

Disclosure of beginning to have substantial holding

Section 276, Financial Markets Conduct Act 2013

To NZX Limited
and
To WasteCo Group Limited

Date this disclosure made: 22 November 2024

Date on which substantial holding began: 22 November 2024

Substantial product holder(s) giving disclosure

Full name(s): Empire Waste Technology Limited

Summary of substantial holding

Class of quoted voting products: WasteCo Group Limited (**WCO**) ordinary shares

Summary for Empire Waste Technology Limited (**Empire**)

For this disclosure,—

- (a) total number held in class: Up to 750,000,000 if the maximum number of Notes (as defined below) are issued to Empire and are subsequently converted
- (b) total in class: 848,372,765 (and up to 1,598,372,765 if the maximum number of Notes (as defined below) are issued to Empire and are subsequently converted)
- (c) total percentage held in class: Up to 46.922% if the maximum number of Notes (as defined below) are issued to Empire and are subsequently converted)

(Please refer to the 'Important Note' below)

Details of relevant interests

Details for Empire Waste Technology Limited

Nature of relevant interest(s): The power, exercisable only on the fulfilment or waiver of certain conditions, to control the acquisition of WCO ordinary shares arising pursuant to the entry by Empire and WCO into a Convertible Note Subscription Agreement (as summarised further below).

For that relevant interest,—

- (a) number held in class: Up to 750,000,000 if the maximum number of Notes (as defined below) are issued to Empire and are subsequently converted
- (b) percentage held in class: Up to 46.922% if the maximum number of Notes (as defined below) are issued to Empire and are subsequently converted)
- (c) current registered holder(s): Not applicable (any WCO ordinary shares will only be issued by WCO if any Notes (as defined below) are converted by Empire)
- (d) registered holder(s) once transfers are registered: Empire

Details of transactions and events giving rise to substantial holding

Details of the transactions or other events requiring disclosure: On 22 November 2024, Empire and WCO entered into a Convertible Note Subscription Agreement (**Subscription Agreement**) a copy of which is attached to this disclosure.

Under the Subscription Agreement, subject to the satisfaction or waiver of certain conditions for the benefit of Empire, WCO is required to issue to Empire:

- \$15 million principal amount of convertible notes (**Notes**); and
- up to 750 million ordinary shares upon conversion of the Notes by Empire at an issue price of \$0.02 per share (subject to adjustment in accordance with the terms of the Notes).

The Subscription Agreement is conditional on, amongst other matters set out in clause 7.1 of the Subscription Agreement, WCO obtaining shareholder approval by ordinary resolution for the issue of the Notes and the shares upon any conversion of the Notes (it is currently expected that a special meeting of shareholders will be held before 19 December 2024) and two nominees of Empire being appointed to the WCO board.

Important Note

Unless otherwise stated, the numbers and percentages used in this notice:

- (a) are based on a total of 848,372,765 WCO ordinary shares currently on issue;
- (b) assume that Empire converts convertible notes with an aggregate face value of \$15,000,000 at a conversion price of \$0.02 per share (resulting in the issue of 750,000,000 shares);
- (c) assume that no other WCO ordinary shares are issued or repurchased;
- (d) assume that there is no consolidation or subdivision of WCO ordinary shares, or other alteration in WCO's share capital.

Additional information

Address(es) of substantial product holder(s): c/o- Bayswater, 21 Sir Peter Blake Parade, Auckland, 0622, New Zealand

Contact details:

Simon Herbert, Director Empire Technology Limited

+64 21 610 205

simon@empirecapital.co

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: Not applicable

Certification

I, Simon Herbert, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

CONVERTIBLE NOTE SUBSCRIPTION AGREEMENT

WASTECO GROUP LIMITED
("the Company")

EMPIRE WASTE TECHNOLOGY LIMITED
("the Subscriber")

Warning Statement

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because there is an exclusion for offers where the amount invested upfront by the investor (plus any other investments the investor has already made in the financial products) is \$750,000 or more. As a result of this exclusion, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for this investment.

Investments of this kind are not suitable for retail investors.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.

Acknowledgement

The Subscriber confirms that it understands that—:

- the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by the Subscriber (plus any other investments the Subscriber has already made in those financial products) is \$750,000 or more; and*
- the Subscriber may not receive a complete and balanced set of information about this investment; and*
- the Subscriber has fewer legal protections for this investment; and*
- this investment is not suitable for retail investors; and*
- the Subscriber has been advised to ask questions, read all documents carefully, and seek independent financial advice.*

PARTIES

1. **WASTECO GROUP LIMITED** (3202682) a duly incorporated company having its registered office at 421 Blenheim Road, Upper Riccarton, Christchurch 8041 (the **"Company"**); and
2. **EMPIRE WASTE TECHNOLOGY LIMITED** (9269489) a duly incorporated company having its registered office at 21 Sir Peter Blake Parade, Bayswater, Auckland 0622 (the **"Subscriber"**).

BACKGROUND

- A At the request of the Subscriber, the Company has agreed to issue to the Subscriber, and the Subscriber has agreed to subscribe for, convertible notes having the aggregate principal amount of \$15,000,000 for the Issue Price and upon the terms and conditions set out in this Agreement.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms

In this Agreement, unless the context requires otherwise:

"Agreement" means this Agreement, including the Background and the Schedules;

"Authorisation" means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government agency;

"Board" means the board of directors of the Company;

"Business Day" means any day on which the NZX Main Board is open for trading in New Zealand;

"Company Group" means the Company and its Subsidiaries (if any) from time to time;

"Conditions" means the conditions precedent comprised in clause 7.1;

"Constitution" means the constitution from time to time of the Company;

"Control" means with respect to a person (other than an individual natural person):

- (a) the direct or indirect ownership of at least 50% of the voting rights of such person; or
- (b) the right to appoint, or cause the appointment of, at least 50% of the members of the board of directors (or similar governing body) of such person,

whether such right arises directly or indirectly, whether by the legal or beneficial ownership of share capital, securities or other equity, the possession of voting power, by contract, trust, or otherwise (and the term **"Controlling"** has a corresponding meaning);

"Conversion" means a conversion of Notes into Ordinary Shares in accordance with this Agreement and **"Convert"**, **"Convertible"** and **"Converted"** shall be construed accordingly;

“Conversion Date” means in respect of any conversion of Notes to Ordinary Shares under this Agreement, the date on which those Notes convert to Ordinary Shares under this Agreement, which shall be 10 Business Days after the date that the Subscriber serves a valid Election Notice on the Company in accordance with clause 5.1;

“Deed of Priority” has the meaning in clause 2.12(b);

“Default Rate” means 12% per annum;

“Due Diligence Material” means all written information disclosed to the Subscriber prior to the date of this Agreement, an index of which has been agreed by the Subscriber and Company prior to the entry into this Agreement;

“Election Notice” means a notice in the form set out in Schedule 4 or such other form of notice as the Company may in its discretion accept;

“Encumbrance” means any security interest (as that term is defined in the Personal Property Securities Act 1999), mortgage, lien, charge and encumbrance whether equitable or otherwise;

“Event of Default” means any one or more of the following events:

- (a) the Company fails, including, for the avoidance of doubt, where any non-payment of any amount due under this Agreement is required under the Deed of Priority, to pay all or any part of any amount pursuant to a Transaction Document on the due date for payment (or within one Business Day of its due date where non-payment has arisen solely by reason of a bank technical or administrative error);
- (b) any representation, warranty or undertaking made or deemed to be made by the Company under or in respect of any Transaction Document is not correct, accurate, true or complied with in any material respect or is found to be or becomes incorrect, untrue, inaccurate or not complied with in any material respect (whether by omission or otherwise);
- (c) the Company breaches or fails to comply with any Transaction Document where such breach or failure is in the opinion of the Subscriber not capable of remedy, or, if capable of remedy, that breach or failure to comply has not been remedied to the Subscriber’s satisfaction within 20 Business Days after the Company has received notice of the breach or failure from the Subscriber requiring that breach or failure to be remedied;
- (d) an insolvency event occurs in respect of the Company, which includes:
 - (i) the Company being unable to pay its debts as and when they become due;
 - (ii) the Company becomes insolvent;
 - (iii) an encumbrancer takes possession of any assets of the Company, or a liquidator, receiver, receiver and manager, statutory manager, trustee and/or administrator (whether voluntary or not) is appointed in respect of the Company or its assets, whether provisionally or finally;

- (iv) a distress, attachment, execution or other legal process is levied or enforced on, or commenced against, any assets of the Company and is not discharged or stayed within 10 Business Days;
 - (v) the Company seeks or obtains protection from its creditors under any statute or any other law;
 - (vi) an application or order for the winding up of the Company is made; or
 - (vii) anything analogous, or having a substantially similar effect, to anything referred to above occurs in respect of the Company; or
- (e) any other indebtedness of the Company for borrowed money in excess of \$100,000 is not paid when due or within any originally applicable grace period, or becomes capable of being declared due and payable prior to its stated maturity by reason of a default, cancellation event, prepayment event or similar event (whatever called);

“Exit Event” means any event or action that results, or will result, in a person (alone or with its associates, but not including the Subscriber), acquiring Control of the Company or of any holding company of the Company’s business, in circumstances where such person (alone or with its associates) does not have such control at the Subscription Date, and includes the sale by the Company of a Controlling interest in the whole or substantially the whole of its business however structured, including a sale of the assets of, or shares in, any direct or indirect subsidiary of the Company;

“GSD” has the meaning in clause 2.12;

“Independent Advisor Report” means the independent advisor’s report required to be prepared by the independent advisor appointed by the Company in relation to the Notes and the Conversion for the purposes of the Takeovers Code, as amended or updated from time to time and including any supplementary or replacement report;

“Interest Rate” means 6% per annum;

“Issue Price” means the sum of \$15,000,000 in aggregate, which comprises the amount of consideration payable by the Subscriber for the Notes;

“Material Adverse Change” means an event or circumstance (including a matter, occurrence, fact or omission) or a series of related or unrelated events or circumstances (including without limitation any fire, contamination, earthquake, flood, epidemic, pandemic or act of God) which occurs or commences between the date of this agreement and the Subscription Date and which has had, or is reasonably likely to have, the effect of reducing the:

- (a) EBITDA (or forecast EBITDA) of the Company Group in aggregate in the 12 month period following the occurrence of the relevant event or circumstance by \$NZ500,000 or more; and/or
- (b) net tangible assets of the Company Group in aggregate by \$NZ500,000 or more,

and **“Material Adverse Effect”** shall have a corresponding meaning;

“Nominated Director” has the meaning in clause 7.1(d)(ii).

“Notes” means 15,000,000 Notes, to be issued to the Subscriber in accordance with this Agreement;

“NZX” means NZX Limited and, where the context requires, the main board financial market that it operates;

“NZX Listing Rules” means the NZX Listing Rules as at 24 July 2024, and updated from time to time;

“Ordinary Shares” means ordinary voting shares in the capital of the Company, ranking equally in all respects with the ordinary shares of the Company quoted on NZX;

“Paid” includes, in the context of interest payable on the Notes and the application of the withholding tax rules in Part R of the Income Tax Act 2007, capitalisation of such interest;

“Parties” mean the parties to this Agreement;

“PPSA” means the Personal Property Securities Act 1999;

“Redemption” means a redemption of Notes for cash at a rate of NZ\$1.00 per Note in accordance with this Agreement and **“Redeem”** and **“Redeemed”** shall be construed accordingly;

“Redemption Date” means 60 calendar months from the date of the issue of the Notes to the Subscriber;

“Register” means the Register of Notes to be kept by the Registrar;

“Registrar” means the Company;

“RWT-exempt status” has the meaning given in section YA 1 of the Income Tax Act 2007;

“Sale Agreement” means the Agreement for Sale and Purchase of Business entered into between the Company and Civic Waste Limited and dated on or about the date of this Agreement;

“Settlement” means the issue of the Notes pursuant to clause 2.6;

“Shareholder Documentation” has the meaning in clause 7.2.

“Share Purchase Plan” means the share purchase plan for the issue of up to 250,000,000 Ordinary Shares in the Company at an issue price of \$0.02 per Ordinary Share to complete before 20 December 2024;

“Subscription Date” means that date being the date of the settlement of the sale and purchase of business assets under the Sale Agreement (as notified by the Company to the Subscriber at least 5 Business Days prior to the Subscription Date);

“Subsidiary” has the same meaning given to the term “subsidiary” in section 5 the Companies Act 1993 (read as if the expression “company” in that subsection included any body corporate of any jurisdiction).

“Takeovers Code” means the Takeovers Code set out in the Schedule to the Takeovers Regulations 2000;

“Taxes” includes all present and future income and other taxes, duties, levies, assessments, imposts, charges and deductions or withholdings of any nature whatsoever imposed by a fiscal authority together with any interest, additions to tax, penalties and fines with respect thereto, and **“Tax”** and **“Taxation”** shall be construed accordingly.

“Transaction Documents” means:

- (a) this Agreement;
- (b) the GSD;
- (c) the Deed of Priority;
- (d) each other document required or contemplated by, or relating to, this Agreement and the GSD,

and any other document agreed from time to time to be a Transaction Document by the Company and the Subscriber;

“Warranties” means the warranties set out in Schedule 1; and

“Warranty Claim” means any claim by the Subscriber arising out of a breach of a Warranty.

1.2 Construction

Unless expressed to the contrary:

- (a) Words importing:
 - (i) The singular include the plural and vice versa;
 - (ii) Any gender includes the other genders;
- (b) If a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) A reference to:
 - (i) A person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) A person includes its legal personal representatives, successors and assigns;
 - (iii) A statute, ordinance, code or other law (including any listing rules) includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) “\$” or “dollars” is a reference to the lawful currency of New Zealand; and

- (v) This or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties.

2 AGREEMENT TO SUBSCRIBE

2.1 Agreement to Subscribe

The Subscriber will subscribe for the Notes for the Issue Price on the Subscription Date and on the terms and conditions set out in this Agreement.

2.2 Terms of Notes

The Notes shall be constituted by this Agreement and shall rank equally among themselves and any other notes that are issued on the same terms as the Notes which are the subject of this Agreement.

2.3 Acknowledgement of indebtedness

The Company acknowledges its indebtedness to the Subscriber in respect of the principal amount of all Notes paid up by the Subscriber under this Agreement and interest thereon as set out in this Agreement.

2.4 Validity

The Subscriber shall not be concerned or obliged to enquire whether any Notes have been issued in contravention of this Agreement, the Constitution, or any other agreement or any law or regulation. Each Note shall be deemed to be validly issued and constituted for all purposes notwithstanding that it may subsequently be determined that the issue of such Notes were in breach of any provision of this Agreement or the Constitution or any other agreement or any law or regulation, but without prejudice to the Subscriber's rights pursuant to this Agreement in relation to such breach.

2.5 Ordinary Shares

The Company shall procure the passing of all resolutions by the Subscription Date, and shall take all other actions necessary to ensure the required number of Ordinary Shares are issued immediately on Conversion.

2.6 Issue of the Notes

The Company shall on the Subscription Date, against payment by the Subscriber of the Issue Price in accordance with clause 3.2, issue the Notes to the Subscriber together with a certificate in the form set out in Schedule 3.

2.7 Listing

The Notes will not be quoted on any recognised stock exchange.

2.8 The Register

- (a) The Company shall cause a Register to be maintained by the Registrar at such place as the Company may from time to time determine.

- (b) Only the person whose name stands first in the Register as one of the joint holders of the Note shall be entitled to delivery of any notice, payment or other communication from the Company, and any such notice, payment or other communication given to any such person shall be deemed to have been given to all the joint holders. With the consent of all joint holders of the relevant Note, the Company may amend the name of the person standing first in the Register.
- (c) There shall be entered in the Register the number of Notes for the time being issued and held by the respective holders who are registered in the Register, all subsequent transfers or changes of ownership of Notes, the names and addresses of the holders of the Notes, and the date at which such names are entered on such Register.
- (d) Any change of name or address of any holder of Notes shall forthwith be notified to the Registrar in writing by the holder, or if a joint holding, by all the joint holders, and the Registrar shall be notified accordingly.

2.9 **Transfer of the Notes**

- (a) Subject to applicable law and clause 16.4, the Notes may be transferred by an instrument in the usual or common form subject to the following provisions:
 - (i) Every instrument of transfer must be signed by the transferor and the transferor shall be deemed to remain the owner of each Note concerned until the name of the transferee is entered in the Register;
 - (ii) Every instrument of transfer must be left at the office of the Registrar or at the registered office of the Company for registration accompanied by the certificate for the Notes being transferred in the form set out in Schedule 3 together with such evidence as the Board of Directors of the Company may reasonably require to prove the title of the transferor or their right to transfer each such Note. Upon being satisfied as to the due execution of the transfer the Board of Directors of the Company will register and will recognise the transferee as the holder of each Note comprised in the transfer and issue a new certificate to the transferee for the number of Notes comprised in the transfer;
 - (iii) All instruments of transfer which are registered will be retained by the Company, but any instrument of transfer which the Board of Directors of the Company declines to register shall be returned to the person submitting it;
 - (iv) No fee shall be charged for the registration of a transfer.
- (b) Any person becoming entitled to any Note by operation of law (including the death or bankruptcy of any holder) may, upon producing such evidence of their entitlement as shall be reasonably acceptable to the Company, obtain registration as the holder of such Note or execute a transfer of such Note. This provision shall apply to any case where a person becomes entitled as a survivor of persons registered as joint holder.

2.10 **Issue of more Notes**

Subject to the terms of this Agreement, the Company may, in its discretion, issue additional convertible notes on the same or similar terms to the Notes to other parties as it decides

without requiring the prior approval of the Subscriber or the other or subsequent holders of the Notes.

2.11 Recognition of Trusts

The Company shall (notwithstanding any notice to the contrary) be entitled to treat the Subscriber (or any other party to whom the Subscriber (or a subsequent transferee) has transferred the Notes in accordance with clause 2.9) as the absolute and beneficial owner of the Notes and shall not be required to recognise any trust or equity affecting such ownership (except as required by law).

2.12 Secured Obligations

The obligations of the Company to the Subscriber in respect of the Notes shall be secured by a second ranking general security deed (in the form set out in schedule 5 to this Agreement) over the present and after acquired property of the Company ("**GSD**"). The parties acknowledge that:

- (a) the GSD shall rank behind the existing general security agreement registered against the Company in favour of Kiwibank Limited (or any replacement of Kiwibank Limited as senior secured lender to the Company); and
- (b) the Company, the Subscriber and Kiwibank Limited (and any replacement of Kiwibank Limited as senior secured lender to the Company) will enter into a deed of priority in a form acceptable to the Subscriber, acting reasonably ("**Deed of Priority**"), to regulate the priorities of the GSD and Kiwibank Limited's existing general security agreement registered against the Company (or any replacement of Kiwibank Limited as senior secured lender to the Company), on terms acceptable to the Subscriber, acting reasonably.

3 CONSIDERATION FOR NOTES AND SETTLEMENT

3.1 The Consideration

The consideration payable by the Subscriber to the Company for the Notes shall be NZ\$1.00 per Note.

3.2 Payments

Subject to:

- (a) the satisfaction of the Conditions; and
- (b) the receipt of the duly executed GSD and Deed of Priority,

the Subscriber will pay the Issue Price to the Company in cleared funds by direct credit into the Company's bank account free of any form of deduction by 1 p.m on the Subscription Date.

3.3 Default Interest - Default by Subscriber

Provided the Company has first given the Subscriber at least 5 Business Days notice of the Subscription Date, if for any reason, other than the default of the Company, the Subscriber fails to pay any part of the Issue Price or any other payment under this Agreement on the date it is due, then the Subscriber will pay interest at the Default Rate to the Company on the unpaid

amount calculated on a daily basis from the due date until payment, but nevertheless this provision is without prejudice to any of the Company's other rights or remedies.

4 **INTEREST**

4.1 Interest shall accrue daily on the Issue Price of each Note that has been issued and fully paid at the Interest Rate during the period commencing on (and including) the date of the issue of the Notes to the Subscriber and ending on (but excluding) the date on which a Note is Converted or Redeemed. For the avoidance of any doubt, Interest shall not compound.

4.2 Interest is payable in cash in arrears on the date falling three business days before the end of each calendar month during the term of the Notes. Payment shall be made to the bank account specified by the Subscriber.

4.3 **Default Interest - Default by the Company**

If for any reason, other than the default of the Subscriber, and for the avoidance of doubt including where any non-payment of any amount due under this Agreement is required under the Deed of Priority, the Company fails to pay any payment under this Agreement on the date it is due, then the Company will pay interest at the Default Rate to the Subscriber on the amount unpaid calculated on a daily basis from the due date until payment, but nevertheless this provision is without prejudice to any of the Subscriber's other rights or remedies.

5 **CONVERSION**

5.1 The Subscriber may at its election exercise the right to Convert all or part of the Notes into Ordinary Shares in the Company at any time during the period commencing on the Subscription Date and ending on the Redemption Date ("**Exercise Period**") by giving an Election Notice to the Company. If the Subscriber does not give an Election Notice during the Exercise Period in respect of all of the Notes, then the Subscriber shall have no right after the expiry of the Exercise Period to Convert any Notes which have not already been Converted.

5.2 If the Notes are to convert to Ordinary Shares pursuant to any provision of this Agreement, then on the Conversion Date the Company shall issue to the Subscriber Ordinary Shares calculated in accordance with the following formula:

$$OS = PA \div A$$

In the above formula:

OS = the number of Ordinary Shares in the Company to be issued on conversion of the Notes

PA = the principal amount of the Notes to be converted into Ordinary Shares (as specified in the relevant Election Notice)

A = \$0.02 (subject to any adjustment required by clause 8)

5.3 The Company shall deliver to the Subscriber confirmation of the issue of the Ordinary Shares on Conversion into the name of the Subscriber on the Conversion Date.

- 5.4 If application of the formula in clause 5.2 would result in a fraction of an Ordinary Share being issued to the Subscriber, the number of Ordinary Shares to be issued to the Subscriber shall be rounded up to the nearest whole number of Ordinary Shares.
- 5.5 Each Note shall be cancelled on Conversion.
- 5.6 The Subscriber shall not be concerned or obliged to enquire whether any Ordinary Share has been issued in contravention of this Agreement, the Constitution, any other agreement or any law or regulation. Each Ordinary Share shall be deemed to be validly issued and constituted for all purposes notwithstanding that it may subsequently be determined that the issue of such Ordinary Share was in breach of any provision of this Agreement, the Constitution or any other agreement or any law or regulation, but without prejudice to any of the Subscriber's rights pursuant to this Agreement in relation to such breach.

6 REDEMPTION AND REPAYMENT

- 6.1 In the event that Conversion of all of the Notes has not occurred in accordance with clause 5 by the end of the Exercise Period, the Company shall Redeem in cash the Issue Price paid up by the Subscriber of all Notes and all interest and other amounts then owing under this Agreement on the Redemption Date in respect of those Notes which have not already been Converted and, upon Redemption, any such Notes shall be cancelled.

7 CONDITIONS

- 7.1 This Agreement is conditional upon:

- (a) The Sale Agreement becoming unconditional except for completion of the subscription of the Notes, on or before 5 p.m. on 18 December 2024;
- (b) The board and the shareholders of the Company approving:
- (i) the issue of the Notes to the Subscriber;
 - (ii) the issue of up to a maximum of 750,000,000 new ordinary fully paid shares in the Company to the Subscriber pursuant to any Conversion of the Notes;
 - (iii) the grant of the GSD to the Subscriber,
- as may be required by, and in accordance with, the NZX Listing Rules and the Takeovers Code (as the case may be), on or before 18 December 2024;
- (c) Kiwibank Limited:
- (i) approving the registration of the GSD against the Company as a second ranking security interest, ranking behind the existing general security agreement held by Kiwibank on terms acceptable to the Subscriber; and
 - (ii) entering into the Deed of Priority with the Subscriber in respect of the GSD and Kiwibank's existing general security agreement, on terms acceptable to the Subscriber,

on or before 18 December 2024;

- (d) The composition of the Board with effect from the Subscription Date, and the ongoing Board appointments rights of the Subscriber, being acceptable in all respects to the Subscriber, including that during the term of the Notes:
 - (i) the Board has a maximum of 5 directors (including the nominees of the Subscriber below);
 - (ii) two nominees of the Subscriber (each a “**Nominated Director**”) are appointed to the Board; and
 - (iii) the identity of the incoming independent chair of the Board is approved by the Subscriber. The Subscriber acknowledges that the Board intends to elect a new chair by 31 January 2025.
- (e) There being no Material Adverse Change with respect to the Company during the period between the date of this Agreement and the Subscription Date.

7.2 Each of the parties shall use all reasonable endeavours to ensure the fulfilment of the Conditions. This shall include, but is not limited to:

- (a) as soon as practicable after preparation of an advanced draft of all documentation to shareholders with respect to the Notes, conversion thereof, director appointment rights of the Subscriber or any other matter contemplated by the transactions set out in this Agreement (including, but not limited to, a notice of meeting and Independent Advisor Report, and together, the “**Shareholder Documentation**”) suitable for review by the Takeovers Panel and NZX, the Company giving that draft to the Subscriber;
- (b) the Company giving the Subscriber subsequent drafts of the Shareholder Documentation in a timely manner, give the Subscriber a reasonable opportunity to review those drafts and consider and take into account in good faith the reasonable comments of the Subscriber and its advisers when preparing revised drafts of the Shareholder Documentation. The Subscriber must limit any comments on the independent advisor report to factual error correction about the Subscriber and/or its affiliates;
- (c) the Company keeping the Subscriber informed of any matters raised by any of the Takeovers Panel or NZX with respect to the Shareholder Documentation, the Notes, conversion thereof, director appointment rights of the Subscriber or any other matter contemplated by the transactions set out in this Agreement and consult with the Subscriber to resolve any such issues; and
- (d) the Company ensuring that each director of the Company:
 - (i) approves all director’s resolutions required to give effect to the provisions of this Agreement;
 - (ii) recommends that shareholders of the Company vote in favour of any shareholder resolutions required to give effect to the provisions of this Agreement;
 - (iii) to the maximum extent permitted under the Takeovers Code, undertakes to vote, or procure the voting of, all Ordinary Shares held or controlled by him or her or

his or her associates in favour of any shareholder resolutions required to give effect to the provisions of this Agreement; and

- (iv) does not change, qualify or withdraw any of the approvals, recommendations or undertakings in this clause 7.2.

7.3 The Conditions have been inserted for the protection of the Subscriber and any waiver of such conditions must be agreed to in writing by the Subscriber.

7.4 If any of the Conditions are not fulfilled, or validly waived in accordance with the timeframes prescribed in each of the Conditions, or such later date as may be agreed by the Company and the Subscriber, the Agreement may be terminated by either the Company or the Subscriber giving notice to the other and if this Agreement is so terminated it will be of no further force or effect and all parties shall be released from their obligations under this Agreement provided that such termination will not affect accrued rights arising from any breach of this Agreement occurring before such termination.

8 CHANGES IN SHARE CAPITAL

8.1 If, prior to Conversion, Ordinary Shares are consolidated or subdivided, the Conversion formula specified in clause 5 shall be adjusted pro rata in the manner necessary to reflect that consolidation or subdivision which preserves the existing rights and entitlements of the Subscriber under the Notes relative to the rights and entitlements of holders of Ordinary Shares or Notes immediately prior to the date of the consolidation or subdivision.

8.2 In the event of any other alteration or reconstruction of the capital of the Company, the Conversion formula specified in clause 5 shall be adjusted pro rata in the manner necessary to reflect that alteration or reconstruction which preserves the existing rights and entitlements of the Subscriber under the Notes relative to the rights and entitlements of holders of Ordinary Shares or Notes immediately prior to the date of the alteration or reconstruction.

9 TAXES

9.1 All amounts payable under a Note must be paid:

- (a) Free of any restriction or condition; and
- (b) Except to the extent required by law without any deduction or withholding on account of any tax or any other amount, whether by way of set-off, counterclaim or otherwise.

9.2 If the Company is required by law to make any deduction or withholding from any amount Paid or payable by it under the Agreement:

- (a) The Company shall ensure that any such deduction or withholding does not exceed the amount required by law and shall pay the amount deducted or withheld to the relevant authority on or before the date penalties and/or interest attach thereto;
- (b) The amount payable by the Company in respect of which that deduction or withholding is required to be made shall not be increased, and instead the Subscriber will receive the amount net of any applicable deduction or withholding;

- (c) The Company shall promptly, but in any case, within 30 days (or such further period as the Subscriber may allow), deliver to the Subscriber the receipt or other notice issued by the applicable authority evidencing that such deduction or withholding has been made; and
- (d) If the Subscriber is entitled to a reduced rate of withholding on any amount Paid or payable to it under the Agreement (including where the Subscriber has RWT-exempt status), the Subscriber shall provide reasonable evidence to the Company that it is entitled to the reduced withholding rate and agrees to notify the Company (as soon as possible, and in any event prior to any payment being made) if it ceases to have, or ceases to be entitled to have, the reduced withholding rate.

10 **SUBSCRIBER TO RELY ON OWN JUDGEMENT**

- 10.1 The Subscriber acknowledges that it is entering into this Agreement solely in reliance on its own judgement and not in reliance on any statements, warranties or representations made to it or to any other person by or on behalf of the Company, other than the Warranties and those warranties set out in the Sale Agreement. Accordingly, all other express or implied warranties and representations are excluded from this Agreement to the maximum extent permitted by the law.

11 **SUBSCRIBER'S RIGHTS**

- 11.1 The Notes entitle the Subscriber to attend meetings of shareholders of the Company and to receive copies of all notices, reports and financial statements issued generally to those shareholders (pursuant to any requirement of law, the Constitution or otherwise) but do not confer any voting rights on the Subscriber or any other person at any such meeting.

12 **COMPANY WARRANTIES**

- 12.1 In consideration of the Subscriber entering into this Agreement the Company gives the Warranties to the Subscriber as at the date of this Agreement and shall be deemed to repeat the Warranties on the Subscription Date by reference to the facts and circumstances then existing.
- 12.2 Separate and independent:
 - (a) Each of the Warranties are separate and independent and, except as expressly provided, shall not be limited by reference to any other Warranty.
 - (b) Each of the qualifications and limitations in this clause 12 are separate and independent and, except as expressly provided, shall not be limited by reference to any other qualification or limitation.
- 12.3 The Warranties are given for the benefit of the Subscriber and may not be relied upon by any other person.
- 12.4 The Warranties are given subject to:
 - (a) any matter expressly provided for under the terms of this Agreement;
 - (b) any matter or thing done, or omitted to be done, in accordance with any provision of this Agreement, or at the request, or with the prior approval, of the Subscriber;

- (c) any matter, circumstance or information that is fairly disclosed in the Due Diligence Material; and
- (d) any matter, circumstance or information actually known to the Subscriber before the date of this Agreement.

12.5 In this Agreement, references to the knowledge or awareness of the Company (however expressed) are references to the actual knowledge (after making reasonable enquiry) as at the date of this Agreement of each of the directors of the Company and each of the Company's "Senior Managers" (as defined in the NZX Listing Rules), and shall not include any facts or circumstances of which any person has constructive knowledge only.

12.6 The Subscriber shall take all reasonable steps to avoid or mitigate any loss or liability which might give rise to a claim under any Warranty.

12.7 No double claims:

- (a) The Company shall not be liable to the Subscriber more than once in respect of any loss or liability arising from the same fact, circumstance, event or other originating cause giving rise to a claim.
- (b) If the Subscriber recovers any amount of any loss or liability suffered or incurred by the Subscriber or the Company from a third party, then the amount recovered shall:
 - (i) be excluded for the purposes of ascertaining the amount of the Company's liability in respect of any claims; and
 - (ii) not otherwise be recoverable from the Company.

12.8 Following the Conversion of any Notes, if any amount is payable by the Company to the Subscriber in respect of any Warranty Claim under this Agreement, the relevant amount will be increased by an amount equal to $((X \times Y\%) / (1 - Y\%))$, where X is the total amount of the Warranty Claim payable by the Company to the Subscriber (before the gross up increase referred to in this clause) and Y is the percentage of the Ordinary Shares held by the Subscriber in the Company against the total shares in the Company.

13 COVENANTS FROM THE COMPANY

13.1 During the term of the Notes, the Company agrees that it shall:

- (a) **Events of Default/Exit Events:** notify the Subscriber promptly upon becoming aware of the occurrence of an event which is or may become an Event of Default or Exit Event and shall provide the Subscriber with full details of any action taken (or to be taken) as a result;
- (b) **Maintain authorisations:** obtain and maintain in full effect, all consents, authorisations, licenses, permits or certifications necessary, desirable or required to enable the Company to:
 - (i) perform or comply with its obligations under each Transaction Document; and

- (ii) ensure that the obligations under each Transaction Document are valid, legally binding and enforceable;
- (c) **Compliance:** duly and punctually:
 - (i) comply with and observe all laws, regulations, by-laws, directives and consents to which the Company is or becomes subject;
 - (ii) perform all obligations binding on the Company by law, regulation, by-law, directive, consent, contract or otherwise,

in each case, where a failure to do so would have a Material Adverse Effect;
- (d) **Maintain insurance:** maintain at all times insurance over the Company's assets in such amounts and covering such risks as are usually carried by persons or corporations engaged in similar businesses;
- (e) **Maintain assets:** maintain and preserve the Company's assets in good and substantial repair and in good working order and condition, free from any unlawful contamination and hazardous waste, and promptly remedy every defect in the repair, order or condition of any of the assets and remove or eliminate any unlawful contamination or hazardous wastes affecting any of the assets, in each case, where a failure to do so would have a Material Adverse Effect;
- (f) **Notes Conversion:** comply with all requirements of all applicable laws (including the Takeovers Code and the NZX Listing Rules) relating to the Notes and the Conversion thereof, including to:
 - (i) permit the Conversion of the Notes in accordance with this Agreement; and
 - (ii) ensure the immediate quotation on NZX of the Ordinary Shares issued to the Subscriber following Conversion;
- (g) **Board of Directors:** use best endeavours to ensure that:
 - (i) if a Nominated Director is up for re-election at the next subsequent annual meeting of shareholders of the Company, the Board shall, absent any other adverse relevant factors, recommend to shareholders the re-appointment of such director;
 - (ii) if any Nominated Director retires or is not re-elected by shareholders of the Company to the extent required by the NZX Listing Rules, the Subscriber has the right to nominate a replacement and the Board will procure that such replacement Nominated Director is appointed to the Board. This provision may apply more than once, at each time a Nominated Director retires or is not re-elected by the shareholders of the Company; and
 - (iii) following the appointment of two directors nominated by the Subscriber in accordance with clause 7.1(d)(ii), the Board shall consist of not more than five directors at all times;

- (h) **Negative pledge:** not, without the prior written consent of the Subscriber, create or permit to subsist any security interest over the whole or any part of its assets, other than:
- (i) any security interest that is created or provided for by:
 - (A) a lease for a term of more than one year (as defined in the PPSA) in respect of which that person is the lessee;
 - (B) a commercial consignment (as defined in the PPSA) in respect of which that person is consignee; or
 - (C) a transfer or purchase of an account receivable or chattel paper (in each case as defined in the PPSA) on normal commercial arm's length terms in respect of which that person is transferor or vendor,and that does not secure payment or performance of an obligation; and
 - (ii) a security interest entered into pursuant to an operating or finance lease entered into in the ordinary course of business;
 - (iii) any security interest in respect of personal property which is, or has at any time been, a purchase money security interest (as defined in the PPSA) in favour of a seller securing all or part of the purchase price of that personal property which is acquired by that person in the ordinary course of its business;
 - (iv) Security granted in favour of NZX Limited;
 - (v) security interests in favour of a registered bank which are subject to the Deed of Priority;
- (i) **Transactions:** Not, without the prior written consent of the Subscriber:
- (i) alter the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) of the Company or other securities or financial products (if any) of any member of the Company Group, but for the avoidance of doubt this clause 11.1(i)(i) does not apply to the Company or any member of the Company Group amending any existing loan agreements with third party lenders;
 - (ii) alter the constitutional documents of any member of the Company Group;
 - (iii) undertake any Material Transaction (as defined in the NZX Listing Rules) irrespective of whether the counterpart to that transaction is a "Related Party" of the Company; or
 - (iv) delist or cause the delisting of the Ordinary Shares of Company from the NZX.
- (j) **Anti-dilution**
- (i) Except in relation to the Share Purchase Plan, use its best endeavours to offer the Subscriber the right to participate in a future capital raising by the Company to the extent that, immediately following the capital raising, the Subscriber

could maintain the same percentage interest in the Company it would hold on conversion of the Notes (had it converted the Notes immediately prior to that capital raise), subject to compliance with all applicable laws.

- (ii) To give effect to the above covenant, unless the Subscriber agrees in writing otherwise, the Company agrees to use its best endeavours to seek all necessary regulatory consents and authorisations to permit the Subscriber to participate in a future capital raising on the above basis, including to promptly seek a Takeovers Code exemption and if an exemption is not granted on satisfactory terms, to seek shareholder approval at the time of such a future capital raise on the above basis.

13.2 Redemption on Event of Default or Exit Event:

If an Event of Default or an Exit Event occurs, without limiting any other right of the Subscriber (including any right to Convert Notes) the Subscriber may, by written notice to the Company given at any time thereafter, require the Company to Redeem all of the Notes (plus accrued interest) then outstanding.

14 DISPUTE RESOLUTION

- 14.1 Every dispute that arises out of or in connection with this Agreement shall be determined by the Parties but if they cannot resolve the dispute within 7 days of the dispute arising then any Party may ask the President of the New Zealand Law Society or their nominee to nominate an independent person to resolve the dispute. Such person, when nominated, shall act as an expert, not an arbitrator, and that person's decision shall be final and binding on the Parties. Nothing in this clause shall prevent any Party from making application to the Courts for injunctive relief or mandatory injunctive relief where that Party believes in its reasonable opinion that such relief is necessary to preserve or protect its interests under this Agreement.

15 NOTICES

15.1 Written notice

Any notice produced under this Agreement shall be in writing addressed to the Party to whom it is to be sent at the address or email from time to time designated by that Party in writing to the other Party.

15.2 Delivery

Delivery may be effected by hand or by email.

15.3 Deemed Receipt

Any notice given under this Agreement shall be deemed to have been received:

- (a) At the time of delivery, if delivered by hand;
- (b) On the day on which the email transmission is received, if sent by email. However, if the date of transmission is not a Business Day or the transmission is received after 4pm on a Business Day then the notice will be deemed to have been received on the next Business Day after the date of transmission. If there is any dispute or difference between the Parties over the fact of transmission in any particular case, production by the sender of a

confirmation of clear transmission shall be conclusive evidence of transmission and shall bind the Parties accordingly.

16 MISCELLANEOUS CLAUSES

16.1 No Merger

The agreements, obligations, warranties and undertakings of the Parties shall not merge with the subscription for, and issue of, the Notes or the Ordinary Shares but (to the extent that they have not been completed by performance at Settlement) shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.

16.2 Further Assurances

Each of the Parties agrees to execute and deliver any documents, and to do all things as may reasonably be required by any other Party to obtain the full benefit of this Agreement according to its true intent. This obligation continues after Settlement and survives the termination of this Agreement.

16.3 No Waiver

No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this Agreement shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.

16.4 No Assignment

No Party shall transfer, assign, or create any Encumbrance over or deal in any manner with the benefit or burden of this Agreement without first obtaining the written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

16.5 Severability

If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement, which shall remain in full force.

16.6 Entire Agreement

This Agreement and the Sale Agreement constitute the entire agreement between the Parties on the subscription for, and issue of, the Notes, and supersede and extinguish all earlier negotiations, understandings and agreements, whether oral or written, between the Parties relating to the subscription for, and issue of, the Notes.

16.7 Governing Law/Jurisdiction

This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand. The Parties submit to the exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this Agreement.

16.8 Counterparts

This Agreement may be executed in two or more counterparts (including scanned email copies), each of which shall be deemed an original, but all of which together shall constitute the same instrument.

16.9 Costs

Except as otherwise provided in this Agreement, the Parties will meet their own costs relating to the negotiation, preparation and implementation of this Agreement.

16.10 Amendment

Any variation to this Agreement requires the written agreement of all parties to this Agreement.

EXECUTION

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SCHEDULE 1: WARRANTIES

1.1 Capacity:

- (a) The Company has been duly incorporated and is validly existing under the laws of New Zealand.
- (b) The Company has the legal capacity to enter into this Agreement and to perform and comply with its obligations under this Agreement and has taken all necessary corporate and other actions to authorise the execution, delivery and performance of this Agreement in accordance with its terms.
- (c) This agreement creates obligations which are legally binding on the Company and is enforceable against the Company in accordance with its terms.

1.2 No legal impediment:

Neither the entry into this Agreement, nor the exercise of any right or the performance of any obligation under it will:

- (a) conflict with, or result in the breach of, any agreement, law, arrangement, obligation or duty to which the Company is party, or by which the Company may be bound; or
- (b) breach any of the documents constituting the Company or cause any limitation on any of the Company's powers,

in any such case which is material in the context of its ability to perform its obligations under this Agreement.

1.3 Capital Structure:

- (a) The Company Group's capital structure is as set out in Schedule 2.
- (b) Except as provided for in Schedule 2 (including, for the avoidance of doubt, pursuant to this Agreement or the Share Purchase Plan), there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or other instruments which are convertible into securities in a member of the Company Group on issue, nor has any member of the Company Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any third party provided that the Company may issue options to employees or directors as approved at its annual general meeting in any year.
- (c) The Company shall notify the Subscriber of any new options issued.

1.4 Ordinary Shares:

The Ordinary Shares issued to the Subscriber on Conversion of the Notes will, on issue:

- (a) be fully paid,
- (b) rank equally with all other shares in Company existing at the time of issue,
- (c) be free of any Encumbrance; and

- (d) be quoted on NZX and freely transferable (on the same basis as other Ordinary Shares in the Company).

1.5 Public disclosures

The Company has filed or lodged with the registrar (as defined in the Companies Act 1993) or NZX all documents required to be filed with the registrar or NZX, including pursuant to NZX Listing Rule 3.1 (“**Company Reporting Documents**”) and is not in breach of its continuous and periodic disclosure obligations under the Companies Act, the FMCA, the NZX Listing Rules and is not relying on the carve-out in NZX Listing Rule 3.1 to withhold any information from public disclosure. The Company Reporting Documents do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except to the extent that such statements have been modified or superseded by a later Company Reporting Document.

1.6 Information:

The Due Diligence Material has been prepared and provided in good faith and, as far as the Company is aware, the Due Diligence Material was, when given, true, complete and accurate in all material respects and is not misleading in any material respect whether by omission or otherwise.

1.7 No material circumstances omitted:

As far as the Company is aware, there is no material circumstance which has not been disclosed in the Due Diligence Material and which might reasonably be expected materially and adversely to affect the financial position, business, assets or profitability of the Company Group (taken as a whole).

1.8 Receivership, liquidation:

No receiver or statutory or official manager has, or will prior to the Subscription Date have, been appointed in respect of the Company or the whole or any part of the assets of the Company, and no application or order has been made, or resolution passed, or will prior to the Subscription Date have been made or passed, for the liquidation or dissolution of the Company.

1.9 Compliance with laws

Each member of the Company Group has complied in all material respects with all laws and regulations applicable to them (save for instances of non-compliance which do not have a material adverse impact on the Company Group taken as a whole), has all material Authorisations for them to conduct the business of the Company Group as presently being conducted and, so far as Company is aware, no member of the Company Group is under investigation with respect to the violation of any laws or applicable Authorisations which would have a material adverse impact on the Company Group taken as a whole.

1.10 Financing

The Company Group does not have any outstanding financing that is not reflected in its most recent financial statements and notes thereto (as set out in the Due Diligence Materials noting that the balances of such indebtedness may change from time to time) other than a subsequent payment arrangement entered into with the Inland Revenue Department, and no member of Company Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto provided that the Company Group may increase its facility limits by up to \$1,000,000 above what is in place at the time of the Due Diligence Materials without the consent of the Subscriber.

1.11 Litigation

There is no current or, so far as the Company is aware on the date of this Agreement, pending or threatened claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Company Group that is material in the context of the Company group as a whole.

1.12 Material adverse change

As at the date of this Agreement, there is no matter, event or circumstance which would, or is likely to, constitute a Material Adverse Change.

SCHEDULE 2: CAPITAL STRUCTURE OF THE COMPANY GROUP

| # of shares | Balance sheet | | | | | |
|-------------------|----------------|------------|----------------|----------------|------------------|------------|
| | classification | 15/12/2024 | 31/03/2024 | 30/09/2024 | Note | Maturity |
| Share Capital | Equity | | 848,373,000.00 | 848,373,000.00 | | |
| Share Options | Equity | | 20,800,000.00 | 19,800,000.00 | | |
| Convertible notes | Debt | | 60,000,000 | 60,000,000 | \$3m @ .05 cents | 15/10/2025 |

| \$ | Balance sheet | | | | | |
|-------------------|----------------|------------|---------------|---------------|------------------|------------|
| | classification | 15/12/2024 | 31/03/2024 | 30/09/2024 | Note | Maturity |
| Share Capital | Equity | | \$ 16,387,000 | \$ 10,855,000 | | |
| Convertible notes | Debt | | 3,000,000 | 3,000,000 | \$3m @ .05 cents | 15/10/2025 |

Note - excludes securities to be issued pursuant to this Agreement and the Share Purchase Plan.

SCHEDULE 3: FORM OF CERTIFICATE

Certificate No: 1

Date of Issue:

**WASTECO GROUP LIMITED
CONVERTIBLE NOTE CERTIFICATE**

This is to certify that:

- 1. **EMPIRE WASTE TECHNOLOGY** is the holder of 15,000,000 Convertible Notes issued by WasteCo Group Limited.
- 2. The Convertible Notes are issued under and constituted by the Convertible Note Agreement dated [XXX] November 2024 (*Agreement*) a copy of which is attached to this certificate.
- 3. The Convertible Notes are held subject to the terms and conditions contained in the Agreement.
- 4. This certificate may only be transferred in those circumstances where transfer is permitted by the Agreement.

SIGNED by
WASTECO GROUP LIMITED
in the presence of:

Director

Witness Signature

Witness Name

Witness Occupation

SCHEDULE 4: FORM OF ELECTION NOTICE

This Notice is given pursuant to the Convertible Note Agreement dated the [XXX] November 2024 between WasteCo Group Limited (“**the Company**”) and Empire Waste Technology Limited (“**the Agreement**”).

TO: WasteCo Group Limited

We hereby notify WasteCo Group Limited that we wish to exercise the right to convert the number of Notes below into Ordinary Shares in the Company in accordance with the terms of the Agreement with effect 10 Business Days from the date of this Notice.

DATED:

Empire Waste Technology Limited

Number of Notes to be converted into Ordinary Shares

SCHEDULE 5: FORM OF GENERAL SECURITY DEED

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