Specification. In emergency situations where it is not possible to agree a variation to the Fee, the Principal is liable for any additional direct costs reasonably incurred by the Contractor in delivering the waste to an alternative facility, as notified by the Contractor to the Principal in writing prior to the cost being incurred.

7.7 Additional reporting

Without limiting any other requirements in the Contract or the Panel Agreement, the Contractor must maintain records of:

- (a) any breach of Legal Requirements by the occupier of a Tenement in respect of the placement or contents of a Bin or other material left out for collection; and
- (b) the weight of Collected Material collected by each Collection Vehicle per day.

7.8 Complaints

Unless requested otherwise by the Principal, if the Contractor receives any complaint from a Tenement occupier regarding the Contractor's failure to service that Tenement or the manner in which the Contractor has serviced the Tenement, the Contractor must:

- (a) immediately notify the Principal of the complaint;
- (b) immediately investigate the complaint and advise the Principal and the complainant of the result of the investigation as soon as possible after that investigation is complete; and
- (c) where the investigation determines that the Contractor has failed to collect and remove Waste in accordance with the Contract or has failed to service the Tenement in accordance with Good Industry Practice, rectify any such failure as soon as practicable.

7.9 Notifications

If Bin Services are not provided under the Contract and the Contractor or Contractor's Personnel becomes aware that a Bin is damaged or is no longer required at a Collection Point, the Contractor must immediately notify the Principal.

7.10 Advertising

Except as otherwise provided in the Collection Service Specification, in the event of any suspension of, or a stoppage or disruption to, the Collection Services, which was reasonably caused by an act or omission of the Contractor or its Personnel, the Contractor must, as and when directed in writing by the Principal:

- (a) place advertisements in newspapers nominated by the Principal; and
- (b) organise a letterbox drop of information to affected areas; or
- (c) arrange for advertising in any other medium approved by the Principal, advising of the relevant suspension, stoppage or disruption, with the form and content of the newspaper advertisement and of any information distributed to be approved by the Principal.

7.11 Waste Levy

- (a) This clause 7.11 applies if the Contractor is not the Facility Operator of the Landfill Facility to which the Contractor delivers Collected Material and the cost of the Facility Operator paying the Waste Levy in respect of the Collected Material is passed on by the Facility Operator to the Contractor under an agreement between the Facility Operator and the Contractor.
- (b) Notwithstanding any provision of the Contract, if there is an increase or decrease in the rate of the Waste Levy and this increase or decrease is passed on to the Contractor by the Facility Operator, the Contractor may increase and must decrease the Fee for the amount of the increase or decrease (as the case may be) effective from the date of the increase or decrease. For clarity, this does not enable the Contractor to charge the Principal for an administrative levy or other fee in relation to the increase or decrease of the Waste Levy and Fee.

7.12 Title to Bins

Unless provided otherwise in the Collection Service Specification, if the Contractor provides Bins as part of the Collection Services and ownership of such Bins is stated by the Contract as vesting in the Contractor, then on the date on which the Contract terminates, ownership of such Bins vests in the Principal.

8 Bin Service

8.1 Application

This clause 8 applies to the Contract where the Procurement Form specifies that the Contractor is to provide the Bin Service.

8.2 Serial Numbers

The Contractor must, unless directed in writing otherwise by the Principal:

- (a) on provision of an address list in electronic format by the Principal, deliver to the Principal a database of all serial numbers of the Bins to be supplied and the addresses of Bin Delivery Points in a form, and using database software, approved by the Principal, prior to the Start Date;
- (b) provide the Principal with written notice on a monthly basis of the serial number of any Bins delivered by the Contractor during that month and the address of the Bin Delivery Point to which it was delivered; and
- (c) deliver to the Principal, within 5 days of the end of the Services Term, the database provided under clause 8.2(a) updated to reflect the information provided under clause 8.2(b).

8.3 Retrieval and replacement of Bins

If set out in the Specifications, the Contractor must retrieve Bins that are damaged or no longer required and deal with them as follows:

- (a) either:

- (1) if they are damaged beyond repair, preferably recycle or if recycling is not possible dispose of them; or
- (2) repair and store them at a secure location for re-issue to Bin Delivery Points as required;
- (b) if a Bin is removed due to being damaged, replace that Bin, by issuing a replacement Bin in a timely manner; and
- (c) use its best endeavours to reuse Bins wherever possible.

8.4 Affixation of notices to Bins

- (a) If directed in writing by the Principal, the Contractor must attach notices to all Bins which have already been, or are to be, supplied to Bin Delivery Points in any manner specified by the Principal.
- (b) The Principal will supply any such notices and must compensate the Contractor for its reasonable costs in affixing such notices.

9 Verge Collection Service and Receptacle Services

9.1 Application

This clause 9 applies to the Contract where the Procurement Form specifies that the Contractor is to provide the Verge Collection Service or Receptacle Service.

9.2 Verge Collection Service

- (a) Subject to clauses 9.3(a), 9.3(b) and 9.3(f), Hard Waste must be collected by the Contractor in accordance with approved Verge Collection Schedules from all:
 - (1) verges at the front of Residential Tenements; and
 - (2) verges of other Tenements or locations nominated in writing by the Principal,(each a **Verge Collection Point**).
- (b) The Verge Collection Services must not take place:
 - (1) on a day that is not a Collection Day; or
 - (2) on the days and at the times set out in the Verge Collection and Receptacle Services Specifications,without the prior written consent of the Principal which may be given subject to such conditions as the Principal considers appropriate.
- (c) On becoming aware of, or upon receiving a notification of, a missed collection from an occupier of a Tenement or from the Principal, where the materials that were not collected are Acceptable Verge Waste, the Contractor must attend the relevant Verge Collection Point and collect the materials, at its cost as soon as practicable.

9.3 Verge Collection Schedule

- (a) No later than 20 Business Days prior to the Start Date, the Principal must provide the Contractor a written list in electronic format of all addresses within the Collection Area to be serviced by Verge Collection Services. The Principal may update this list in writing at any time.
- (b) The Principal will provide details of the requirements and proposed schedule for its Verge Collection Program within 20 Business Days of the Execution Date or 20 Business Days after the anniversary of the Execution Date, as the case may be.
- (c) The Contractor must prepare a schedule for the performance of the Verge Collection Services within the Collection Area which must be consistent with:
 - (1) the information provided to the Contractor under clauses 9.3(a) and 9.3(b);
 - (2) any other information that the Principal provides to the Contractor for the purposes of determining the Verge Collection Schedule; and
 - (3) Main Roads being serviced outside of peak traffic times,
(Verge Collection Schedule).
- (d) A draft of the Verge Collection Schedule must be submitted by the Contractor to the Principal for approval at least 20 Business Days prior to the Start Date and the Principal must respond to the draft under clause 9.3(e) within 5 Business Days of receipt.
- (e) Following receipt of a draft Verge Collection Schedule, the Principal may:
 - (1) require the Contractor to provide further information regarding the proposed Verge Collection Schedule;
 - (2) direct reasonable amendments to the proposed Verge Collection Schedule; and
 - (3) make its approval of the proposed Verge Collection Schedule subject to such reasonable conditions as the Principal considers appropriate.
- (f) The Verge Collection Schedule must be approved by the Principal at least 10 Business Days prior to the Start Date.
- (g) Any alteration to, or departure from, the approved Verge Collection Schedule by the Contractor in the conduct of Verge Collection Services can only occur with the Principal's prior written consent. Should a collection occur late or not in accordance with the Verge Collection Schedule and the Principal's prior written consent was not obtained to such a departure, the Contractor must notify the Principal in writing as soon as practicable.

9.4 Collection of Waste as part of Verge Collection Services

- (a) The Contractor must only collect Hard Waste or Bulk Garden Organics that is Acceptable Verge Waste.
- (b) If the manner in which any Hard Waste or Bulk Garden Organics is placed for collection from any Verge Collection Point does not comply with any policy of the Principal or any Legal Requirements, the Contractor must not collect such material.

- (c) If the Contractor does not collect any Hard Waste or Bulk Garden Organics in accordance with clause 9.4(b), the Contractor must ensure that the driver of the Collection Vehicle immediately notifies the Contractor of the address of the relevant Tenement and the reason for not collecting the material.
- (d) If the Contractor receives a notice under clause 9.4(c), the Contractor must notify the Principal as soon as possible of the address and the reason for not collecting the material.
- (e) The Contractor must ensure that its Personnel collect and remove any material spilt:
 - (1) by them in performing the Verge Collection Services; or
 - (2) from a Collection Vehicle.
- (f) The Contractor must advise the Principal of any Tenements in respect of which the Contractor considers that special arrangements are required to provide Verge Collection Services and take all necessary steps to implement such special arrangements at its cost.

9.5 Receptacle Services

- (a) The Contractor must provide Receptacles for use by occupiers of Tenements in accordance with this clause 9.5.
- (b) Following a request by a Tenement occupier for the use of a Receptacle, the Principal must provide a written request to the Contractor to deliver a Receptacle to the Tenement, and to collect the Receptacle and the Hard Waste within it, on specified dates. Where the Receptacle is to be placed on a location other than a verge, the request must specify the location on or adjacent to the Tenement on which the Receptacle is to be placed. If:
 - (1) there is no suitable location at or near the Tenement on which the Receptacle can be safely located, the Contractor can decline to provide the Receptacle and must notify the Principal accordingly; or
 - (2) there is a suitable location at the Tenement on which the Receptacle can be safely located, the Contractor must deliver the Receptacle, subject to the occupier of the Tenement executing a document consenting to the placement of the Receptacle in the location proposed and releasing and indemnifying the Contractor from and against liability for loss or damage to any private property caused by the placement of the Receptacle in that location.
- (c) The Contractor must comply with any reasonable request made under clause 9.5(b) subject to availability of Receptacles between the specified dates.
- (d) The Contractor must only collect Hard Waste that is Acceptable Receptacle Waste.
- (e) If the manner in which any Hard Waste is placed for collection from any Verge Collection Point does not comply with any policy of the Principal or any Legal Requirements, the Contractor must not collect such material.
- (f) If the Contractor does not collect any Hard Waste in accordance with clauses 9.5(d) or 9.5(e), the Contractor must ensure that the driver of the Collection Vehicle immediately notifies the Contractor of the address of the relevant Tenement and the reason for not collecting the material, following which the Contractor must notify the Principal as soon as possible of the address and the reason for not collecting the material.

- (g) The Contractor must ensure that its Personnel collect and remove any material spilt:
 - (1) by them in performing the Receptacle Services;
 - (2) from any Receptacle; or
 - (3) from a Collection Vehicle.
- (h) The Contractor must ensure that, when delivered, Receptacles are not placed in a position hazardous to any person or property.

9.6 Collection Vehicles

- (a) In performing Verge Collection Services and Receptacle Services, the Contractor must:
 - (1) use a sufficient number of Collection Vehicles; and
 - (2) ensure that all Collection Vehicles are roadworthy, in good repair and condition, and sufficiently equipped to perform the Verge Collection Services or Receptacle Services (or both).
- (b) If at any time, the Principal, acting reasonably, considers that the Collection Vehicles are inadequate to properly perform the Verge Collection Services or the Receptacle Services, the Principal may in writing direct the Contractor to address such inadequacy as the Principal considers appropriate, and the Contractor must comply with such direction.
- (c) All Collection Vehicles must be kept clean and washed down both inside and outside.
- (d) All Collection Vehicles must be fitted with a two-way communication system and the Contractor must be able to maintain effective two-way communication with all Collection Vehicles from the Contractor's office.
- (e) When any Collection Vehicles are passing along roads or left standing in any public place, they must not be left standing in such a manner as to cause an unreasonable interference to the public's use of the road or public place or present a hazard to a member of the public.
- (f) The Contractor is responsible for all maintenance, parts and other resources required to operate and maintain each Collection Vehicle.

9.7 Delivery of Waste to the Facility

- (a) Where the Contractor is not the Facility Operator and is delivering Collected Material to a Facility of a Facility Operator engaged by the Principal to receive such Collected Material, the Contractor:
 - (1) must deliver all Collected Material to the Facility directed in writing by the Principal from time to time;
 - (2) must deliver only Collected Material to Facilities;
 - (3) subject to clause 9.7(a)(4), must deliver Collected Material to a Facility during its Opening Hours;
 - (4) may only deliver Collected Material to a Facility outside of its Opening Hours with the Principal's written permission, which may be given subject to conditions;
 - (5) when delivering Collected Material to the Facility must:

- (A) not interfere with the activities of any other person at the Facility; and
 - (B) leave the Facility secure, clean, orderly and fit for immediate use having regard to the condition of the Facility immediately prior to the delivery of the Collected Material; and
- (6) must ensure that its Personnel while at the Facility comply with any:
 - (A) reasonable directions of representatives of the Facility Operator; and
 - (B) reasonable rules or policies of which notice has been given to the Contractor by the Facility Operator or Principal, including rules about occupational health and safety.
- (b) The Contractor must:
 - (1) ensure that all Collected Material delivered to a Facility is weighed at the weighbridge at the Facility or, if the Facility does not have a weighbridge, is otherwise calculated using the procedures of the Facility; and
 - (2) provide to the Principal weighbridge dockets for a specified period of time within 3 Business Days of a request being made by the Principal.
- (c) Where the Contractor is the Facility Operator or is delivering Collected Material to a Facility of a Facility Operator engaged by the Contractor to receive such Collected Material, the Contractor must ensure that the weighbridge is appropriately licensed and calibrated for accuracy in accordance with applicable Laws.
- (d) The parties acknowledge and agree that the weighbridge measurements are conclusive evidence of the amount of Delivered Material received at the Facility and will be used for the purpose of calculating the Fee.
- (e) As at the Execution Date, the Principal's nominated Facility or Facilities for delivery of Collected Material are set out in the Collection Service Specification. If the Principal nominates an alternative facility, then the Contractor will be entitled to a variation to the Fee, to reflect the change in distance. The price variation will be based on "rate per kilometre to an alternative facility" set out in the Collection Service Specification. In emergency situations where it is not possible to agree a variation to the Fee, the Principal is liable for any additional costs reasonably incurred by the Contractor in delivering the Waste to an alternative facility, as notified by the Contractor to the Principal in writing prior to the cost being incurred.

9.8 Additional reporting

The Contractor must maintain records of:

- (a) any breach of Legal Requirements by the occupier of a Tenement in respect of the placement or contents of the receptacle or the type of Waste left out for collection; and
- (b) the weight of Collected Material collected by each Collection Vehicle per day.

9.9 Complaints

Unless requested otherwise by the Principal, if the Contractor receives a complaint from a Tenement occupier regarding the Contractor's failure to service the Tenement or the manner in which the Contractor has serviced the Tenement, the Contractor must:

- (a) immediately notify the Principal of the complaint;
- (b) immediately investigate the complaint and advise the Principal and the complainant of the result of the investigation as soon as possible after that investigation is complete; and
- (c) where the investigation determines that the Contractor has failed to collect and remove Waste in accordance with the Contract or in accordance with Good Industry Practice, rectify any such failure as soon as practicable.

9.10 Advertising

Except as otherwise provided in the Verge Collection and Receptacle Services Specification, in the event of any suspension of, or a stoppage or disruption to, the Verge Collection Services, which was reasonably caused by an act or omission of the Contractor or its Personnel, the Contractor must, as and when directed in writing by the Principal:

- (a) place advertisements in newspapers nominated by the Principal; and
- (b) organise a letterbox drop of information to affected areas; or
- (c) arrange for advertising in any other medium approved by the Principal, advising of the relevant suspension, stoppage or disruption, with the form and content of the newspaper advertisement and of any information distributed to be approved by the Principal.

9.11 Waste Levy

- (a) This clause 9.11 applies if the Contractor is not the Facility Operator of the Landfill Facility to which the Contractor delivers Collected Material and the cost of the Facility Operator paying the Waste Levy in respect of the Collected Material is passed on by the Facility Operator to the Contractor under an agreement between the Facility Operator and the Contractor.
- (b) Notwithstanding any provision of the Contract, if there is an increase or decrease in the rate of the Waste Levy and this increase or decrease is passed on to the Contractor by the Facility Operator, the Contractor may increase and must decrease the Fee for the amount of the increase or decrease (as the case may be) effective from the date of the increase or decrease. For clarity, this does not enable the Contractor to charge the Principal for an administrative levy or other fee in relation to the increase or decrease of the Waste Levy and Fee.

10 Landfill Management Service and Transfer Station Service

10.1 Application

This clause 10 applies to the Contract where the Procurement Form specifies that the Contractor is to provide the Landfill Management Service or Transfer Station Service.

10.2 Transfer Station Services

- (a) Subject to clause 10.2(b) the Contractor must accept, sort, store, transport, reuse, recycle, recover or dispose of all Delivered Material delivered to the Transfer Station.
- (b) The Contractor may refuse to accept at the Transfer Station any Delivered Material that is Excluded Waste.
- (c) The Contractor must have available to it an alternative facility for the receipt of Delivered Material where the maximum capacity of the Transfer Station is likely to be exceeded should the Transfer Station receive Delivered Material.
- (d) If the receipt of Delivered Material is likely to result in the maximum capacity of the Transfer Station being exceeded, the Contractor must notify the Principal immediately of that fact and the address of the alternative facility which will receive the Delivered Material.
- (e) Where Delivered Material is delivered to an alternative facility in accordance with clauses 10.2(c) and 10.2(d), the Contractor must maintain a reporting structure and pay the Principal any additional, reasonable and actually incurred costs of the Principal in having the Delivered Material delivered to that alternative facility.

10.3 Landfill Management Services

- (a) Subject to clause 10.3(b), the Contractor must accept all Delivered Material delivered to a Landfill Facility for disposal.
- (b) The Contractor may refuse to accept at a Landfill Facility any Delivered Material that is Excluded Waste.
- (c) The Contractor must maintain and ensure that the Landfill Facility is available for the disposal of Delivered Material.
- (d) If the Delivered Material exceeds the Maximum Capacity of the Landfill Facility within the Services Term, subject to clause 10.3(e), the Contractor has no legal obligation to accept any further Delivered Material for disposal.
- (e) If the Maximum Capacity of the Landfill Facility is likely to be reached before the end of the Services Term, the Contractor must notify the Principal at least 12 months prior to the estimated date of the Maximum Capacity being reached. After receipt of such a notice, the Principal may, in its absolute discretion, on one month's written notice to the Contractor, terminate the Landfill Management Service in whole or in part.
- (f) The Contractor must ensure that the Landfill Facility is able to accept all Delivered Material that the Landfill Facility is licenced to accept under an Approval or Legal Requirement and in accordance with the Contract.

10.4 Receipt of Delivered Material

- (a) The Contractor must operate the Facility during the Opening Hours.
- (b) The Contractor must ensure that all Delivered Material received at the Facility is weighed at the weighbridge at the Facility or, if the Facility does not have a weighbridge, is otherwise calculated using the procedures of the Facility.
- (c) The Contractor must ensure that the weighbridge is appropriately licensed and calibrated for accuracy in accordance with applicable Laws.
- (d) The Contractor must provide to the Principal weighbridge dockets for a specified period of time within 3 Business Days of a request being made by the Principal.
- (e) The Parties acknowledge and agree that the weighbridge measurements are conclusive evidence of the amount of Delivered Material received at the Facility and will be used for the purpose of calculating the Fee.
- (f) The Contractor must accept all Delivered Material and perform the Landfill Management Services or the Transfer Station Services (or both), as the case may be, in accordance with all applicable Legal Requirements, the Contract, Good Industry Practice and the Standards and Procedures.
- (g) The Contractor must store, transport and dispose of Residue, including Hazardous Waste other than Excluded Waste, in accordance with all applicable Legal Requirements at its own cost.
- (h) The Principal may, on reasonable written notice to the Contractor, inspect the Facility and the Contractor must provide the Principal with all reasonable assistance and access.

10.5 Delivery to another Facility

Where the Contractor is providing Transfer Station Services, the Contractor must, as directed in writing by the Principal from time to time, in accordance with the Specifications:

- (a) deliver all Recyclables to a Material Recovery Facility;
- (b) deliver all Organics to an Organic Waste Facility; and
- (c) deliver all other Waste to a Landfill Facility.

10.6 Waste Levy where Contractor is providing Landfill Management Services

Notwithstanding any provision of the Contract, if there is an increase or decrease in the rate of the Waste Levy and the Contractor is liable to pay the Waste Levy, the Contractor may increase or decrease the Fee for the amount of the increase or decrease effective from the date of the increase or decrease. For clarity, this does not enable the Contractor to charge an administrative levy or other fee in relation to the increase or decrease of the Waste Levy or the Fee.

10.7 Waste Levy where Contractor is providing Transfer Station Services

- (a) This clause 10.7 applies if the Contractor is not the Facility Operator of the Landfill Facility to which the Contractor will transport Delivered Material and the cost of the Facility Operator of the Landfill Facility paying the Waste

Levy in respect of such Delivered Material is passed on by the Facility Operator to the Contractor under an agreement between the Facility Operator and the Contractor.

- (b) Notwithstanding any provision of the Contract, if there is an increase or decrease in the rate of Waste Levy and this increase or decrease is passed on to the Contractor by the Facility Operator, the Contractor may increase and must decrease the Fee for the amount of the increase or decrease (as the case may be) effective from the date of the increase or decrease. For clarity, this does not enable the Contractor to charge the Principal for an administrative levy or other fee in relation to the increase or decrease of the Waste Levy and Fee.

10.8 Additional reporting

The Contractor must maintain records of:

- (a) the implementation of any EMP, EMS, and OH&S Management System, (where such plans or systems are required by the Contract to be prepared), to the extent necessary for the parties to comply with all applicable Legal Requirements;
- (b) if directed in writing to do so by the Principal:
 - (1) the date, time and weight of every vehicle entering and leaving a Facility and the difference in each vehicle's weight between entering and leaving;
 - (2) the weight and composition of the Delivered Material received at the Facility; and
 - (3) the implementation of any required quality system; and
- (c) if the Contractor is providing Transfer Station Services and is directed in writing to do so by the Principal, the weight, composition and destination of all Residue, Recyclables and Organics and the date that all Residue, Recyclables and Organics left the Transfer Station.

10.9 Grant of Licence

- (a) Where the Principal is the owner of the Facility, the Principal grants to the Contractor a licence to access the Licensed Area on a non-exclusive basis for the performance of the Landfill Management Services and Transfer Station Services, as the case may be, subject to the Contract.
- (b) For clarity, this Licence does not confer any right of exclusive occupancy on the Contractor and the Principal may exercise all its rights in respect of the Licensed Area at any time.
- (c) The Contractor must:
 - (1) only use the Licensed Area for the performance of Landfill Management Services or Transfer Station Services (or both, as the case may be);
 - (2) not do anything which might in any way endanger or damage the property of the Principal, the property of any third party or any person in or on the Licensed Area;
 - (3) not carry on any illegal, offensive or unlawful activity, business or use on any part of the Licensed Area;

- (4) promptly make good to the Principal's reasonable satisfaction any damage to the Licensed Area caused by the negligence, misuse or abuse or misconduct of, or otherwise caused by, the Contractor or its Personnel (subject to fair wear and tear);
 - (5) at its own cost obtain, maintain and comply with all Approvals necessary for the conduct of its activities and the lawful use of the Licensed Area;
 - (6) if any Approval is suspended, withdrawn, cancelled or in any other way rendered ineffective, immediately stop access to, and the use of, the Licensed Area until all necessary Approvals have been obtained or made effective;
 - (7) where necessary, facilitate, and otherwise not do anything to prevent or hinder, entry onto the Licensed Area, of any person granted a right of access, licence or other form of tenure by the Principal; and
 - (8) comply with any reasonable direction of the Principal and the Contractor must ensure that its Personnel comply with the Principal's health and safety Policies and Guidelines when inspecting the Contractor's Facility.
- (d) The Principal expressly reserves the right to, upon written notice to the Contractor:
- (1) enter upon the Licensed Area to operate, alter and maintain any existing assets belonging to it on the Licensed Area;
 - (2) enter upon the Licensed Area to install, operate, alter and maintain new assets or infrastructure;
 - (3) grant to any other person a right of access, licence or other form of tenure over the Licensed Area for any purpose (to the extent such grant does not adversely prejudice the rights and obligations of the Contractor under the Contract); and
 - (4) temporarily suspend the Contractor's rights under this licence for a breach by the Contractor of clause 10.9(c).
- (e) Without prejudice to any provisions of the Contract regarding termination, the licence will terminate automatically, and without notice being required by the Principal, on the date on which the Contract terminates.
- (f) The Contractor must remove the Contractor's property from the Licensed Area within 2 Business Days after either the Contract is terminated or the licence is terminated, whichever occurs first.
- (g) All damage to any part of the Licensed Area, any Principal-Supplied Plant and Equipment, any equipment or property of the Principal, the property of any third party or any other person caused by the removal of the Contractor's property must promptly be made good by the Contractor to the Principal's reasonable satisfaction and, if the Contractor fails to do so, the Principal may make good the damage at the Contractor's expense.
- (h) For clarity, the parties may agree in writing additional terms for the licence to those set out in this clause 10.9 provided that they are not inconsistent with this clause 10.9.

10.10 Carbon Issues

- (a) The parties acknowledge and agree that the party identified in the Procurement Form as having operational control of the Facility (**Controlling Party**), notwithstanding any other provision of the Contract, has 'operational control' (as defined in the *National Greenhouse and Energy Reporting Act 2007* (Cth)) of the Facility, including the greatest authority to introduce and implement operating, health and safety and environmental policies for the Facility.
- (b) The Controlling Party must promptly provide any assistance, information, documents or access to Personnel reasonably requested by the other party to enable the other party to discharge any obligations under clause 10.10(a).
- (c) Subject to clause 33:
 - (1) the Fee includes reimbursement for any costs that may arise in connection with any Carbon Scheme and the Contractor is not entitled to any further payment in respect of such costs; and
 - (2) if there is any amendment, repeal or other change to any Carbon Scheme the parties must, on the written request of either party, negotiate promptly and in good faith any amendments to this clause 10.10 which may be necessary to give effect, as far as possible, to the same allocation of rights and responsibilities as is contemplated by the existing provisions of this clause 10.10.

11 Recyclables Sorting Service and Organic Waste Processing Service

11.1 Application

This clause 11 applies to the Contract where the Procurement Form specifies that the Contractor is to provide the Recyclables Sorting Service or Organic Waste Processing Service.

11.2 Recyclables Sorting Services and Organic Waste Processing Services

- (a) If the Contractor is not providing Collection Services, the Contractor may refuse to accept any Delivered Material that is Excluded Waste.
- (b) If the Contractor is providing Collection Services, the Contractor must not refuse to accept any Delivered Material that is Excluded Waste.
- (c) If the Contractor is providing Recyclables Sorting Services, and any Delivered Material delivered to a Material Recovery Facility exceeds the Maximum Compaction Rate, the Contractor may proportionately increase the Fee by the amount of the Over-compaction Charge in respect of the relevant Delivered Material that exceeds the Maximum Compaction Rate.
- (d) The Contractor must have available to it an alternative facility for the receipt of Delivered Material where the maximum capacity of the Facility is likely to be exceeded on a day should the Delivered Material be accepted by the Contractor.

- (e) If the receipt of Delivered Material is likely to result in the maximum capacity of the Facility being exceeded on a day, the Contractor must notify the Principal immediately of that fact and the address of the alternative facility which will receive the Delivered Material.
- (f) Where Delivered Material is delivered to an alternative facility in accordance with clauses 11.2(d) and 11.2(e), the Contractor must pay the Principal any additional, reasonable and actually incurred costs of the Principal in having the Delivered Material delivered to that alternative facility.

11.3 Receipt of Delivered Material at the Material Recovery Facility or Organic Waste Facility

- (a) The Contractor must ensure that all Delivered Material received at the relevant Facility is weighed at the weighbridge at the Facility or, if the Facility does not have a weighbridge, is otherwise calculated using the procedures of the relevant Facility.
- (b) The Contractor must provide to the Principal weighbridge dockets for a specified period of time within 3 Business Days of a request being made by the Principal.
- (c) The Contractor must ensure that the weighbridge is appropriately licensed and calibrated for accuracy in accordance with applicable Laws.
- (d) The Parties acknowledge and agree that the weighbridge measurements are conclusive evidence of the amount of Delivered Material received at the relevant Facility for the Recyclables Sorting Services or the Organic Waste Processing Services (or both, as the case may be) and will be used for the purpose of calculating the Fee.
- (e) The Contractor must accept all Delivered Material and perform the Recyclables Sorting Services or the Organic Waste Processing Services (or both, as the case may be) in accordance with Legal Requirements, the Contract, Good Industry Practice and any Standards and Procedures.

11.4 Recyclables Sorting Services

- (a) The Contractor must separate Recyclables in the Delivered Material from the Residue in the Delivered Material.
- (b) The Contractor must sort the Recyclables into the relevant material types.
- (c) Without limiting the Contractor's Obligations under clause 11.3(e), the Contractor must store, transport and dispose of Residue, including Hazardous Waste other than Excluded Waste, at its own cost and in accordance with all Legal Requirements and Good Industry Practice.
- (d) The Contractor must not use or dispose of the Recyclables delivered to the Material Recovery Facility otherwise than in accordance with the Contract.

11.5 Organic Waste Processing Services

- (a) Until the Organic Waste is processed, the Contractor must store the Organic Waste in accordance with all Legal Requirements and Good Industry Practice.
- (b) The Contractor must store, transport and deliver any products derived from processing the Organic Waste in accordance with all Legal Requirements.

- (c) Without limiting the Contractor's Obligations under clause 11.3(e), the Contractor must store, transport and dispose of Residue, including Hazardous Waste other than Excluded Waste, at its own cost in accordance with all Legal Requirements and Good Industry Practice.
- (d) The Contractor must not use or dispose of the Organic Waste delivered to the Organic Waste Facility otherwise than in accordance with the Contract.

11.6 Additional reporting

Without limiting the reporting required elsewhere by the Contract, the Contractor must also maintain records of:

- (a) the weight and composition of Recyclables or Organic Waste (or both, as the case may be) recovered from the Delivered Material by the Contractor;
- (b) the destination of all Recyclables or Organic Waste, (or both, as the case may be) leaving the Facility and the date the Recyclables or Organic Waste, as the case may be, left the Facility;
- (c) the weight of Residue derived from the Delivered Material and delivered to a Landfill Facility by the Contractor;
- (d) the landfill diversion rate of the Facility;
- (e) the implementation of any required EMP, the EMS and the OH&S Management System, to the extent that either party requires such records to comply with Legal Requirements;
- (f) if directed by the Principal, implementation of any required quality system; and
- (g) contamination levels at a granularity requested by the Principal and agreed by the Contractor.

11.7 Waste Levy where Contractor is providing Recyclables Sorting Services and Organic Waste Processing Services

Notwithstanding any other provision of the Contract, if there is an increase or decrease in the rate of the Waste Levy and the Contractor is liable to pay the Waste Levy in respect of Residue from Recyclables Sorting Services or Organic Waste Processing Services, then the Contractor may increase and must decrease the Fee for the amount of the increase or decrease (as the case may be) effective from the date of the increase or decrease. For clarity, this does not enable the Contractor to charge an administrative levy or other fee in relation to the increase or decrease of the Waste Levy or the Fee.

11.8 Contamination

- (a) To reflect the Contractor's increased handling and disposal costs incurred due to high levels of Contamination, the Contractor may apply the Contamination Levy if included in Item 19. The Contamination Levy will be charged as an additional Fee in respect of every tonne of material delivered to the Facility by or on behalf of the Principal where specified in Item 19.
- (b) If the Recyclables or Organic Waste are demonstrated to have a Contamination Level above the Baseline Contamination Level, as determined by an Audit in accordance with Annexure 4 to Schedule 3 and the Specifications, then a Contamination Levy will be applied in accordance with Annexure 4 to Schedule 3.

- (c) The Contamination Levy will continue to apply until a subsequent Audit is completed, either at the request of the Principal or Contractor, from which time the Contamination Levy will be in accordance with the level of contamination determined by such subsequent Audit and in accordance with Annexure 4 to Schedule 3 and the Specifications.
- (d) The Contractor will conduct an Audit at the frequency specified in Item 19 and in accordance with Annexure 4 to Schedule 3 and the Specifications.
- (e) Notwithstanding this clause 11.8, the Contractor may dispose direct to landfill Delivered Material that has a contamination exceeding the thresholds defined in Item 19.

11.9 Gross Contamination

Without limiting any rights of the Contractor under the Contract, where Contamination of a particular load of deliverables is considered Extraordinary Gross Contamination, exceeds the Maximum Contamination Level, or where Hazardous Waste are found in Recyclables, the full load may be rejected and Contractor will be entitled to apply the Gross Contamination Levy in respect of each tonne contained in that load.

11.10 Contamination Audits

- (a) Physical contamination audits (**Audits**) will be conducted during the Services Term in accordance with the Specifications and at the frequency specified in Item 19.
- (b) Audits will be performed by an independent auditor nominated by the Contractor, and agreed by the Principal, acting reasonably (**Independent Auditor**).
- (c) The Independent Auditor will be appointed by the Contractor and, unless otherwise agreed between the parties, the costs of each Audit must be agreed in writing in advance, and shared equally between the parties.
- (d) At all times, the Independent Auditor must strictly follow all Facility requirements, including without limitation, all health and safety requirements in respect of the Facility.
- (e) Each party acknowledges and agrees that the purpose of the Audit is to:
 - (1) determine the levels of Contamination in the Recyclables or Organic Waste delivered to the Facility, and consequently, the Contamination Levy to apply for the applicable period;
 - (2) assist the parties' understanding of the financial and operational impact of processing and disposing of Contamination; and
 - (3) assist the Principal in measuring results achieved from communication and education campaigns in respect of Recyclables or Organic Waste.
- (f) Audits must be conducted in accordance with the Audit Procedure described in clause 11.11.
- (g) Nominated Principal staff are invited to participate in the observation of the Audit at places and times agreed with the Contractor.

11.11 Audit Procedure

Unless otherwise agreed by the parties, the Independent Auditor must follow industry accepted sampling methodology (**Audit Procedure**). The Audit Procedure may be amended, changed or reviewed from time to time by mutual agreement. The Contractor

will provide the Principal with a copy of the sampling methodology. The Contractor will provide the Principal with a copy of the Audit results.

12 Performance and Acceptance of Services

- (a) The Contractor must perform and complete the Services in accordance with any timing requirements in the relevant Specifications and otherwise complete the Services during the Services Term.
- (b) The Contractor must allow the Principal or a representative of the Principal, at all reasonable times and on reasonable notice, to inspect, examine, review and witness tests of the Services, or the performance of the Services and to carry out site inspections at the Contractor's premises.
- (c) If the Principal, acting reasonably, determines that the Services do not meet the Services Requirements, the Principal may issue a notice to the Contractor stating the reasons why the Services do not meet the Services Requirements (**Non-Acceptance Notice**).
- (d) If the Contractor receives a Non-Acceptance Notice, the Contractor must, at its cost, re-perform the Services, or that part of the Services that do not meet the Services Requirements, until the Services Requirements are met. The Principal has no liability to pay for Services that are subject to a Non-Acceptance Notice.
- (e) Acceptance of the Services by the Principal does not constitute approval of the Services or prejudice any claim the Principal may have in connection with the Services.

13 Contractor's warranties and acknowledgements

13.1 General

The Contractor warrants to the Principal that the Services will be performed in accordance with, and will comply with, all requirements of the Contract.

13.2 Skill and care

- (a) The Contractor warrants to the Principal that:
 - (1) the Contractor and Contractor's Personnel have the skill, expertise, resources and experience required to perform the Services;
 - (2) the Contractor will provide the Services in accordance with the reasonable directions from the Principal from time to time; and
 - (3) the Services will be performed using a high standard of skill, care and diligence and in accordance with Good Industry Practice.
- (b) The Contractor acknowledges that the Principal is relying on the Contractor's expertise, skill and judgement in the Contractor's performance of the Services.

13.3 Contractor's warranties and acknowledgements

- (a) The Contractor acknowledges the size of the Collection Area and the number of Collection Points and other sites to be serviced by the Contractor under the Contract and acknowledges that each may increase or decrease in size and number respectively during the Services Term.
- (b) The Contractor warrants that, subject to clause 29.4 and in the absence of manifest error in the information provided by the Principal in the tender or request for quote documents, it is satisfied as to the correctness and sufficiency of the Fee and that the Fee covers the cost of complying with all of its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Contract, including additional costs the Contractor may incur in connection with an increase in the Collection Area, additional Collection Points or other sites that must be serviced in accordance with the Contract, the length of roads, additional trips to the processing plant, changes in operational or environmental constraints on processing plants and changes in volume of Materials or otherwise.
- (c) The Contractor is not entitled to claim any additional costs or expenses from the Principal or to seek a Variation to the Contract except in the express circumstances set out in the Contract, except in circumstances where there is a manifest error in the information provided by the Principal in the tender or request for quote documents.

13.4 Contractor's Obligations unaffected

Except as expressly stated in the Contract, the Contractor's warranties and obligations under the Contract remain unaffected notwithstanding:

- (a) any receipt, review, comment, approval or silence by the Principal or Principal's Personnel in relation to:
 - (1) the documents prepared or provided by the Contractor, including the Service Plan;
 - (2) the parts, materials and methods of working used by the Contractor;
 - (3) the Contractor's Personnel engaged by the Contractor; or
 - (4) the performance of the Services or the way Services are performed;
- (b) the Principal's consent to subcontract under clause 16.2;
- (c) any inspection carried out by the Principal; and
- (d) the Contractor's use of any information, design, goods, equipment or work methods prepared, provided or suggested by or on behalf of the Principal.

13.5 Contractor to inspect Collection Area

- (a) The Contractor is deemed to have examined and to be aware of all risks, conditions, contingencies and other circumstances relevant to the performance of its obligations under the Contract.
- (b) The Contractor's Obligations under the Contract are not altered by any deficiency in or unsuitability of any of the Contractor's Plant.

14 Bins and Materials

14.1 Extraordinary Gross Contamination

- (a) If a Collection Vehicle containing only Recyclables has been adversely affected by Extraordinary Gross Contamination, then the Contractor must notify the Principal.
- (b) Upon receipt of a notification from the Contractor under clause 14.1(a), the Principal will promptly assess the Collection Vehicle (by photograph sent by the Contractor) and will notify the Contractor whether it is satisfied (acting reasonably) that the Recyclables have been adversely affected by Extraordinary Gross Contamination.
- (c) If, following the photographic evidence submitted by the Contractor to the Principal under clause 14.1(b), the Principal is:
 - (1) reasonably satisfied that the Collection Vehicle has been adversely affected by Extraordinary Gross Contamination, and the Contractor can reasonably demonstrate to the Principal that the Extraordinary Gross Contamination was not caused by the Contractor, the Contractor may dispose of the entire load at the Nominated Disposal Facility at the Principal's cost; or
 - (2) not reasonably satisfied that the Collection Vehicle has been adversely affected by Extraordinary Gross Contamination, or if the Contractor cannot demonstrate to the Principal, acting reasonably, that the Extraordinary Gross Contamination was not caused by the Contractor, then the Contractor must use reasonable endeavours to recycle those parts of the load that can reasonably be expected to be sorted and recovered, and may dispose of the balance of the load at the Nominated Disposal Facility, at the Contractor's cost.

14.2 Ownership of Bins and Materials

- (a) Unless the Bin Service is provided under the Contract or Bins are provided as part of the Collection Service under the Contract, Bins remain the property of the Principal and title to all Bins, whether:
 - (1) supplied to Collection Points prior to the Start Date; or
 - (2) supplied following the Start Date,vests in the Principal.
- (b) Subject to clause 14.3, ownership of Collected Material and Delivered Material will vest in the Principal except where the Contractor is providing Landfill Management Services, Organic Waste Processing Services or Recyclables Sorting Services in respect of such materials, in which case ownership will vest in the Contractor.
- (c) Subject to clause 14.3, where the Contractor is providing Landfill Management Services, Organic Waste Processing Services or Recyclables Sorting Services, but is not providing Collection Services, Verge Collection Services or Receptacle Services, ownership and risk in Delivered Material delivered to the Facility will vest in the Contractor once the Delivered Material:
 - (1) passes the weighbridge at the relevant Facility; and

- (2) if the relevant Facility does not have a weighbridge, passes the boundary of the site on which the relevant Facility is located.

14.3 Container Deposit Scheme

Where the Contractor is providing the Recyclables Sorting Services and the Principal is entitled to receive a payment under the Container Deposit Scheme in respect of eligible containers forming part of those Recyclables, the Contractor will calculate the payment in accordance with the Container Deposit Scheme requirements, including the 'Local Government Revenue Sharing Protocol' issued by the Department of Water and Environmental Regulation (as may be updated from time to time) (**Protocol**). Unless otherwise agreed and set out in Item 17, 50% of the payments received by the Contractor for eligible containers, net of costs and revenue losses deducted pursuant to the Protocol, will be remitted to the Principal.

15 Plant and Depot

15.1 Provision of Contractor's Plant

- (a) The Contractor must provide, maintain and repair at its own cost:
 - (1) the Contractor's Plant and haulage necessary for the efficient, safe and reliable performance of the Services; and
 - (2) anything else necessary for the efficient performance of the Services and the Contractor's other obligations under the Contract.
- (b) The Contractor must have in readiness, access to at least one suitable back up Collection Vehicle at all times.

15.2 Quality of Contractor's Plant

- (a) The Contractor must only use Contractor's Plant that is:
 - (1) fit for its intended purpose; and
 - (2) suitable, appropriate and adequate for the Contractor to perform its obligations under the Contract,
in accordance with Good Industry Practice; and
 - (3) approved by the Principal in accordance with the Specification.
- (b) The Contractor must ensure that all of the Contractor's Plant:
 - (1) complies with all applicable Legal Requirements; and
 - (2) is maintained in good repair and condition.
- (c) Without limiting clause 15.2, the Contractor must comply with the requirements for Collection Vehicles as set out clause 7.5.

15.3 Deficiencies

- (a) If the Principal reasonably considers that any item of the Contractor's Plant is deficient, the Principal may give notice to the Contractor specifying the deficiency and:
 - (1) stating a date by which the deficiency is to be remedied; or

- (2) stating that the item of the Contractor's Plant is not to be further used in the performance of the Services or otherwise in connection with the Contract.
- (b) Any notice given by the Principal under clause 15.3(a) may also:
 - (1) specify that the item of the Contractor's Plant is not to be used until the deficiency has been remedied; or
 - (2) specify that the item of the Contractor's Plant may only be used subject to specified conditions until the deficiency has been remedied.
- (c) Any notice given by the Principal under clause 15.3(a) must give reasons for the Principal's direction.
- (d) The Contractor must comply with any notice given by the Principal in accordance with Good Industry Practice and under clause 15.3(a) at its own cost.

15.4 Contractor's depot

- (a) The Contractor must, throughout the Services Term, provide and maintain the Contractor's Depot:
 - (1) in good repair, order and condition;
 - (2) in a clean and sanitary state; and
 - (3) with appropriate cleansing facilities.
- (b) Subject to reasonable notice and operational requirements, the Principal's Representative may, on reasonable notice to the Contractor, enter the Contractor's Depot during operating hours on any Business Day to examine the Contractor's Depot. The Contractor must provide reasonable assistance to the Principal's Representative for the purpose of such examination. The Principal must ensure that its Personnel comply with the Contractor's health and safety policies when inspecting the Contractor's Depot.

15.5 Facility control and access

If the Contractor owns or controls any Facility used for the provision of Services:

- (a) the Contractor acknowledges and agrees that it owns or controls the Facility (as the case may be);
- (b) the Principal may, on reasonable notice to the Contractor, inspect the relevant Facility and the Contractor must provide the Principal with all reasonable assistance and access; and
- (c) the Principal must ensure that its Personnel comply with the Contractor's health and safety policies when inspecting the Facility.

16 Assignment and Subcontracting

16.1 Assignment

The Contractor must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of the Principal.

16.2 Subcontracting

- (a) The Contractor must not, without the prior written approval of the Principal, which must not be unreasonably withheld, subcontract any part or all of the performance of the Services.
- (b) Approved Subcontractors are taken to have the approval of the Principal for the purposes of clause 16.2(a).
- (c) The Principal may request further information regarding:
 - (1) a subcontractor and the particulars of the Services to be subcontracted; and
 - (2) the relationship between the Contractor and subcontractor, in order to approve (or otherwise) a subcontractor under clause 16.2(a).
- (d) Approval to subcontract does not relieve the Contractor from any liability or obligation under the Contract, and the Contractor is absolutely liable:
 - (1) to the Principal for the acts and omissions of any subcontractor, its personnel and the Contractor's Personnel as if they were acts or omissions of the Contractor;
 - (2) for undertaking the appropriate due diligence to ensure that the subcontractor is able to perform the Services that it has been subcontracted in accordance with this clause 16.2; and
 - (3) for the direct payment of all subcontractors, notwithstanding the Principal's approval (or otherwise) of any subcontractor (including Approved Subcontractors).

16.3 Principal amalgamation

[Drafting Note: Member to include any specific drafting that a Member usually includes in contracts to deal with amalgamation and associated issues or alternatively mark "Not Used".]

17 Protection of people and property

The Contractor must take all action required to protect both people and property when performing the Services, including:

- (a) providing all Contractor's Plant, procedures and training and taking all measures necessary to protect people and property;
- (b) avoiding unnecessary interference with the passage of people and vehicles;
- (c) minimising damage, obstruction or other interference with any utility service or other similar services;
- (d) minimising the effect of the Services on the aesthetic qualities of the Environment and social activities of local community members;
- (e) minimising nuisance, including unnecessary noise and disturbance; and
- (f) preventing unlawful environmental damage or Environmental Contamination.

18 Sustainable procurement

- (a) The Contractor acknowledges that the Principal supports ethical and environmentally, socially and economically sustainable procurement practices (**Sustainability Objectives**).
- (b) The Contractor agrees to:
 - (1) use reasonable endeavours to conduct its business and supply the Services in a manner which seeks to support and is consistent with the Sustainability Objectives;
 - (2) provide the Principal with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives; and
 - (3) undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that the Services are supplied from sustainable sources and free from modern slavery.
- (c) The Contractor acknowledges that a rating system may be implemented by WALGA or the Principal to assess the Contractor's performance in relation to the Sustainability Objectives, and in considering whether to engage the Contractor or another supplier.
- (d) The Principal may request from time to time, and the Contractor must provide within the timeframe stipulated in such request:
 - (1) evidence of the Contractor's compliance with the Sustainability Objectives and this clause 18; and
 - (2) any other information reasonably requested by the Principal in connection with this clause 18.
- (e) The Contractor must allow the Principal (or its nominee) prompt access to the Contractor's records in connection with this clause 18, and to otherwise audit the Contractor's compliance with this clause 18 and the Sustainability Objectives, such audit to be carried out in accordance with the specification defined by the Principal and accepted by the Contractor during the request for quotation process.

19 Principal-Supplied Plant and Equipment

- (a) Where specified in the Procurement Form, the Principal will supply the Principal-Supplied Plant and Equipment.
- (b) The Principal-Supplied Plant and Equipment remains the Principal's property and the Contractor may only use the Principal-Supplied Plant and Equipment for the purpose of performing the Services.
- (c) The Contractor agrees to use the Principal-Supplied Plant and Equipment only for its intended use and so as to not damage, destruct or misplace the Principal-Supplied Plant and Equipment, subject to fair wear and tear, in the delivery of the Services.
- (d) The Contractor must promptly return to the Principal:
 - (1) any of the Principal-Supplied Plant and Equipment that it no longer requires for the performance of the Services; and

- (2) all Principal-Supplied Plant and Equipment remaining with the Contractor at the expiry of the Services Term, within 2 Business Days of it no longer being required or of the Services Term expiring (as the case may be).
- (e) Where specified in the Procurement Form, responsibility for service, repairs and maintenance records will be maintained by the Contractor.

20 Employees

20.1 Sufficient and competent staff

- (a) The Contractor must engage sufficient employees to carry out the Services in an efficient manner.
- (b) The Contractor must all times during the Services Term provide and use only competent, qualified and (where necessary) licensed staff to use and operate all Contractor's Plant and to carry out and satisfy all of the Contractor's Obligations under the Contract.

20.2 Conduct of staff

The Contractor must ensure that Contractor's Personnel:

- (a) conduct themselves towards members of the public in a civil and inoffensive manner;
- (b) do not seek or demand any fee, reward or gratuity in respect of the performance of the Services from anyone other than the Contractor;
- (c) perform the Services in a careful and clean manner and with as little noise and disturbance as is practicable;
- (d) do not cause any damage to any property;
- (e) obey all relevant Legal Requirements, including the *Health Act 1911 (WA)*, *Waste Avoidance and Resource Recovery Act 2007 (WA)*, and *Local Government Act 1995 (WA)*;
- (f) drive on the correct side of any road and avoid the obstruction of traffic; and
- (g) do not leave any Collection Vehicle unattended on any road within the Collection Area.

20.3 Good behaviour

The Contractor must not continue to employ any person or continue to engage any agent or sub-contractor in the performance of the Services who:

- (a) breaches any of the requirements of clause 20.2; or
- (b) is not sober, honest and of good behaviour.

21 Industrial instrument compliance and payment of Contractor's Personnel

21.1 Industrial instrument compliance

The Contractor must ensure that all Contractor's Personnel engaged in providing the Services, whether as employees of the Contractor or of a subcontractor, are employed in accordance with and paid at rates prescribed by any relevant award, determination, judgement or order of any competent court, board, commission or other industrial tribunal, or other applicable industrial instrument including an enterprise agreement.

21.2 Evidence of payment of Contractor's Personnel

- (a) The Principal, or the Principal's Representative on its behalf, may request the Contractor to give the Principal a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, that:
 - (1) all employees who have at any time been engaged on the Services have been paid all moneys payable to them, whether by the Contractor or a subcontractor, in respect of their employment on the Services; and
 - (2) all subcontractors have been paid all moneys payable to them in respect of the Services.
- (b) If within 5 Business Days after the request the Contractor fails to provide the statutory declaration, the Principal may suspend payment of moneys due to the Contractor until the statutory declaration is received. The statutory declaration referred to in clause 21.2(a) may be requested no more than once annually.

22 Safety and Environment

22.1 Workplace health and safety to be paramount consideration

- (a) Each party acknowledges that the health, safety and welfare of:
 - (1) its Personnel;
 - (2) any other persons engaged or employed to perform the Services; and
 - (3) the public,affected by the Services is the paramount consideration in the undertaking of those Services.
- (b) The Contractor must comply with, and ensure that any of the Contractor's Personnel engaged in the provision of the Services comply with, all such Workplace Health and Safety Legislation and Workplace Health and Safety Requirements. The Contractor must, upon reasonable request by or on behalf of the Principal, demonstrate compliance with such requirements, including providing evidence of measures taken to achieve such compliance.
- (c) The Contractor must:

- (1) cooperate with any other contractors or other persons engaged in or associated with the business of the Principal in order to maintain uniform safety and industrial practices;
- (2) cooperate with the Principal to enable the Principal to comply with its obligations under all relevant Workplace Health and Safety Legislation; and
- (3) immediately give the Principal notice of any act, fact or circumstance associated with the activities of the Contractor or any other person relevant to the ability of the Contractor to perform the Services in a manner that is safe and without risks to health.

22.2 Breach of Workplace Health and Safety Legislation or Workplace Health and Safety Requirements

Without limiting the Principal's other rights under the Contract, any breach by the Contractor of Workplace Health and Safety Legislation or Workplace Health and Safety Requirements which:

- (a) gives rise to circumstances which present actual or potential risk to life or serious injury; or
- (b) is otherwise required to be notified under Workplace Health and Safety Legislation,

entitles the Principal to suspend the whole or part of the Services.

22.3 Contractor to notify of incident in accordance with Workplace Health and Safety Legislation

The Contractor must perform all relevant functions and fulfil all relevant duties under all relevant Workplace Health and Safety Legislation required of an employer, or otherwise applicable to the role of the Contractor under the Contract, including notification of incidents as may be required under the Workplace Health and Safety Legislation.

22.4 Contractor to give notice of accident, injury and damage to the Principal

- (a) The Contractor must:
 - (1) promptly notify the Principal (and, in any case, within 48 hours) in writing of any Notifiable Incident that occurs at or in connection with the Services;
 - (2) promptly investigate any Notifiable Incidents, unless directed otherwise by the Principal;
 - (3) allow the Principal to conduct its own investigation into any Notifiable Incidents; and
 - (4) promptly notify the Principal (and, in any case, within 48 hours) and so far as practicable provide all relevant information and documents, in relation to any accident, injury, property damage, damage to the environment or other work health and safety issue arising from or in connection with the Services, including:
 - (A) details of any notification provided to a Government Agency;

- (B) a copy of any notice issued by a Government Agency requiring the Contractor to provide information or documents to the Government Agency;
 - (C) a copy of any information or document provided by the Contractor to a Government Agency;
 - (D) details of any enforcement action taken against the Contractor, including legal proceedings commenced against the Contractor; and
 - (E) a copy of any investigation report prepared by or at the instruction of the Contractor.
- (b) Notwithstanding clause 22.4(a)(1), an incident, accident or property damage that a reasonable person would consider to be of a serious nature must be reported to the Principal within 1 hour of the Contractor becoming aware of it.
 - (c) The Principal may request the Contractor to engage a third party investigator to review work practices, cause and future mitigation.

22.5 Environmental Contamination

- (a) If the Contractor becomes aware of any Environmental Contamination, the Contractor must:
 - (1) immediately notify the Principal of the Environmental Contamination;
 - (2) take any urgent action required to protect people, property, the environment or livestock; and
 - (3) take all reasonable steps to minimise and mitigate any adverse impacts that the Environmental Contamination has on the Services, any relevant facility (if applicable) and surrounding areas.
- (b) The Contractor must, at its cost:
 - (1) dispose of, or otherwise deal with, the Environmental Contamination; and
 - (2) remediate any relevant facility (if applicable) and surrounding areas to the extent affected by the Environmental Contamination,

caused by the Contractor in the performance of the Services, in accordance with Environmental Laws and Good Industry Practices.

23 Quality management

23.1 Quality assurance

- (a) The Contractor must have in place and maintain during the Services Term a quality management system certified by an appropriately qualified third party to a minimum of AS/NZS ISO 9001 standards.
- (b) The Contractor must, during the Services Term, provide the Principal with certified copies of all periodic audit reports carried out on the Contractor's quality management system by the relevant certification organisation.

23.2 Customer service

- (a) If set out in Part C of the Procurement Form, the Contractor must, at its own cost, provide and maintain a customer service centre to accept telephone calls and emails from residents and other customers relating to the Contract (**Customer Service Centre**) in accordance with the requirements of the relevant Specifications.
- (b) The Contractor must provide regular reports to the Principal in respect of the Customer Service Centre activities. Such reports must be provided at least monthly and must otherwise be in accordance with the requirements set out in the Contract, the customer service plan and the quality management plan.
- (c) The Principal may require changes to the reporting from time to time throughout the Contract.
- (d) The reports provided pursuant to this clause 23.2 must include, at a minimum, the following:
 - (1) the number and type of complaints and queries received;
 - (2) the name, address and contact details for all complainants;
 - (3) the time taken and the action implemented to resolve complaints;
 - (4) the number of complaints that could not be resolved and reasons for this or resolved during each collection period (or both);
 - (5) the number of unsuccessful calls made to the Customer Service Centre including time of call and waiting time; and
 - (6) all complaints or queries requiring on-going monitoring by the Contractor.

23.3 Customer satisfaction surveys

The Contractor acknowledges and agrees that:

- (a) to ensure that the Services are being carried out in accordance with the Specifications, and that the Contractor is fulfilling its obligations, the Principal may carry out customer satisfaction surveys, which may include contacting any previous complainants (**Customer Satisfaction Survey**);
- (b) effective management of customer problems is an important aspect of such surveys, and will be used in assessing performance as part of the KPI evaluation; and
- (c) customer satisfaction surveys are statistically valid and will represent a fair and accurate measure of customer satisfaction across the Collection Area.

24 Service Plan

24.1 Service Plan

- (a) As at the Execution Date, the Service Plan is as contained in Schedule 1.
- (b) No later than 40 Business Days prior to the Start Date, the Principal will provide to the Contractor any information required for the final development of the Service Plan.

- (c) No later than 20 Business Days prior to the Start Date, the Contractor must provide the updated Service Plan to the Principal, which must comply with the requirements provided by the Principal under clause 24.1(b) and the relevant Specifications.
- (d) Within 10 Business Days of receiving the updated Service Plan under clause 24.1(c) or such further time agreed to between the parties, the Principal will notify the Contractor whether it:
 - (1) approves the Service Plan; or
 - (2) requires reasonable amendments to the Service Plan.
- (e) If the Principal requires reasonable amendments to the Service Plan under clause 24.1(d)(2), the Contractor must, within 10 Business Days of receiving the Notice under clause 24.1(d)(2), submit a Service Plan which has been amended in accordance with the Principal's request.

24.2 Updated Service Plan

- (a) The Contractor must, if the Principal reasonably requires from time to time throughout the Services Term, submit to the Principal an updated version of the Service Plan within 10 Business Days of such request, which:
 - (1) complies with the requirements set out in the Specifications and address any issues identified by the Principal;
 - (2) reflects the current Legal Requirements; and
 - (3) without limiting clauses 24.2(a)(1) or 24.2(a)(2), accords with the way in which the Services are being performed.
- (b) Within 10 Business Days of receiving the updated Service Plan under clause 24.2(a) or such further time agreed to between the parties, the Principal must notify the Contractor whether it:
 - (1) approves the Service Plan; or
 - (2) requires reasonable amendments to the Service Plan.
- (c) If the Principal requires reasonable amendments to the Service Plan under clause 24.2(b)(2), the Contractor must, within 5 Business Days of receiving the Notice under clause 24.2(b)(2), submit a Service Plan which has been amended in accordance with the Principal's request.
- (d) Where the Principal requires further reasonable amendments, clause 24.2(c) will continue to apply until the Service Plan is approved.

24.3 Contractor to comply with Service Plan

- (a) The Contractor must comply with the Service Plan as approved under clause 24.1 and:
 - (1) as approved from time to time under clause 24.2(b)(1); or
 - (2) as amended and re-submitted under clause 24.2(c).
- (b) If the Contractor does not submit:
 - (1) a Service Plan in accordance with clause 24.2(a); or
 - (2) an amended Service Plan under clause 24.2(c),
 that is a Critical Default for the purposes of clause 37.1.

25 Records and Reporting

25.1 Records

- (a) The Contractor must keep and maintain accurate and reasonably detailed books and records in connection with the performance of the Contractor's Obligations, including:
- (1) all complaints and queries received in respect of its performance of the Services;
 - (2) the results of any investigations made into complaints;
 - (3) any breach of Legal Requirements by the Contractor or the Contractor's Personnel in relation to the Services;
 - (4) any accidents or other incidents where a possibility of injury to persons or property damage arose;
 - (5) all Records which evidence how any Variations were valued for the purposes of clause 32; and
 - (6) any other Records required to be kept under the Contract.
- (b) Without limiting the Contractor's Obligations under this clause 25.1, the Contractor must comply with the requirements of the *State Records Act 2000* (WA) insofar as that Act applies to any of the Records referred to in clause 25.1(a).

25.2 Reporting

- (a) Unless provided otherwise in the Specification, each month following the end of the previous month, the Contractor must provide to the Principal a report in a format acceptable to the Principal setting out the following information in respect of the previous month:
- (1) **General information** to be provided in relation to each of the Services, as applicable:
 - (A) the performance of the Services against the KPIs;
 - (B) the total weight of the Collected Material collected for the previous month;
 - (C) a breakdown of the different types of Collected Material per Collection Day, including the breakdown of Non-Recyclable Material and Extraordinary Gross Contamination (to the extent that calculating such a breakdown is possible);
 - (D) the number of any Collection Points where the Contractor missed a scheduled collection;
 - (E) the address of each new Collection Point where a Bin was supplied by the Contractor;
 - (F) the address of each Collection Point where a repair was made to a Bin;
 - (G) details of all Bins not collected due to non-compliance or the presence of Non-Recyclable Material or Extraordinary Gross Contamination; and
 - (2) **Payment information:**

- (A) the number of collections of Waste Bins;
 - (B) the number of collections of Organics Bins;
 - (C) the number of collections of Public Place Bins;
 - (D) the number of new Bins delivered or Bin maintenance details;
 - (E) the mass of Waste delivered to the Nominated Disposal Facility;
 - (F) the mass of Non-Recyclable Material separated at the Nominated Material Recovery Facility and delivered to the Nominated Disposal Facility;
 - (G) the mass of Recyclables transferred from the Nominated Material Recovery Facility to a separate processing facility; and
 - (H) the mass of Residual Material separated at the Nominated Recyclables Facility.
- (b) The Contractor must provide to the Principal the updated Bin Register each month unless defined otherwise by the Principal and agreed by the Contractor. The Contractor must provide any other information reasonably required by the Principal from time to time relating to the Services, in a format which is acceptable to the Principal and provided to the Principal at intervals which coincide with the Principal's internal reporting requirements.
- (c) The Principal may dispute the veracity of any information contained in a report by giving written notice to the Contractor requiring the Contractor to provide evidence necessary to verify any statement or claim. The Contractor must amend any statement found to be incorrect.
- (d) The Contractor must be available to attend and present information related to the Contract reasonably requested by the Principal at any reasonable time.

25.3 Access

The Contractor must:

- (a) where it holds the original of any of the Records referred to in clause 25.1(a), keep those originals for the period until the date that is 1 year following the end of the Services Term (**Relevant Period**); and
- (b) give every assistance to, and make available to the Principal for inspection, upon request, the originals of the Records referred to in clause 25.1.

25.4 Audit

- (a) At any time and from time to time during the Relevant Period, the Principal or its nominated auditor (including the West Australian Auditor General or its nominee) has the right to inspect and audit the Contractor's Records referred to in clause 25.1.
- (b) The Contractor must provide the Principal with proper access (including to any of the Contractor's Personnel) and facilities to enable the Principal or its nominated auditor to undertake any inspection and audit of the kind set out in this clause 25.4.
- (c) The Principal is solely responsible for all costs incurred by the Principal in undertaking any inspection and audit of the kind set out in this clause 25.4.

- (d) The Contractor is entitled to recover its reasonable costs incurred in complying with clause 25.4 where agreed in writing between the parties and in advance of any audit activity.

25.5 Inspection rights

- (a) The Principal's Representative may at any time, provided reasonable notice is given, inspect the Services and must be given reasonable access by the Contractor in order to do so.
- (b) Without limiting clause 25.5(a), the Contractor must permit the Principal to travel in any Collection Vehicle while it is engaged in the performance of the Services for any reasonable period nominated by the Principal's Representative.
- (c) The Contractor acknowledges that no inspection of the Services by the Principal's Representative will in any way lessen or otherwise affect the Contractor's Obligations, whether under the Contract or otherwise according to Law or the Principal's rights against the Contractor, whether under the Contract or otherwise according to Law.

26 Confidentiality, Publicity and Data Security

26.1 Confidential Information

- (a) Each party must:
 - (1) keep confidential, and not use or disclose, any of the other party's Confidential Information, except:
 - (A) to the extent necessary for the performance of its obligations under the Contract;
 - (B) that a party may disclose to its legal advisers or auditors who are under a duty of confidence;
 - (C) that a party may disclose if required by Law (including any order of a court of competent jurisdiction), the rules of any stock exchange or statutory duty; and
 - (D) that the Principal may (where applicable) disclose to the Minister responsible for administering the *Local Government Act 1995* (WA) or that Minister's department; and
 - (2) immediately provide notice to the other party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any of the other party's Confidential Information.
- (b) The Contractor must return to the Principal, or destroy or delete as the Principal directs, all original documents and copies (including in electronic form) in the Contractor's possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to the Confidential Information of the Principal, at the earliest of the following:
 - (1) immediately on demand by the Principal; or
 - (2) on the termination of the Contract,however, the Contractor may keep one copy of any Confidential Information solely for the purposes of its own records or if required by Law provided that

such Confidential Information continues to be kept confidential by the Contractor.

- (c) The Contractor acknowledges that the Principal may be subject to the *Freedom of Information Act 1992 (WA)* and that the Contract, or documents relating to the Contract, may become the subject of an application under that Act and access to them may need to be given to a third party in accordance with that Act. The Principal has no liability to the Contractor whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992 (WA)*.

26.2 Publicity and reputation

The Contractor must not:

- (a) make any public announcement or issue any media release relating to the Contract or the performance of the Services or exploit the fact that it has entered into the Contract, without the prior written approval of the Principal, which may be withheld at the Principal's reasonable discretion or given subject to any conditions; and
- (b) commit any act or omission that damages or adversely affects, or has the potential to damage or adversely affect, the Principal's reputation, trade mark or brand.

26.3 Data Security

The Contractor must:

- (a) do all things that a Professional Contractor would do to ensure that all Principal Data is protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
- (b) provide protective measures for the Principal Data that are no less vigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Principal Data; and
- (c) either return to the Principal or destroy any Principal Data immediately following the termination or expiry of the Contract, provided that the Contractor may retain one copy of any Principal Data solely for the purposes of its own records or if required by Law and subject to this clause 26.

27 Intellectual Property

27.1 Ownership and licensing

- (a) Subject to clause 27.1(c), the Contractor IP remains vested in the Contractor and the Principal IP remains vested in the Principal.
- (b) The Principal will own all Intellectual Property that the Contractor creates in the performance of the Services (**Project IP**).
- (c) The Contractor grants to the Principal a non-exclusive, perpetual, worldwide, royalty-free, irrevocable, transferable licence (with the right to assign and sub-licence) to use the Contractor IP as necessary to use the Project IP.

27.2 Warranties

- (a) The Contractor warrants that:
- (1) the Contractor is able to license the Contractor IP;
 - (2) use by the Principal, or by another person at the direction or with the permission of the Principal, of the Contractor IP and Project IP in accordance with the Contract will not infringe the Intellectual Property Rights of any third party or breach any Law;
 - (3) neither the Principal, nor any other person acting at the direction or with the permission of the Principal, is liable to pay any third party any licence or other fee in respect of the use of the Contractor IP or Project IP; and
 - (4) the Contractor has obtained from any third party involved in the creation of, or whose Intellectual Property form part of, the Contractor IP or Project IP, all necessary written consents to ensure the Principal and any person claiming an interest in the Contractor IP and Project IP through the Principal do not infringe any Intellectual Property.
- (b) The Principal warrants that:
- (1) the Principal is able to license the Principal IP;
 - (2) use by the Contractor, or by another person at the direction or with the permission of the Contractor, of the Principal IP in accordance with the Contract will not infringe the Intellectual Property of any third party or breach any Law; and
 - (3) neither the Contractor, nor any other person acting at the direction or with the permission of the Contractor, is liable to pay any third party any licence or other fee in respect of the use of the Principal IP.

27.3 Principal's trade mark

- (a) Where the Principal requests that its trade mark or imagery is displayed on Collection Vehicles in relation to the Services:
- (1) without limiting clause 27.1, the Principal grants to the Contractor a royalty-free and non-transferrable licence to use the Principal's trade mark provided to the Contractor for the identification of Collection Vehicles when they are used to provide the Services and for marketing the Services;
 - (2) the Principal may revoke the licence granted under clause 27.3(a) at any time upon written notice to the Contractor, following which the Contractor must remove the Principal's trade mark from all Collection Vehicles at the Principal's cost as soon as practicable and in any event within 10 Business Days; and
 - (3) the Principal may direct the Contractor to use new or updated trade marks or imagery on Collection Vehicles and the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred in complying with the Principal's direction.

28 Indemnity and limits of liability

28.1 General indemnity

- (a) The Contractor indemnifies the Principal from and against any Claim or Loss, however caused, brought against, suffered or incurred by the Principal arising out of or in connection with the Contractor's breach of the Contract, or the negligence of the Contractor or the Contractor's Personnel, in respect of:
 - (1) damage to, or loss or destruction of, any property (including damage to the Environment);
 - (2) injury to, or death or disease of, any person;
 - (3) any breach of Law; or
 - (4) any breach of a party's or third party's Intellectual Property.
- (b) The indemnity in clause 28.1(a) will be reduced to the extent that the Loss is caused, or contributed to, by the Principal's negligence or breach of the Contract.

28.2 Benefit of indemnities

- (a) In clause 28.1, a reference to the 'Principal' includes the 'Principal's Personnel'.
- (b) The Principal holds the benefit of clause 28.1 for itself and on trust for each of the Principal's Personnel.

28.3 Limits of liability

- (a) To the extent permitted by Law, but subject to clause 28.3(c), each party will have no liability to the other party arising under or in connection with the Contract (howsoever arising, including negligence) for Excluded Loss.
- (b) Subject to clause 28.3(c), the Contractor's liability to the Principal, and the Principal's liability to the Contractor, in respect of Loss arising out of or in connection with the Contract, in the aggregate for all Claims, is limited to the Maximum Liability Amount.
- (c) The Contractor's liability in respect of the following is not limited by clause 28.3(a) or 28.3(b), and is not counted towards the limit under clause 28.3(b):
 - (1) personal injury and death, including third party Claims in connection with personal injury or death;
 - (2) damage to, or loss or destruction of, any property;
 - (3) breach of any Laws, confidence or privacy;
 - (4) the infringement of any Intellectual Property of a party or third party;
 - (5) to the extent that the Contractor recovers proceeds under insurances required by the Contract in respect of the liability, or would have recovered insurance proceeds if it had complied with the Contract, complied with the insurance policy, and taken all reasonable steps to do so.
- (d) When determining the insurance proceeds that would have been recovered for the purposes of clause 28.3(c)(5), the exclusions and limits of liability under clauses 28.3(a) and 28.3(b) will not be taken into account.

- (e) A party's liability in respect of the following is not limited by clauses 28.3(a) or 28.3(b), and is not counted towards the limit under clause 28.3(b):
 - (1) fraud, deliberate default or Wilful Misconduct; or
 - (2) any act or omission done or not done with a reckless disregard for the consequences by the party or any other party for whom the party is responsible.
- (f) Liability to which a limit under clause 28.3(b) applies is counted towards the limit when discharged by a party.

29 Payment and invoicing

29.1 Payment for the Services

- (a) The Principal must pay the Fee to the Contractor for the Services in accordance with this clause 29.
- (b) Subject to clause 29.1(c), on the 7th Business Day following the end of each previous month, the Contractor must submit a Tax Invoice to the Principal for the amount due to the Contractor, which must:
 - (1) be calculated in accordance with Schedule 3; and
 - (2) comply with the reporting information for that month, as provided by the Contractor under clause 25.2.
- (c) The Tax Invoice referred to in clause 29.1 must be accompanied by any other documentation necessary for the Principal to be able to claim any applicable GST, or have payment of any GST recognised, under the GST Act with respect to that invoice.
- (d) If agreed in writing by the Principal, the Contractor may submit a Tax Invoice to the Principal at the end of each month, or any other period specified by the Principal in writing, for any Services performed during that or previous months provided those Services have not already been included in a previous Tax Invoice issued to the Principal.
- (e) Tax Invoices must be submitted to the details provided by the Principal in writing, as updated from time to time.
- (f) If a Tax Invoice does not contain the information required in clause 29.1(b), the Principal may, at its option, complete the missing details or return the incomplete Tax Invoice to the Contractor, in which case the Contractor must submit a replacement Tax Invoice which complies with clause 29.1(b).

29.2 Payment

- (a) Subject to the Contractor submitting a Tax Invoice that complies with clause 29.1(b), the Principal must pay the amount payable within 30 days or as otherwise agreed by the parties.
- (b) Payment under this clause 29 will not be taken as proof or admission that all, or any part of, the Services have been performed to the satisfaction of the Principal, but will be taken to be payment on account only.

- (c) The Contractor warrants that it is registered for GST purposes in Australia and, if requested by the Principal, must provide to the Principal sufficient evidence to substantiate that the Contractor is registered for GST purposes.
- (d) The Fee is inclusive of all costs and expenses including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and Taxes and no additional amounts will be payable by the Principal, subject to:
 - (1) clauses 32 and 33; and
 - (2) any amounts payable as set out in the Procurement Form or otherwise specified in this Contract.
- (e) The Contractor agrees that the Principal may:
 - (1) deduct from amounts due to the Contractor any money due or which may become due from the Contractor to the Principal under, or in connection with, the Contract; and
 - (2) withhold payment of any amounts payable under the Contract pending resolution of any Dispute.

29.3 Conditions for Payment

Notwithstanding anything else in the Contract, the Principal is not required to make any payment to the Contractor unless:

- (a) all Security required by the Contract has been provided by the Contractor to the Principal in accordance with the Contract; and
- (b) all insurances that the Contractor is required to effect under the Contract have been effected and are being maintained.

29.4 Rise and Fall

On the anniversary of the Execution Date or such other date specified in the Contract, any Fees, rates and other amounts payable under the Contract will be adjusted by the application of the rise and fall mechanism set out in Annexure 3 to Schedule 3.

30 GST

- (a) Words or expressions used in this clause 30 which are defined in the GST Act have the same meaning as in the GST Act.
- (b) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under the Contract are exclusive of GST and where the value of any supply is to be calculated with reference to a monetary turnover figure, the GST exclusive value of the monetary turnover will be used in calculating the value of the supply.
- (c) If a party (**supplier**) makes a taxable supply under or in connection with the Contract:
 - (1) the consideration otherwise payable or to be provided for that supply is increased by, and the party paying or providing the consideration (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply;

- (2) subject to the supplier complying with clause 30(c)(3), the recipient must pay the GST amount in Australian dollars, at the same time and in the same manner as it must pay or provide the consideration for that supply; and
- (3) the supplier must issue a valid Tax Invoice or adjustment note to the recipient of the supply at or before the time of payment of the GST inclusive consideration or at such other time as the parties agree.
- (d) Where an amount is payable to a party as a reimbursement, indemnification or similar payment calculated by reference to a Loss or any other amount incurred by that party, then such amount must be reduced by any part of that Loss or other amount which is attributable to GST for which that party, or the representative member of any GST group of which that party is a member, is entitled to an input tax credit.

31 Insurance

31.1 Panel insurances

- (a) The Contractor acknowledges and agrees that:
 - (1) it is obliged under the Panel Agreement to take out and maintain insurances, which, as a minimum, will apply in respect of contracts with WALGA members (including the Principal) for the procurement of goods, services and works under the Panel Agreement;
 - (2) due to the nature of the Services, the Procurement Form may require that levels of insurances greater than those required under clause 31.1(a)(1) be provided by the Contractor; and
 - (3) in circumstances where the Procurement Form requires higher levels of insurances, the Contractor must ensure that it has insurances sufficient to meet such requirements.
- (b) The parties acknowledge and agree that the relevant provisions of the Panel Agreement are repeated and apply in the Contract, as modified for the application to the provision of the Services under the Contract.

31.2 Insurances to be effected

Without limiting clause 31.1, the Contractor must (at its own cost) effect and maintain the insurance policies listed, and on the terms and conditions set out, in Schedule 4. The Principal reserves the right to review the certificates of currency for each of the insurance policies required under the Contract from time to time, and to require the Contractor to take out other insurances or insurances with different limits of cover, should:

- (a) it be required by Law; or
- (b) there be a material change in the Services and the Principal (acting reasonably) considers that the insurances are reasonably required having regard to the nature and extent of the change to the Services and the availability of the proposed insurances in the market at the time, in which case the change in Services and change to insurance cover will be part of an agreed Variation in accordance with clause 32.

31.3 Common terms

- (a) To the extent commercially available from the insurance market from time to time, unless otherwise stated in the Contract, every policy of insurance required under clause 31.2 must:
 - (1) be obtained before the Contractor commences the Services and maintained until the expiry of the Services Term; and
 - (2) provide that the Contractor must pay all premiums and all deductibles on the policies of insurance listed in Schedule 4 when due.

31.4 Subcontractor insurance

- (a) If the Contractor subcontracts any part of the Services, the Contractor must ensure that every subcontractor purchases and maintains all the insurance required by this clause 31 which are applicable to that subcontracted part of the Services, for the duration of the Subcontract before the subcontractor commences any of the Services.
- (b) The Contractor must ensure that every subcontractor purchases and maintains all the insurance required by this clause 31.

31.5 Access to policies

- (a) Copies of the certificates of currency for the policies required to be maintained under Schedule 4 must be provided by the Contractor to the Principal:
 - (1) at least 5 Business Days prior to the date set for each annual renewal; and
 - (2) within 5 Business Days of a written request by the Principal.
- (b) If the Contractor fails to produce evidence of insurance required by the Contract, this is a Critical Default, and clause 31.6 applies.
- (c) The rights given to the Principal under this clause 31 are in addition to any other rights the Principal may have.

31.6 Consequences of non-compliance

If clauses 31.4(a) or 31.5(b) apply, the Principal may in its discretion:

- (a) exercise its rights under clause 37.1;
- (b) suspend the Contract by Notice to the Contractor, until evidence of insurance required by this clause 31 is produced to the Principal; or
- (c) withhold payment of any amount due to the Contractor until evidence of insurance required by this clause 31 is produced to the Principal.

31.7 Primary

Each of the Principal and the Contractor acknowledges to each other that it is intended that the insurances contemplated by this clause 31 are primary and not secondary or subordinate to the indemnities referred to in the Contract in respect of any claim, loss or liability to which such indemnities respond.

32 Variations

32.1 Variations

- (a) If at any time the Principal notifies the Contractor that it requires a Variation, the Contractor must promptly provide a Variation Quotation.
- (b) If the Principal accepts a Variation Quotation, the Principal will issue a Variation Notice to the Contractor and:
 - (1) the Contractor must then carry out the Variation;
 - (2) the Fee will be adjusted by the amount set out in the relevant Variation Quotation; and
 - (3) the Date for Completion will be adjusted as set out in the Variation Quotation.
- (c) The Contractor will not be entitled, in any circumstances, to an adjustment to the Fee or any extension of time except as set out in a Variation Notice.
- (d) The Contractor must not commence performing the proposed Variation Quotation unless and until the Principal directs the Contractor in a Variation Notice.

32.2 General

- (a) If a Variation requires the omission of Services, the Principal may have the omitted Services provided by others or not, as the Principal sees fit.
- (b) A Variation does not invalidate the Contract.
- (c) A direction is not a Variation unless a Variation Notice has been signed by the Principal.

33 Change of Law

- (a) The Contractor must promptly notify the Principal on becoming aware of the occurrence of a Change of Law and provide the Principal with full details of the effect of the Change of Law on the Services or the performance by the Contractor of its obligations under the Contract, including details of the impact the Change of Law will have on:
 - (1) the manner in which the Services are provided or the Contractor's Obligations under the Contract are performed;
 - (2) any performance guarantees and warranties relating to the Services; and
 - (3) the costs and time required to provide the Services or to perform the Contractor's Obligations under the Contract.
- (b) The Contractor must take all reasonable steps to minimise and mitigate any additional costs and other adverse impacts resulting from, or associated with, any Change of Law, however nothing in this clause requires the Contractor to apply for an exemption, ruling or other relief from an Authority.

- (c) The Principal will, within a reasonable time following receipt of a notice in accordance with clause 33(a), issue a direction to the Contractor regarding the manner in which the Contractor is to comply with the Change of Law.
- (d) The Contractor must promptly notify the Principal if it believes that compliance with a direction issued in accordance with clause 33(c) would amount to a Variation and in such circumstances the Contractor must proceed in accordance with clause 32.
- (e) If the Principal disputes any aspect of the Change of Law notice in accordance with clause 33(a), including that a Change of Law has occurred, the Principal must notify the Contractor and the parties must meet to resolve the dispute. If the parties have not resolved the dispute within 10 Business Days of the Principal notifying the Contractor of the dispute, either party may refer the dispute for resolution under clause 39.
- (f) If the Contractor does not agree that implementing the Principal's direction will allow the Contractor to comply with the relevant Law, the Contractor may refer the matter for dispute resolution under clause 39.
- (g) If the Contractor does not follow the Principal's direction or refer the matter for resolution, the limit of the Contractor's entitlement against the Principal arising out of the Change of Law is the amount that the Contractor would have been entitled to recover had the Contractor implemented the Principal's advice given under clause 33(c).
- (h) Without limiting any express right in respect of change of Law (including a Change of Law) conferred under the Contract, the Contractor's rights in relation this clause 33 are the Contractor's sole remedy in respect of any change of Law (including a Change of Law).

34 Step-in

34.1 Step-in Right

- (a) The Principal may, but is not obliged to, step in and perform the whole or part of the Services, whether by itself, an agent or contractor, to the extent necessary to ensure the Services are provided while a Step-in Event is occurring (**Step-in Right**).
- (b) The Principal is entitled to exercise the Step-in Right when, in the reasonable opinion of the Principal:
 - (1) an Insolvency Event has occurred in respect of the Contractor;
 - (2) the Contractor is affected by a Force Majeure Event which delays the performance of the Services for more than 5 consecutive Business Days;
 - (3) there is a real and immediate risk that an Approval will be revoked or not granted;
 - (4) there is a real and immediate risk of action being taken by an Authority to require the Contractor to cease operating or carrying out the Services; or
 - (5) there is a real and immediate threat to public health or safety associated with the performance of the Services,

(each a **Step-in Event**).

- (c) Prior to the exercise of a Step-in Right, the Principal must:
- (1) where there is imminent harm or danger to a person, property or the relevant Facility, give such notice to the Contractor as is practicable in the circumstances (which, for clarity, in urgent circumstances, may be notice given forthwith after exercising the Step-in Right); or
 - (2) otherwise, give at least 5 Business Days' written notice to the Contractor; and
 - (3) give particulars of the circumstances giving rise to its exercise of the Step-in Right in that notice.

34.2 Principal may exercise

- (a) The Principal will not be obliged to perform all or any of the Contractor's Obligations under the Contract, nor will the Principal be liable for any Loss suffered by the Contractor, as a result of the Principal exercising or purporting to exercise the Step-in Right, provided that the Principal has acted reasonably and honestly and has not acted fraudulently or with reckless disregard for the consequences of its acts or omissions.
- (b) The Contractor must comply with any reasonable direction of the Principal when the Principal is exercising the Step-In Right.
- (c) The Principal may exercise the Step-In Right until the Principal approves a written notice from the Contractor, requesting that the Step-In Right cease to be exercised.
- (d) The Principal may approve such request on the basis that:
 - (1) the Step-In Event is cured;
 - (2) the circumstances giving rise to the Step-In Event no longer exist; or
 - (3) the Step-In Right is no longer required.
- (e) The Principal must not unreasonably withhold giving its approval under clause 34.2(c) if the Contractor requests the Principal to do so and the Principal is reasonably satisfied of one of the matters in clause 34.2(d).
- (f) If the Principal has exercised a Step-In Right, the Principal:
 - (1) must continue to pay the Fee in accordance with the Contract; and
 - (2) may retain, withhold, reduce or set-off from the Fee any costs incurred by the Principal associated with the exercise of the Step-In Right under this clause 34.
- (g) Notwithstanding any provision in this clause 34 to the contrary, the Contractor will not be liable for any negligent act or Wilful Misconduct of the Principal when exercising its Step-in Rights.

35 Force Majeure Event

- (a) A party must give timely notice to the other party of any Force Majeure Event that precludes the party (whether partially or wholly) from complying with its obligations under the Contract (**Affected Obligations**) and must either:

- (1) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
 - (2) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other party with periodic supplemental notices during the period over which the Force Majeure Event continues.
- (b) The party's obligation to perform the Affected Obligations is suspended for as long as performance of the obligation is prevented by the Force Majeure Event.
 - (c) If the Contractor is the party with Affected Obligations, the Principal is relieved, to the extent the Contractor is precluded from providing the Services, from making any payment to the Contractor for duration of the delay resulting from the Force Majeure Event.
 - (d) The parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
 - (e) If a Force Majeure Event continues to affect the provision of the Services for a continuous period of 120 days, the Principal may terminate the Contract by serving written notice on the Contractor and neither party has liability to the other except in respect of any event arising prior to the date of the Contract being terminated.
 - (f) The parties will be responsible for their own costs incurred during the period of the Force Majeure Event.

36 Suspension

36.1 General

- (a) If the Principal considers that suspension of the whole or part of the Services is necessary or appropriate to comply with any Law, or to preserve the health and safety of people or property, unless otherwise specified in the Contract, the Principal may direct the Contractor to immediately suspend the progress of the whole or part of the Services for such time as the Principal decides, and the Contractor must promptly suspend the Services.
- (b) When it chooses, the Principal may direct the Contractor to recommence the whole or the relevant part of the Services and the Contractor must recommence the Services at the time directed by the Principal or, if no time is stated, within a reasonable time after the direction.
- (c) Where the suspension of the Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, and such suspension can be reasonably attributed to the fault or action of the Principal, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of the Contract. For clarity, such costs must not include Excluded Losses.
- (d) Where all or part of the Services has been suspended by the Principal in accordance with this clause 36.1 for a period of greater than 30 days, the parties must promptly meet and decide how the Contract is to continue.
- (e) Nothing in this clause 36.1 limits the Principal's rights under clause 37.

36.2 Suspension for breach

- (a) If, in the reasonable opinion of the Principal, the Contractor or any of the Contractor's Personnel fail to comply with any provision of the Contract, any reasonable and lawful direction of the Principal or any safety requirement, the Principal may suspend the Services or have any of the Contractor's Personnel banned from performing the Services.
- (b) The Contractor is not entitled to any additional cost arising from the Principal's Representative applying the provisions of this clause 36.2.

37 Termination

37.1 Contractor Default

- (a) Subject to clause 37.2, if the Contractor:
 - (1) breaches its obligations under clause 5.2(c);
 - (2) breaches any single KPI twice within any 6 month period during the Services Term (regardless of whether or not it has complied with its obligations under clause 5.2(c); or
 - (3) commits any other breach of the Contract.

(Contractor Default), then the Principal may give notice to the Contractor of:

 - (4) the Contractor Default and of its intention to exercise its rights under clause 37.2 on the expiration of 20 Business Days if the Contractor Default is capable of being rectified but is not rectified within the 20 Business Day period; or
 - (5) its intention to exercise its rights under clause 37.2 if the Contractor Default is not capable of being rectified, or in the case of a Critical Default.
- (b) A notice given under this clause 37.1 must specify that it is a notice under this clause 37.1.

37.2 Failure to remedy

If:

- (a) the Contractor fails within 20 Business Days after receipt of a notice given under clause 37.1(a)(4) to either:
 - (1) remedy a Contractor Default; or
 - (2) in writing show (to the satisfaction of the Principal) that reasonable progress has been made in rectifying the Contractor Default; or
 - (b) the Principal gives Notice under clause 37.1(a)(5),
- then the Principal may, without prejudice to its rights under the Contract or otherwise:
- (c) at any time thereafter wholly or partly suspend any payment due to the Contractor under the Contract until the Contractor Default has been remedied to the satisfaction of the Principal; or
 - (d) terminate the Contract by notice to the Contractor.

37.3 Actions upon termination

- (a) On termination of the Contract, the Contractor must:
 - (1) immediately cease performance of the Contractor's Obligations; and
 - (2) ensure that accurate Reports are made of the Services performed up to the date of termination and delivered to the Principal.
- (b) The Principal must pay the Contractor that part of the Fee for any of the Contractor's Obligations performed prior to termination that have not already been paid by the Principal.
- (c) The Contractor is not entitled to, and the Principal is not liable for, any additional parts of the Fee whatsoever.
- (d) Termination of the Contract, however it may occur, does not prejudice any Claim that either party may have against the other under the Contract on termination.

38 Disengagement

38.1 Services continuation

Without limiting any other rights of the Principal under the Contract, if the Contract expires or is terminated for any reason whatsoever, the Contractor acknowledges and agrees that the Principal is free to continue with the Services either:

- (a) with new contractors and consultants; or
- (b) on any basis the Principal may determine,

(or both) and the Contractor must do all things and execute all further documents necessary to ensure that the Principal is free to continue with the Services in the manner set out in this clause 38.1 within the time period prescribed by the Principal.

38.2 Continuation of the Services

Until the Effective Date of Termination, the Contractor agrees to continue performing the Services in the manner contemplated by the Contract. In return, the Principal will pay the Contractor its entitlements under the Contract for performing the Services during that time.

38.3 Work in progress

Unless agreed otherwise, the parties agree that any work-in-progress relating to the Services which is in existence as at the Effective Date of Termination will transfer to the Principal or any contractor appointed by the Principal to provide the Services.

39 Dispute Resolution

39.1 Dispute Notice

- (a) Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief from a court in respect of a Dispute, until they have complied with the dispute resolution process in accordance with this clause 39.
- (b) If any Dispute arises between the parties in relation to the Contract, either party may give notice of the Dispute to the other party (**Dispute Notice**).
- (c) A Dispute Notice must specify:
 - (1) that it is a notice under this clause 39.1;
 - (2) the alleged facts on which the Dispute is based;
 - (3) the legal basis on which the Dispute is made, including any issues of law relevant to the Dispute (if any); and
 - (4) the relief that is claimed.

39.2 Negotiation

- (a) Within 10 Business Days of a party receiving a Dispute Notice, the parties must arrange for a senior representative from the Principal and a senior representative from the Contractor to meet to attempt to resolve the Dispute.
- (b) If a Dispute is not resolved within 10 Business Days of the parties' senior representatives meeting to attempt to resolve the Dispute in accordance with clause 39.2, the parties may escalate the Dispute to WALGA for WALGA to assist the parties in the resolution of the Dispute.

39.3 Litigation

If a Dispute is not resolved within 20 Business Days of the party receiving a Dispute Notice, either party who has given a Dispute Notice under clause 39.1(b) and complied with this clause 39 may end the dispute resolution process and commence court proceedings in relation to the Dispute.

39.4 Independent expert

- (a) If the Dispute relates to the Services or the KPIs, then either party may, with the agreement of the other party, refer the Dispute to an independent expert.
- (b) The independent expert will be appointed by the Principal, provided such person must have at least 5 years' experience in waste recycling and waste management.
- (c) The independent expert is to act as an expert and not an arbitrator and the expert's decision is final and binding on the parties.
- (d) The expense of the independent expert will be paid by the unsuccessful party.

39.5 Services to continue

If it is reasonably possible, the Contractor must continue to provide the Services during the existence of a Dispute.

40 Notices

40.1 How and where notices may be sent

- (a) Subject to clause 40.1(b), a notice must be in writing and:
 - (1) delivered by hand or sent by post, to the address of the party set out in the Party Details or otherwise notified; or
 - (2) sent by email, as an attachment to an email, to the email address of the party set out in the Party Details or otherwise notified.
- (b) A notice under clause 37 may only be delivered by hand or sent by post.

40.2 When notices are taken to have been delivered and received

A notice is effective:

- (a) if delivered by hand, on the date it is delivered to the recipient;
- (b) if sent by post:
 - (1) within Australia to an Australian address, on the third Business Day following the postage date; or
 - (2) from a place within Australia to an address outside of Australia, or from a place outside Australia to an address within Australia, on the eighth Business Day following the postage date; or
- (c) if sent by email, on the earlier of:
 - (1) an email delivery confirmation report being received by the sender; or
 - (2) 4 hours after the email was sent unless the sender receives notification from its or the recipient's email server that the email is undeliverable, was not delivered or the recipient is out of the office,

provided that where any notice is sent by email and is received after 4:00pm (recipient's time) or on a day other than a Business Day (recipient's time), then the notice will be deemed as being received at 9:00am on the next Business Day (recipient's time).

41 General

41.1 Governing law and jurisdiction

The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

41.2 Entire agreement and reliance

- (a) The Contract states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understandings and agreements in respect of its subject matter.

- (b) Neither party has relied on any statement by the other party not expressly included in the Contract.

41.3 Waiver

No party to the Contract may rely on the words or conduct of any other party (including any delay in exercising a right) as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver. In this clause 41.3, “waiver” includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

41.4 Relationship of the parties

- (a) The Contractor acknowledges and agrees that:
 - (1) it is an independent contractor and not an agent of the Principal;
 - (2) the Contract is entered into in accordance with the terms of the Panel Agreement;
 - (3) the Contract is entered into between the Principal and the Contractor and WALGA is not a party to the Contract; and
 - (4) the Contractor has no authority to bind the Principal or WALGA by contract or otherwise.
- (b) In carrying out their respective obligations under the Contract, each party is acting independently of the other party. Nothing in the Contract creates a partnership, trust or agency between the parties or imposes any fiduciary duties on either party in relation to the other, unless expressly stated.

41.5 Amendment

An amendment of any term of the Contract must be in writing and signed by both parties.

41.6 Invalidity and enforceability

- (a) Any provision of the Contract which is invalid or unenforceable will not affect the remaining provisions of the Contract which remain in full force and effect.
- (b) If any provision of the Contract is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid.

41.7 Executing the Contract

- (a) Each party must do all things and execute all documents necessary to give full effect to its obligations under the Contract and the transactions contemplated by it.
- (b) The Contract may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A party may execute the Contract by signing any counterpart.

41.8 Rights under the Contract

- (a) Unless the Contract provides otherwise:

- (1) a party may exercise a right, power or remedy in any way at its discretion; and
 - (2) the rights, powers and remedies provided by the Contract are in addition to any rights, powers and remedies provided at Law.
- (b) Nothing in the Contract:
- (1) gives a party authority to bind any other party in any way; or
 - (2) imposes any fiduciary duties on a party in relation to any other party.
- (c) The Principal is not required to engage the Contractor exclusively to perform the Services.

41.9 Survival

Clauses 1, 6, 25, 26, 27, 28, 37.3(d), 38, 39, 40 and 41, and any other obligations which are expressed to or, by their nature, survive expiry or termination of the Contract, will survive termination or expiry of the Contract, and are enforceable at any time at Law.

Schedule 1

Service Plan

[Drafting Note: Insert Services Plan.]

Schedule 2

Key Performance Indicators

[Drafting Note: These KPIs are for the Collection Service only. Member to consider KPIs for the other Services.]

1 Revision of KPIs

- (a) The performance of the Contractor will be monitored and assessed in accordance with the KPIs.
- (b) As at the Start Date, the KPIs are as set out in section 4.
- (c) The parties will meet at the following intervals to discuss the KPIs and make any changes as agreed:
 - (1) 3 months following the Start Date; and
 - (2) during each year of the Services Term.
- (d) Either party may give to the other party a written notice proposing a revision of the KPIs. A written notice must set out:
 - (1) the revised value (percentage or value as appropriate) proposed by the party for the relevant KPI;
 - (2) the party's reasons for the proposed revision; and
 - (3) evidence or substantiation to support the proposed revision.
- (e) Within 14 days after a notice is given, the parties must meet and negotiate in good faith with a view to agreeing as to whether a revision is to be made (having regard to then-current KPIs for similar contracts in the market) and, if so, the extent of the revision.
- (f) If the parties fail to agree, then either party may give to the other a written notice of dispute in accordance with clause 39.1 and such dispute must be referred by the parties to an independent expert in accordance with clause 39.4, having regard to the criteria set out in paragraph (e) above.

2 Definitions used in the KPI Table

[Drafting Note: These calculations are reflective of the Collection Service only and will require amendment to include all Services. Member to consider when negotiating with Contractors.]

In this Schedule 2, the defined terms have the meaning set out below:

- (a) 'A' means the availability of the Nominated Material Recovery Facility (NMRF) calculated in accordance with section 3.1;

- (b) 'RR' means the rate of recovery achieved by the NRF calculated in accordance with section 3.2;
- (c) 'MS' is the number of Bins missed which are:
 - (1) not collected by the Contractor during the period; and
 - (2) reported by the Principal to the Contractor during the period;
- (d) 'PN' is the number of notices issued by the Principal to the Contractor for failing to comply with the requirements of the Contract;
- (e) 'AA' is the accuracy and timeliness of Tax Invoices;
- (f) 'PA' is the number of days Collection Vehicles are not available;
- (g) 'CR' is Customer Service Centre reporting;
- (h) 'NC' is Number of complaints received per month;
- (i) 'RC' is Responsiveness to complaints - all complaints responded to within 24 hours and closed off within 5 days;
- (j) 'S' is Customer Satisfaction Survey carried out by the Principal; and
- (k) 'OHS' is the number of Occupational, Health and Safety notices issued by the Principal for incidents which have occurred.

3 Calculations

[Drafting Note: These calculations are reflective of the Collection Service only and will require amendment, between the Member and the Contractor, to include all Services.]

3.1 Calculation of A

A is calculated in accordance with the following formula;

$$A = (\text{the number of Available Days} / \text{the number of Collection Days}) \times 100\%$$

where:

- (a) "Available Days", are "Collection Days" when the Contractor's NRF is available under the Contract; and
- (b) "Collection Days" means days on which the Contractor's NRF is required to be available under the Contract (normally Monday to Friday but may include Saturdays).]

3.2 Calculation of RR

Rate of Recovery or **RR** is calculated in accordance with the following formula: $RR = (A - B)/A \times 100\%$

where:

- (a) A is the number of tonnes of Recyclables accepted by the Contractor at the Facility during the period; and
- (b) B is the number of tonnes on Residual Material recovered from the Recyclable Material delivered to the Facility during the same period.

4 KPI Table

The KPIs are as follows:

KPI	Target	Consequence for Principal if not met
A	xx% in any month	Recyclables not processed
RR	xx% in any month	Recyclables not recovered
MS	xx per month	Customer complaints to Council
PN	0 per month	Under performance against Contract
AA	xx errors and Tax all Invoices issued	Under performance against Contract
PA	0 per month	Under performance against Contract
CR	Register of complaints received and closed off	Under performance against Contract
NC	xx per month	Customer complaints to Council
RC	100%	Customer complaints to Council
S	xx% satisfaction rate for any single survey	Customer complaints to Council
OHS	0 per month	Under performance against Contract

Schedule 3

Payments

Annexure 1

Payment

[Drafting Note: To be inserted by Member and Contractor.]

Annexure 2

Rates

[Drafting Note: To be inserted by Member and Contractor.]

Annexure 3

Rise and Fall Calculation

[Drafting Note: Member and Contractor to include appropriate drafting concerning application of Rise and Fall to the Contract.]

Annexure 4

Contamination Levy

(a) Organic Waste Contamination

[Drafting Note: Contamination Levels should be in accordance with the organic waste specified under the Contract (i.e. Green Organics or FOGO).]

Contamination Level (%)	Contamination Levy excluding GST (per tonne) of part thereof increase in contamination
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]

(b) Recyclables Contamination

Contamination Level (%)	Contamination Levy excluding GST (per tonne) of part thereof increase in contamination
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]

[Insert]

[Insert]

[Drafting Note: Audit activity associated with the Contamination Levy may be defined in specifications, and entered into Part B, Item 18 of the Procurement Form. Cross Reference to clauses 12.8, 12.9, 12.10 and 12.11.]

Insurances

Public and Product Liability Insurance

Scope of cover	<p>Insurance against any claim in respect of:</p> <ul style="list-style-type: none"> (a) Loss or destruction of, or injury or damage to, or Loss of use of any real or personal property (including that of the Principal); or (b) any personal injury to or death of any person, <p>for which the Contractor is legally liable, including as a result of:</p> <ul style="list-style-type: none"> (c) the performance or non-performance of the Services by the Contractor or the Contractor's Personnel; or (d) the quality, disposal or sale of products used by the Contractor in the performance of the Services. <p>The policy must be endorsed to extend to include liability arising out of the use of unregistered motor vehicles.</p>
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Sum insured	<p>Provide cover to an amount of not less than \$20,000,000 in respect of any one occurrence and unlimited as to the number of occurrences.</p> <p>In respect of products liability, limited to not less than \$20,000,000 in the aggregate per annum.</p>
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Insurance of employees

Scope of cover	<p>Insurance for any compulsory statutory workers' compensation benefits or other liability under the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) or other applicable legislation.</p>
Sum insured	<p>Provide cover to such amount as prescribed from time to time by the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) or any other applicable legislation.</p>

Contractor's Plant

Scope of cover Insurance against all Loss to all items of the Contractor's Plant (whether owned, hired or leased) used in the performance of the Services.

The Contractor must insure all vehicles or items which are licensed as motor vehicles or are required to be so licensed (whether owned, hired or leased) used in the performance of the Services under compulsory motor vehicle third party insurance.

Sum insured Provide cover to an amount of not less than the replacement value of all Contractor's Plant. The Contractor may self-insure for damage to Contractor's Plant.

Motor Vehicles Insurance

Scope of cover Insurance against all Loss in respect of third party property damage and bodily injury to, or death of, persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used in connection with the Services.

Sum insured Provide cover for an amount not less than \$30,000,000 for any one occurrence or accident.

Compulsory Third Party

Scope of cover Compulsory third party motor vehicle insurance as required under any statute relating to motor vehicles used in connection with the Services.

Schedule 5

Form of Bank Guarantee

TO: **[Insert Member here]** (the **Principal**)

FOR: **[Enter Contractor name here]** (Company Number **[insert]**) (the **Contractor**)

DATE: **[insert date]**

The Contractor has been selected by the Principal to provide waste recycling services pursuant to the **[Member Contract]** entered into between the Principal and the Contractor (**Contract**).

At the request of the Principal and in respect of the Contractor's obligations under the Contract, **[Name of Issuer]** (**[insert Company Number]**) of **[insert address]** (the **Issuer**) unconditionally and irrevocably undertakes to pay to the Principal, on demand by the Principal, any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of **[insert amount]** dollars (**Maximum Aggregate Sum**).

Payment or payments under this undertaking must be made by the Issuer to the Principal:

- (a) without reference to the Contractor, any other person (other than the Issuer) or the Contract;
- (b) without enquiring into the performance or non-performance of the Contract;
- (c) despite any notice by the Contractor or any other person to the Issuer not to pay the whole or any part of the Maximum Aggregate Sum; and
- (d) despite anything which but for this provision may operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - (1) any variation or alteration to any contract between the Principal and the Contractor (including the Contract); or
 - (2) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person.

This undertaking expires on the earlier of:

- (a) the date the Principal notifies the Issuer in writing, endorsed with the consent of the Principal, that this undertaking is no longer required; or
- (b) the date the Issuer has paid the Maximum Aggregate Sum to the Principal; or
- (c) the date agreed in writing by Principal and Contractor.

The Issuer will have no liability in respect of any claim under this undertaking after the date upon which this undertaking expires.

However, the Issuer may at any time without being required to do so pay to the Principal the Maximum Aggregate Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Issuer hereunder in respect of that amount paid must immediately cease.

This undertaking is governed by and construed in accordance with the laws from time to time in force in Western Australia and the Issuer irrevocably submits to the exclusive

jurisdiction of the courts having jurisdiction in Western Australia and the courts competent to determine appeals from those courts and any injunctions, orders or judgments issued or granted therefrom must be enforceable, insofar as they are enforceable at law, within Western Australia.

Executed and delivered as a deed.

[Insert execution clause of Issuer]