



## TERMS AND CONDITIONS FOR COMMERCIAL WASTE SERVICE FROM 31 MARCH 2025

This commercial waste management contract is made between:

- 1) [Company name], having its registered office at [office address] (“the Customer”); and
- 2) The Council of the Isles of Scilly, having its registered office at Council of the Isles of Scilly, Old Wesleyan Chapel, St Mary’s, Isles of Scilly, TR21 0JD (“the Council”, “We”, “Us”).

### 1. Interpretation

The following definitions and rules of interpretation apply in these terms and conditions.

#### 1.1. Definitions:

**Charges:** the charges payable by the customer for the supply of the Services in accordance with clause 4 and shall include the Collection charge.

**Collection Charge:** means the charge set out in the Agreement Form.

**Collection Site:** means the site or site as set out in the Agreement Form, which may be an Off Island Waste Site.

**Contract Start Date:** means the contract start date specified in the Agreement Form overleaf which shall be the Collection Start Date.

**Conditions:** means these terms and conditions of this Contract.

**Confidential Information:** means any information disclosed by the disclosing party to the disclose party concerning the business or affairs of the disclosing party or of any member of its Group including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

**Contract:** means this contract between the Council and the Customer for the supply of Services in accordance with these Conditions as amended from time to time.

**Council Materials:** means the Equipment and any other property of the Council.

**Data Guidance:** means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this contract or not) to the extent published and publicly available or their existence or contents have been notified to the Service Provider by the Council and/or any relevant Regulatory Body.

**Data Protection Legislation:** means the UK-General Data Protection Regulation ((EU 2016/679) (“GDPR”) until it is no longer directly applicable in the UK, the Data Protection Act 2018 and any other applicable national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

**EIR:** means the Environmental Information Regulations 2004.

**Equipment:** means every waste receptacle issued for containing waste and/or recyclates provided by the Council to the Customer (including but not limited to – single use residual waste and reusable recycling sacks) and associated equipment, such as stickers/tags.

**Expected Frequency:** means the frequency set out in the Agreement Form.

**FOIA:** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004.

**Initial End Date:** means the end date specified in the Agreement Form overleaf.

**Initial Period:** means the period from the Commencement Date to the Initial End Date.

**Off-Island Waste Site:** means sites on Bryher and St Agnes to which the Customer may bring its Waste.

**Order:** means the Customer's order for Services as set out in the Agreement Form.

**Parties:** means the Customer and the Council.

**Personal Data:** has the meaning given to it in the Data Protection Legislation.

**Recyclable Material:** means clean paper, cardboard, steel and aluminium cans, empty aerosols, plastic bottles, plastic food pots, tubs and trays, and clean kitchen foil and foil trays, or any other material as notified by the Council from time to time.

**Services:** means the services supplied by the Council to the Customer as set out in the set out in the Agreement Form.

**Vehicle:** means each and every vehicle owned or operated by the Council, its agents or sub-contractors which visits any Collection Site to deliver, empty, replace or remove the Equipment.

**Waste:** means residual waste and recyclates, further particulars of which are set out in the Agreement Form.

**Waste Collection Deadline:** means 08:30am on the relevant collection day.

## **2. Term**

- 2.1. This Contract commences on the Contract Start Date and shall continue until the Initial End Date or as may be extended under clause 2.2.
- 2.2. The Contract will automatically extend for rolling 12-month periods indefinitely after the Initial End Date unless either party has given at least 3 months' notice prior to the Initial End Date (in which case it shall terminate on the Initial End Date) or is otherwise terminated in accordance with clause 10.

## **3. Supply of Services**

- 3.1. Any quotation given by the Council shall not constitute an offer and is only valid for a period of 30 days from its date of issue.
- 3.2. The Council undertakes:
  - 3.2.1. to deliver the Equipment at the Collection Site in the quantity specified in the Agreement Form;
  - 3.2.2. to service the Waste in a proper and efficient manner, subject to these Conditions;
  - 3.2.3. (subject to prior written agreement) to comply with all special site conditions and safe working procedures, notified to and acknowledged in writing by the Council, by the Customer and any applicable law or regulatory requirement; and
  - 3.2.4. to use reasonable endeavours to meet any collection dates specified in the Agreement Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services and the Council shall not be liable to the Customer or

any third party for any direct or consequential loss caused by any delays in its performance of its obligations. Missed collections shall not entitle the Customer to terminate this Contract.

- 3.3. The Council reserves the right to amend this Contract, if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Council shall notify the Customer in any such event.
- 3.4. The Council does not accept liability for damaged caused to any driveway, road or path upon which a Vehicle must drive in order to collect Waste under this Contract and does not accept responsibility for the loss or damage of any articles left in close proximity to Waste which has been left for collection.
- 3.5. Upon the Council collecting the Waste from the Collection Site, title (with full title guarantee, free from all or any encumbrances and third party rights) to the Waste shall pass to the Council.

#### **4. Charges and payment**

- 4.1. The Charges for the Services shall be calculated as stated in the Agreement Form.
- 4.2. The Council reserves the right to increase or decrease the Charges at any time if there is any variation in the Council's costs in delivering the Services or any variation to the categories of Waste to those provided for in the Agreement Form. The Council shall endeavour to give the Customer not less than 1 calendar months' notice of any variation of the Charges under this clause but notwithstanding this the Customer shall be liable to pay any increase from the date specified in the notice or may terminate this Contract in accordance with clause 10.7.
- 4.3. The Council will charge the Customer for a full Waste collection irrespective of the quantity of Waste contained in the Equipment or if the Customer fails to issue the Waste for collection by the Waste Collection Deadline.
- 4.4. The Council shall invoice the Customer for the full amount for the Services anticipated to be provided during the Initial Period on the Contract Start Date, with all future invoices for Services to be provided following the Initial Period issued on the anniversary of the Contract Start Date at the start of the year during which the Service will be provided. The Council will issue invoices to the Customer in electronic form and may make an administration charge if the Customer requires a paper invoice.
- 4.5. The Customer shall pay each invoice submitted by the Council:
  - 4.5.1. within 30 days of the date of the invoice; or
  - 4.5.2. by opting into a direct debit payment arrangement to be paid in advance in monthly instalments within 28 calendar days of the beginning of each month during which the Services were / are to be provided,

in either instance, the invoiced amount shall be paid in full in cleared funds to a bank account nominated in writing by the Council, and time for payment shall be the essence of the Contract.
- 4.6. The Customer shall raise any invoice disputes within 14 days of the date of the invoice and the Customer shall pay all undisputed parts of the invoice by the due date.
- 4.7. All amounts payable by the Customer under the Contract are exclusive of amounts in respects of value added tax (VAT). No VAT is payable on the Collection Charge.
- 4.8. If the Customer fails to make payment due to the Council under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the

overdue sum, whether before or after judgement. Interest under this clause 4.8 will accrue each day at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

- 4.9. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **5. Customer's obligations and conditions of collection**

- 5.1. The Customer undertakes:

- 5.1.1. to ensure that all Waste is contained and managed appropriately;
- 5.1.2. to ensure all Waste is presented for collection by the Waste Collection Deadline or delivered to a Collection Site/off island waste site in accordance with these Conditions and as described in the Agreement Form;
- 5.1.3. that the Waste is properly described in the Agreement Form and is not notifiable under the Hazardous Waste Regulations 2005 and will, at all times, correspond in all material aspects with that description;
- 5.1.4. to ensure that the collection crew and Vehicles have free and unobstructed access to the Equipment at all times so that the Waste may be emptied directly into the Vehicles. If such access is not provided the Council shall not be under any obligation to collect the Waste. The driver of the vehicle may in their absolute discretion refuse to provide the Service if they believe that access to the Collection Site or turning facilities are unsafe or likely to cause damage to the Vehicle or if there is any reason to believe that the proposed area for siting the Equipment is unsuitable;
- 5.1.5. to ensure all Waste is placed in the correct Equipment provided for collection (including single use plastic bags, reusable sacks and tags), and acknowledges Waste presented in anything other than the correct Equipment shall not be eligible for collection;
- 5.1.6. to display the commercial waste tag or sticker provided by the Council on all Equipment;
- 5.1.7. to be responsible for keeping the Equipment in a safe and accessible location (taking into account the health and safety of collection staff in doing so) and maintaining the Equipment to ensure it is kept in good working order. The Customer shall bear all risks involved in connection with siting, loading and use of the Equipment and at Collection Sites, servicing of the Waste at the Customer's premises and failure to comply with these Conditions;
- 5.1.8. to keep all Council Materials at its own risk, not place any marking on or sub-let or part with possession of, and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation. The Customer shall be responsible to the Council of any loss or damage to the Council Materials;
- 5.1.9. not and shall not purport to charge, sub-let or part with possession of any Equipment or allow any third-party to deposit any material in the Equipment that may contaminate the Waste, and shall notify the Council forthwith on becoming aware that any additional material which is not its own Waste was deposited in the Equipment; and
- 5.1.10. on termination of this Contract to allow the Council or its sub-contractor to collect the Equipment from the Collection Site.

- 5.2. If the Customer requests that the Equipment be placed in a position which requires the Vehicle to leave the public highway the Customer shall indemnify and hold the Council harmless against any loss costs claims damages or expenses which may thereby incur whether as a result of

damage to the Vehicle, the Equipment, the property of the Customer or a third party including damage to the road margin or pavements.

- 5.3. Where the Council is unable, due to Bank or Public Holidays, breakdown or other circumstances outside its reasonable control, to carry out the service on the day notified, the Council shall make all reasonable effort to carry out the service as soon as practicable thereafter. If the performance of the Council's obligations under the Contract is in its opinion likely to be hindered, delayed or affected by circumstances beyond its reasonable control, the Council shall promptly notify the Customer in writing of that fact. If such circumstances continue for a continuous period of more than 6 months, the Council may terminate the Contract by written notice to the Customer.
- 5.4. All Equipment must be available for collection at the Collection Site by the Waste Collection Deadline, unless otherwise instructed by the Council. If the waste is not presented by the Waste Collection Deadline, then the Waste will not be collected until the next scheduled collection day, or if requested, a collection could be made subject to additional collection fees and charges applying as set by the Council.
- 5.5. If operating on St Martin's, collection times and days will be set by the Council's sub contractor. On St Agnes and Bryher all Equipment/material must be taken to the Collection Sites during opening hours, unless otherwise directed by the Council or its subcontractors.
- 5.6. The Customer shall ensure all waste and recycling is adequately contained and does not become strewn.
- 5.7. On St Mary's and St Martin's, any missed collections reported (such report to be delivered by telephone to 01720 424450 and/or by email to [zerowaste@scilly.gov.uk](mailto:zerowaste@scilly.gov.uk) by 12 noon on the same day of the scheduled collection will be collected on the same working day. Missed collections reported after 12 noon on the day of the scheduled collection, will be re-scheduled and collected by 12 noon the next working day (excluding weekends and bank holidays). There will be no refunds issued in these circumstances.
- 5.8. Should a collection be missed at the fault of Customer, the Council has the right to return to collect the Waste and to Charge the Customer an additional Collection Charge.
- 5.9. Any Equipment that is deemed to be over the Assumed Weight will not be collected by the collection crew. In such cases an additional Collection Charge may be applied, and the weight of the Equipment should be reduced before the next collection.
- 5.10. If Waste is presented in single-use plastic sacks, these must be tied at the neck and placed in a protective reusable sack.
- 5.11. Only those materials notified as Recyclable Material can be presented for collection. The Council may amend the materials to be collected by attaching a written notice on the Equipment or advising the Customer in writing.
- 5.12. Contaminated Equipment will not be collected. The Customer will be notified of the issue and the Equipment will not be collected until the next collection is due and the contamination is removed. It is the responsibility of the Customer to sort the contents of the Equipment and remove contamination. No refunds will be issued in these circumstances.
- 5.13. If Waste is presented for collection at less than the Expected Frequency the Customer shall still be liable to pay the Collection Charge in line with the Expected Frequency set out in the Agreement Form.

- 5.14. The Customer shall indemnify the Council against all proceedings and claims for any loss, damage, personal injury or loss of life arising from any of the Customer's undertakings and obligations under this Contract, howsoever caused, except where the loss, damage, personal injury or loss of life were solely attributable to the negligence or wilful act of the Council or any of its employees or agents.
- 5.15. If the Equipment is damaged while in the possession of the Customer which renders it unusable, the Customer agrees to reimburse the Council's reasonable costs in procuring any replacement Equipment.

## **6. Waste**

- 6.1. The Customer warrants that the details relating to the Waste (including, for the avoidance of doubt, those relating to weight and compactability) contained in Sections 2 and 3 will be true and complete. The Council shall be entitled to take samples of the materials placed in the Equipment to satisfy itself that the description is accurate prior to collection and disposal. Such right shall exist under no circumstances relieve the Customer of its obligations to describe Waste accurately.
- 6.2. The Customer may not place or cause to be placed in the Equipment any material other than Waste described in the Agreement Form.
- 6.3. Without prejudice to the generality of the provisions of this clause 6, the Council will be entitled to refuse to deal with any material;
- 6.3.1. which it has reason to believe is toxic, poisonous, explosive, inflammable or otherwise dangerous; or
- 6.3.2. the handling of which may cause the Council to incur civil or criminal liability; or
- 6.3.3. which it has reason to believe is or may be Hazardous Waste; or
- 6.3.4. the disposal of which might incur additional expense or an unreasonable amount of additional work for the Council.
- 6.4. The Council may reject any Waste for the following reasons:
- 6.4.1. the Equipment (sacks) were not fully tied;
- 6.4.2. the Equipment presented are in excess of the number specified in the Agreement Form;
- 6.4.3. the Waste is not presented at the Collection Site location or at the agreed date and time of collection;
- 6.4.4. the wrong Equipment is presented for collection or Waste is presented in the wrong Equipment.
- 6.5. The Customer may not burn, or cause or suffer to be burned, any material classified as Waste.

## **7. Confidentiality, data protection and freedom of information**

- 7.1. Each Party shall maintain the confidentiality of any Confidential Information belonging to the other Party and shall not:
- 7.1.1. use Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Contract; or
- 7.1.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by the Parties in writing or as they are required to by law.
- 7.2. The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR.

- 7.3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and any sub-contractor (if applicable) is the Data Processor and that the Customer's details will be shared with any Council sub-contractor for the purposes of providing the Services.
- 7.4. If the Council is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then within 48 hours of the breach occurring the Council must inform the Customer of the Personal Data Breach, and the Council will report the breach to the Information Commissioner within 72 hours of the Personal Data Breach as is required within the Data Protection Legislation.
- 7.5. Where required under Data Protection legislation, the Council shall ensure that it has a Privacy Notice or Consent Notice in place.
- 7.6. Without prejudice to the generality of clause 7, the Council must ensure that all Personal Data processed by or on behalf of the Council in the course of delivering Services is processed in accordance with the relevant parties' obligations under Data Protection Legislation and Data Guidance.
- 7.7. The Customer acknowledges that the Council is subject to the FOIA and shall give all reasonable assistance to the Council where appropriate and necessary to comply with such duties.

**8. Limitation of liability: The Customer's attention is particularly drawn to this clause**

- 8.1. The Customer will maintain appropriate insurances in place from time to time as would be expected in similar organisations.
- 8.2. The Customer indemnifies the Council in respect of all damage or injury to persons or property and against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith occasioned directly or indirectly by the presence of the container(s) on or about the Customer's premises.
- 8.3. The Council shall not be liable for any claim, loss or damage arising under any legal liability for any defect or delay in or failure of the service whether due to any act, neglect, default of the Council, subcontractors or its agents or otherwise, and all warranties and conditions expressed or implied are hereby excluded.
- 8.4. Nothing in the clause 8 shall limit the Customer's payment obligations under the Contract.
- 8.5. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
  - 8.5.1. death or personal injury caused by negligence;
  - 8.5.2. fraud or fraudulent misrepresentation; and
  - 8.5.3. breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.6. Subject to clause 8.5, the Council's total liability to the Customer for all loss or damage shall be limited to £50,000.
- 8.7. Subject to clause 8.5, the Council shall not be responsible for any property (including personal effects), deposited by the Customer or any other person in the Waste or the Equipment and shall not be bound to return the same, nor be liable for any loss or damage thereto.
- 8.8. Subject clause 8.4 and clause 8.5, the following losses are wholly excluded:

- 8.8.1. loss of profits;
- 8.8.2. loss of sales or business;
- 8.8.3. loss of agreements or contracts;
- 8.8.4. loss of anticipated savings;
- 8.8.5. loss of use or corruption of software, data or information;
- 8.8.6. loss of or damage to goodwill; and
- 8.8.7. any indirect or consequential loss.

8.9. This clause 8 shall survive termination of the Contract.

## **9. Force Majeure**

- 9.1. Neither the Council or Customer shall be liable for any expense, loss or damage resulting from delay or prevention of performance of its obligations under this agreement caused by a Force Majeure Event.
- 9.2. If the Force Majeure Event prevails for a continuous period in excess of 28 days then the party not affected by the Force Majeure Event shall be entitled to terminate this Contract without penalty immediately on notice to the other party.

## **10. Termination and Suspension**

### Termination

- 10.1. The Council reserves the right to not execute any order and to remove any Equipment if arrangements for payment of the Customer(s) account are not, in the Council's discretion, satisfactory to the Council or whose account is overdue for payment or where the Customer is in breach of any of the Conditions, or where the Council considers that providing the Services may place a risk on any person, goods, Vehicles, Equipment or property.
- 10.2. The Council shall have the right (at its sole discretion) to terminate this Contract without reason, on providing the Customer with not less than 30 days' notice in writing.
- 10.3. If it is discovered that the Waste presented for collection is different to that described in the Agreement Form or contains any of the non-Recyclable Material, the Council may (acting reasonably but without prejudice to any other right or remedy available to it):
  - 10.3.1. suspend performance of the Services at the relevant Collection Site;
  - 10.3.2. adjust the Charge for the Site in accordance with clause 4.2; or
  - 10.3.3. terminate the Contract in accordance with clause 10.4.
- 10.4. If the Customer breaches any of these Conditions, the Council may, in addition to its other rights in respect thereof, give notice to the Customer to terminate this Contract immediately or, at the Council's discretion, 30 days from the date of such notice if the Customer shall not have remedied the breach to the Council's satisfaction during that time.
- 10.5. If the Customer shall have a receiver, an administrator or an administrative receiver appointed for the whole or any part of its assets or if an order shall be made or a resolution passed for its winding-up (unless this is for the purpose of its reconstruction or amalgamation) then this Contract shall terminate immediately.



- 10.6. The Customer may terminate this Contract at any time following expiry of the Initial Period by giving the Council not less than 60 calendar days' written notice via email to: [zerowaste@scilly.gov.uk](mailto:zerowaste@scilly.gov.uk).
- 10.7. The Customer may terminate this Contract upon 30 days' written notice to the Council if it is unable to agree any reasonable increase in Charges the Council may require in accordance with clause 4.2.
- 10.8. On termination or expiry of the Contract:
- 10.8.1. the Customer shall immediately pay to the Council all of the Council's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Council shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.8.2. the Customer shall return the Equipment and any Council materials to the Council. If the Customer fails to do so, then the Council may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.9. On termination, any claims which either party has against the other existing at such time shall remain in force.
- 10.10. In the event the Contract is terminated before all Services have been delivered by the Council in exchange for payments received from the Customer in accordance with clause 4.5, the Customer shall be entitled to receive a reconciliation payment for all Services paid for but undelivered, with the Council entitled to set-off this payment against all sums owed to it by the Customer before ensuring any balance due to the Customer is paid within [30] days.

### Suspension

- 10.11. The Customer may suspend the Services at any time (a "Period of Suspension") on giving the Council not less than 30 days' notice in writing ("Notice of Suspension").
- 10.12. The Notice of Suspension must set the date on which the Seasonal Customer wishes the Period of Suspension to commence and expire.
- 10.13. Any Period of Suspension must have a duration not less than one (1) month and not greater than six (6) months. For the avoidance of doubt, if the Customer has not specified an expiry date in the Notice of Suspension, the Services shall automatically re-commence six (6) months from the first day of any Period of Suspension.
- 10.14. During any Period of Suspension, the Council is not required to provide the Services.
- 10.15. Upon the relevant Period of Suspension expiring, the Customer shall be obliged to require resumption of the Services for a minimum of 30 days' before it can request a separate Period of Suspension.

### **11. Variation to Collections**

- 11.1. In the event the Customer wishes to vary any Period of Suspension, the Customer shall notify the Council in writing of the variations required, which are to take effect from 30 days of receipt of the notice by the Council, and the Charges shall be amended accordingly upon this date also.

11.2. Should the Customer require collections for any temporary period during a notified Period of Suspension (the **Additional Collections**), it shall notify the Council in writing of this request providing at least 30 calendar days' notice, detailing:

11.2.1. when the Additional Collections are required to commence; and

11.2.2. when the Additional Collections are required to end,

with the Customer acknowledging any Additional Collections shall occur for a minimum of 30 calendar days.

11.3. The Council shall, acting reasonably, choose to either accept or reject the request made pursuant to clause 11.2 and, if accepted, the Customer shall be required to pay any additional costs in excess of the Charges as reasonably demanded by the Council to effect the Additional Collections.

## **12. Subcontracting**

12.1. The Council reserves the right to subcontract the provision of the Service or any part thereof to any person.

## **13. Assignment and other dealings**

13.1. The Customer shall not assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

## **14. General**

### **14.1. Governing Law**

The Contract, and any dispute or claim (including non-contractual disputes, or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of this Contract.

### **14.2. Entire Agreement**

14.3. This agreement constitutes the entire agreement between the parties.

14.4. Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty that is not set out in this agreement. Each party agrees that it has no claim for innocent or negligent misrepresentation based on any statement in this agreement.